AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

12-11-81
Vol. 46 No. 238
Pages 60565-60798

federal register

Friday
December 11, 1981

Highlights

60712 **Passports—Libya** State restricts use of United States passports to, in, or through Libya.

60572, 60577 **Retirement** Treasury/FS amends rules on United States Retirement Bonds and United States Individual Retirement Bonds. (2 documents)

60592 **Food Assistance Program** USDA/FNS proposes changes in Summer Food Service Program.

60758 **Occupational Safety and Health** Labor/OSHA amends rules on occupational exposure to lead. (Part III of this issue)

60778 **Surface Mining** Interior/SMREO proposes to revise rules on establishment and administration of Abandoned Mine Land Reclamation Program. (Part IV of this issue)

60654 **Cancer Reports** HHS/PHS reevaluates carcinogenicity reports on Dimethylterephthalate.

60657 HHS/PHS announces availability of bioassay of F.D.& C. Yellow No. 6 and monitoring guidelines for carcinogen bioassays.

60629 **Cuban and Haitian Refugees** HHS/SSA proposes new cash and medical assistance policies for refugee resettlement program.

CONTINUED INSIDE

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

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers, free of postage, for $75.00 per year, or $45.00 for six months, payable in advance. The charge for individual copies is $1.00 for each issue, or $1.00 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

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

Highlights

60634 **Procurement** OMB/OFPP announces availability of draft Federal Acquisition Regulation segment.

60591 **Federal Employees** MSPB proposes to clarify "whistleblower" provisions.

60616 **Forests** USDA/ASCS proposes to amend Forestry Incentives Program regulations.

60636 **Courts** Administrative Office of United States Courts announces Spanish/English certification examination for court interpreters.

60589 **Endangered and Threatened Wildlife** Interior/FWS further postpones effective date of rule authorizing export of Bobcat taken in 1981–82 season.

60614 **Food Stamps** USDA/FNS requests comments on bilingual services regulations.

60637 **Wheat and Barley** USDA/ASCS announces determination of national program acreages and program factors for 1981 crops.

60617 **Energy** DOE/FERC proposes to revise annual report (Form P) filed by oil pipeline companies.

60645 **Labor** Federal Mediation and Conciliation Service requests comments on draft FY 1982 program announcement for Labor-Management Cooperation Program.

60639 **Imports** CITA requests comments on bilateral agreements during 1982 on cotton, wool and man-made fiber textile and apparel products from Brazil, China, Colombia, Haiti, Hong Kong, India, Republic of Korea, Pakistan, the Philippines, Romania, Taiwan and Thailand.

Privacy Act Documents

60639 DOD/ARMY

60713 **Sunshine Act Meetings**

Separate Parts of This Issue

60740 **Part II, Labor/ESA**
60758 **Part III, Labor/OSHA**
60778 **Part IV, Interior/SMREO**

Contents

Federal Register
Vol. 46, No. 238
Friday, December 11, 1981

Administrative Office of United States Courts
NOTICES
60636 Interpreters in courts; Spanish/English certification examination

Agricultural Marketing Service
RULES
60565 Lemons grown in Ariz. and Calif.

Agricultural Stabilization and Conservation Service
PROPOSED RULES
Conservation and environmental programs:
60616 Forestry incentives program
NOTICES
Marketing quotas and acreage allotments:
60637 Wheat and barley; 1981 determinations

Agriculture Department
See Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Food and Nutrition Service; Soil Conservation Service.

Animal and Plant Health Inspection Service
RULES
Livestock and poultry disease control:
60565 Brucellosis; indemnity for breeding swine; correction

Army Department
NOTICES
60639 Privacy Act; systems of records

Bonneville Power Administration
NOTICES
Environmental statements; availability, etc.:
60642 Coos-Curry Electric Cooperative; proposed Fairview-Bandon 230-kV transmission project

Centers for Disease Control
NOTICES
Meetings:
60650 Mine Health Research Advisory Committee

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
60638 Montana

Defense Department
See also Army Department.
NOTICES
Meetings:
60641 Electron Devices Advisory Group

Delaware River Basin Commission
NOTICES
60641 Comprehensive plan; water supply and sewage treatment plant projects; hearings

Depository Institutions Deregulation Committee
NOTICES
60713 Meetings; Sunshine Act

Drug Enforcement Administration
RULES
Schedules of controlled substances:
60572 N-ethylamphetamine; correction

Employment and Training Administration
NOTICES
Adjustment assistance:
60669 Biquette, Inc., et al.
60668 La Salle Fashions, Inc., et al.

Employment Standards Administration
NOTICES
60740 Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions (Ariz., Colo., Hawaii, Iowa, Kans., Md., Mich., Minn., N.H., N.J., N.Y., N.C., Ohio, Tenn., and Vt.)

Energy Department
See Bonneville Power Administration; Federal Energy Regulatory Commission.

Environmental Protection Agency
NOTICES
Air quality; prevention of significant deterioration (PSD):
60644 Permit approvals
Environmental statements; availability, etc.:
60643 Agency statements; weekly receipts

Federal Communications Commission
PROPOSED RULES
Radio services, special:
60633 Maritime services; inland waterways communications systems; Gulf Intracoastal Waterway

Federal Emergency Management Agency
RULES
Flood elevation determinations:
60581 California et al.

Federal Energy Regulatory Commission
PROPOSED RULES
Natural gas companies:
60617 Oil pipeline companies, annual report; redesignation and revision of Form P as Form 6
NOTICES
60713 Meetings; Sunshine Act

Federal Mediation and Conciliation Service
NOTICES
Labor-management cooperation program:
60645 Draft announcement/application solicitation, 1982 FY; inquiry

Federal Procurement Policy Office
PROPOSED RULES
Federal Acquisition Regulation (FAR):
60634 Acquisition planning, equal employment opportunity, and major system acquisition; draft availability

Federal Reserve System
NOTICES
Applications, etc.:
60648 C.S.B. Corp.
60648 D.C. National Bancorp., Inc.
60648 First Moore Bancshares, Inc.
60648 Highland Park Bancorporation, Inc.
60649 Kansas Unlimited Investments, Inc.
60649 Lake Shore Bancorp., Inc.
60649 Larch Bancorporation, Inc.
60649 Manhattan Bancshares, Inc.
60649 Tri-State Financial Bancorp.

Federal Trade Commission
NOTICES
60713 Meetings; Sunshine Act

Fiscal Service
RULES
60577 Bonds, U.S. individual retirement; interest rates
60572 Bonds, U.S. retirement plan; interest rates

Fish and Wildlife Service
RULES
Endangered Species Convention:
60589 Bobcat; export findings; 1981–1982 season; deferral of effective date

Food and Drug Adminstration
RULES
Animal drugs, feeds, and related products:
60571 Bacitracin zinc
60570 Praziquantel tablets
60569 Syntex Agribusiness, Inc.; sponsor names and addresses changes
Animal drugs, feeds, and related products; and human drugs:
60567 Antibiotic and antibiotic-containing drugs; histamine test method
Food additives:
60566 Ethyl alcohol; use in sanitizing solutions
60566 Resinous and polymeric coatings; Nylon 12 and Nylon 12/6 as components of side seam cements
PROPOSED RULES
Food for human consumption:
60625 Fructose; Codex standard; advance notice
60626 Powdered dextrose (icing dextrose); Codex standard; advance notice
60628 Powdered sugar (icing sugar); codex standard; advance notice
NOTICES
Food additives, petitions filed or withdrawn:
60651 Heinrich Fischer & Co.
Food for human consumption:
60651 Aflatoxin B1 in pumpkin seed, confirmation; availability of guide
Human drugs:
60652 Marketing requirements; drug efficacy study implementation; followup notice
Medical devices:
60650 Choyce Mark VIII and IX anterior chamber intraocular lenses
60652 TCO2M Model 818 Transcutaneous 02/C02 Monitor

Food and Nutrition Service
PROPOSED RULES
Child nutrition programs:
60592 Summer food service program; sponsor and geographic area eligibility limits, etc.
Food stamp program:
60614 Bilingual services requirements; notice of intent

General Services Administration
NOTICES
Committees; establishment, renewals, terminations, etc.:
60650 Preservation Advisory Committee

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration; Public Health Service; Social Security Administration.

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

Interstate Commerce Commission
NOTICES
60660 Long and short haul applications for relief
Motor carriers:
60659 Compensated intercorporate hauling operations; intent to engage in
60660, 60661 Finance applications (3 documents)
60662, 60664 Permanent authority applications (2 documents)
60668 Permanent authority applications; correction
Railroad services abandonment:
60659 Illinois Central Gulf Railroad Co.
60660 Southern Pacific Transportation Co.

Justice Department
See Drug Enforcement Administration.

Labor Department
See Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration; Occupational Safety and Health Administration; Pension and Welfare Benefit Programs Office.

Land Management Bureau
NOTICES
Authority delegations:
60658 Oregon; Chief, Branch of Lands and Minerals Operations
Opening of public lands:
60657 Alaska

Management and Budget Office
See Federal Procurement Policy Office.

Merit Systems Protection Board
PROPOSED RULES
60591 Whistleblower allegations referred to agencies for investigation or report, etc.

Mine Safety and Health Administration
NOTICES
Petitions for mandatory safety standard modifications:
60670 Valley Camp Coal Co.

National Railroad Passenger Corporation
NOTICES
60713 Meetings; Sunshine Act

Neighborhood Reinvestment Corporation
NOTICES
60713 Meetings; Sunshine Act

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
60692 Tennessee Valley Authority
60713, 60714 Meetings; Sunshine Act (3 Documents)

Occupational Safety and Health Administration
RULES
Health and safety standards:
60758 Lead; occupational exposure standards; supplemental statement of reasons

Occupational Safety and Health Review Commission
NOTICES
60714 Meetings; Sunshine Act

Pension and Welfare Benefit Programs Office
RULES
Employee benefit plans:
60572 Suspension of benefit rules; correction
NOTICES
Employee benefit plans; prohibited transaction exemptions:
60670 Bain, Robert V.
60672 Bellco Glass, Inc.
60675 BMC Pathology Group, P.A.
60676 Clementson Engineers, Inc.
60678 Durham Clinic, P.A.
60678 Fowler, White, Gillen, Boggs, Villareal and Banker, P.A.
60686 Gilmore Steel Corp.
60688 Henderson, Franklin, Starnes & Holt, P.A.
60673 International Ladies' Garment Workers Union
60684 Littler, Mendelson, Falstaff & Tichy Profit Sharing Plan
60689 Rex Companies
60681 Spreitzer, Inc.
60682 TP Laboratories, Inc.

Personnel Management Office
PROPOSED RULES
Excepted service:
60590 Schedules A and B; appropriateness of included positions; advance notice
NOTICES
Educational requirements, minimum:
60692 Veterinary medical science series

Public Health Service
NOTICES
National toxicology program:
60654 Dimethylterephthalate, bioassay, for carcinogenicity; technical report reevaluation
60657 F.D.&C. Yellow 6 bioassay, and monitoring guidelines for carcinogen bioassays

Reclamation Bureau
NOTICES
Contract negotiations:
60658 Washington Water Power Co., Inc.
Environmental statements; availability, etc.:
60658 Central Arizona project; water allocations and service contracting; hearing

Securities and Exchange Commission
NOTICES
Hearings, etc.:
60701 American Electric Power Co., Inc., et al.
60693 Columbus & Southern Ohio Electric Co.
60703 E. F. Hutton Investment Series, Inc.
60707 Keystone Custodian Funds, Inc.
60694 National Fuel Gas Co. et al.
60709 New England Energy Inc.
60696 PW Employee Investments
60710, 60711 Tax Exempt Income (4 documents)

Self-regulatory organizations; proposed rule changes:
60702 American Stock Exchange, Inc.
60708 Municipal Securities Rulemaking Board
60694 National Association of Securities Dealers, Inc.
60694 National Association of Securities Dealers, Inc., et al.
60696 Options Clearing Corp.

Social Security Administration
PROPOSED RULES
60629 Refugee resettlement and Cuban and Haitian entrant programs; cash and medical assistance

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
60638 Baiting Brook Watershed, Mass.
60638 Jackson Gulch Diversion Farm Irrigation RC&D Measure, Colo.
60638 Tilghman Park Water Based Recreation RC&D Measure, Md.

State Department
RULES
60572 Consular services; schedule of fees; correction
NOTICES
60712 Libya; restrictions on travel to, in, or through

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
60778 Abandoned mines land reclamation program; clarification of relationships and responsibilities of States and Federal Government

Textile Agreements Implementation Committee
NOTICES
60639 Bilateral textile negotiations during 1982; cotton, wool, and man-made products from various countries; inquiry

Treasury Department
See Fiscal Service.

MEETINGS ANNOUNCED IN THIS ISSUE

CIVIL RIGHTS COMMISSION
60638 Montana Advisory Committee, Billings, Mont. (open), 1-9-82

DEFENSE DEPARTMENT
Office of Secretary—
60641 DOD Advisory Group on Electron Devices, Arlington, Va. (closed), 1-21-82

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Disease Control—
60650 Mine Health Research Advisory Committee, Pulmonary Function Testing Subcommittee, Morgantown, W. Va. (open), 12-21 and 12-22-81

HEARINGS

DELAWARE RIVER BASIN COMMISSION
60641 West Trenton, N.J., 12-16-81

INTERIOR DEPARTMENT
Reclamation Bureau—
60658 Water Allocations and Water Service Contracting, Central Arizona Project, Phoneix, Ariz., 1-12-82 and Tucson, Ariz., 1-13-82

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.

5 CFR

Proposed Rules:

213 60590
1252 60591
1253 60591

7 CFR

910 60565

Proposed Rules:

225 60592
272 60614
701 60616

9 CFR

51 60565

18 CFR

Proposed Rules:

357 60617

21 CFR

175 60566
178 60566
431 60567
436 60567
444 60567
446 60567
448 60567
450 60567
453 60567
455 60567
460 60567
510 60569
520 (2 documents) 60569, 60570
522 60569
526 60569
540 60567
544 60567
546 60567
558 60571
1308 60572

Proposed Rules:

168 (3 documents) 60625–60628

22 CFR

22 60572

29 CFR

1910 60758
2530 60572

30 CFR

Proposed Rules:

870 60778
872 60778
874 60778
875 60778
877 60778
879 60778
882 60778
884 60778
886 60778
888 60778

31 CFR

341 60572
346 60577

44 CFR

67 60581

45 CFR

Proposed Rules:

400 60629
401 60629

47 CFR

Proposed Rules:

2 60633
81 60633
83 60633

48 CFR

Proposed Rules:

7 60634
22 60634
34 60634

50 CFR

23 60589

Rules and Regulations

Federal Register
Vol. 46, No. 238
Friday, December 11, 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

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 337 and Lemon Reg. 336, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period December 13–19, 1981, and increases the quantity of lemons that may be shipped during the period December 6–12, 1981. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective December 13, 1981, and the amendment is effective for the period December 6–12, 1981.

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

SUPPLEMENTARY INFORMATION: *Findings.* This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981–82. The marketing policy was recommended by the committee following discussion at a public meeting on July 7, 1981. A regulatory impact analysis on the marketing policy is available from William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on December 8, 1981, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons continues good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective times.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. Section 910.637 is added as follows:

§ 910.637 Lemon regulation 337.

The quantity of lemons grown in California and Arizona which may be handled during the period December 13, 1981, through December 19, 1981, is established at 260,000 cartons.

2. Section 910.636 Lemon Regulation 336 (46 FR 29228) is revised to read as follows:

§ 910.636 Lemon regulation 336.

The quantity of lemons grown in California and Arizona which may be handled during the period December 6, 1981, through December 12, 1981, is established at 265,000 cartons.

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

Dated: December 9, 1981.

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

[FR Doc. 81-35763 Filed 12-10-81; 8:45 am]
BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket No. 81-096]

Brucellosis Indemnity; Effective Date Corrected

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Correction of effective date.

SUMMARY: This document corrects the effective date for amendments to the regulations relating to payment of indemnity for breeding swine destroyed because of brucellosis. This action is needed to correct a typographical error which incorrectly stated the effective date as December 12, 1981, instead of December 21, 1981.

EFFECTIVE DATE: The amendments to 9 CFR Part 51 published at 46 FR 57026–57027 are effective December 21, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. G. H. Frye, USDA, APHIS, VS, Federal Building, Room 804, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8711.

SUPPLEMENTARY INFORMATION: On November 20, 1981, there was published in the **Federal Register** (46 FR 57026–57027) a final rulemaking document amending the brucellosis indemnity regulations relating to breeding swine in 9 CFR Part 51. The effective date was

published as December 12, 1981. It should have been December 21, 1981.

In order to correct this typographical error, the effective date of the final regulations concerning Part 51, Title 9, Code of Federal Regulations, published in the Federal Register on November 20, 1981, at 46 FR 57026–57027 is changed to December 21, 1981.

Done at Washington, D.C. this 8th day of December 1981.

Robert I. Brown,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 81-35461 Filed 12-10-81; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 80F-0151]

Indirect Food Additives; Substances for Use as Components of Coatings; Resinous and Polymeric Coatings

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of two polyamides (Nylon 12 and Nylon 12/6) as components of side seam cements. This action also provides for the use of four optional adjuvant substances that may be employed in the production of side seam cements. This action is based on a petition filed on behalf of Toray Industries, Inc., Tokyo, Japan.

DATES: Effective December 11, 1981; objections by January 11, 1982.

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

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of Friday, June 5, 1981 (46 FR 30199), FDA announced that a food additive petition (FAP 1B3556) had been filed on behalf of Toray Industries, Inc., Tokyo, Japan, proposing that § 175.300(b)(3)(xxxii) (21 CFR 175.300(b)(3)(xxxii)) of the food additive regulations be amended to provide for the safe use of two polyamides (Nylon 12 and Nylon 12/6) as components of side seam cement formulations.

In an amended filing notice published in the Federal Register of Friday, October 9, 1981 (46 FR 50155), FDA announced that the petition also proposes that § 175.300(b)(3)(xxxii) be amended to provide for the following four adjuvant substances as components of side seam cement formulations:

(1) 4,4'-Bis(*alpha,alpha*-dimethylbenzyl)diphenylamine,

(2) *N,N'*-Hexamethylenebis(3,5,di-*tert*-butyl-4-hydroxyhydrocinnamide),

(3) Polypropylene glycol, and

(4) Tetrakis [methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane.

Having evaluated the data in the petition and other relevant material, FDA concludes that the proposed uses are safe and that the food additive regulations should be amended as set forth below.

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

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVE COATING AND COMPONENTS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 175 is amended in § 175.300(b)(3)(xxxii) by alphabetically adding six new additives to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) * * *

(xxxii) * * *

4,4'-Bis(*alpha,alpha*-dimethylbenzyl)diphenylamine, CAS Reg. No. 10081–67–1.

N,N'-Hexamethylenebis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamide), CAS Reg. No. 23128–74–7.

Polyamides consisting of the following:

Homopolymer of *omega*-laurolactam, CAS Reg. No. 25038–74–8 (Nylon 12).

Copolymer of *omega*-laurolactam and *espilon*-caprolactam, CAS Reg. No. 25191–04–2 (Nylon 12/6).

Polypropylene glycol CAS Reg. No. 25322–69–4.

Tetrakis [methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)]methane, CAS Reg. No. 6683–19–8.

Any person who will be adversely affected by the foregoing regulation may at any time on or before January 11, 1982 submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any 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. 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 December 11, 1981.

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

Dated: December 3, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-35290 Filed 12-10-81; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 81F-0037]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ethyl alcohol as a substitute for isopropyl alcohol when

used with *n*-alkyl (C_{12}-C_{16}) benzyldimethylammonium chloride in sanitizing solutions. This action responds to a petition by Huntington Laboratories, Inc.

DATES: Effective December 11, 1981; objections by January 11, 1982.

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: James B. Lamb, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 20, 1981 (46 FR 17886), FDA announced that a petition (FAP 1H3544) had been filed by Huntington Laboratories Inc., P.O. Box 710, Huntington, IN 46750, proposing that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for the safe use of ethyl alcohol as a substitute for isopropyl alcohol as a component of a sanitizing solution used on food-processing equipment and utensils.

Having evaluated the data in the petition and other relevant material, FDA concludes that the proposed food additive use is safe and that § 178.1010 should be amended as set forth below. The agency also believes that § 178.1010(b)(9) should be edited for clarity, and has made those editorial changes, which are not substantive.

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

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 178 is amended in § 178.1010 by revising paragraph (b)(9) to read as follows:

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(9) An aqueous solution containing *n*-alkyl (C_{12}-C_{16}) benzyldimethylammonium chloride compounds having average molecular weights of 351 to 380. The alkyl groups consist principally of groups with 12 to 16 carbon atoms and contain not more than 1 percent each of groups with 8 and 10 carbon atoms. Additionally, the aqueous solution may contain either ethyl alcohol or isopropyl alcohol as an optional ingredient.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before January 11, 1982 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any 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. 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 shall become effective December 11, 1981.

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

Dated: December 3, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-35292 Filed 12-10-81; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Parts 431, 436, 444, 446, 448, 450, 453, 455, 460, 540, 544, and 546

[Docket No. 76N-0198]

Antibiotic and Antibiotic-Containing Drugs; Histamine Test Method

AGENCY: Food and Drug Administration

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations by adopting the United States Pharmacopeia (USP) XX procedure used for testing antibiotic drug samples for histamine and by changing the word "histamine" to the phrase "depressor substances" to be consistent with this amendment. The agency is taking this action to ensure quality control of certain antibiotic products.

DATES: Effective January 11, 1982; comments, notice of participation, and request for hearing by January 11, 1982; data, information, and analyses to justify a hearing by February 9, 1982.

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: Joan Eckert, Bureau of Drugs (HFD-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 25, 1976 (41 FR 26228), FDA proposed to amend the antibiotic drug regulations by clarifying the procedure used in repeat testing of antibiotic drugs for histamine. As discussed in the proposal, the histamine test regulation (21 CFR 436.35) does not fully describe the requirements for repeat testing. For the sake of clarity, FDA proposed an amendment to this regulation to specify the number of repeat tests to be performed and to describe how to evaluate the results obtained. This proposed test procedure would be more consistent with the procedure described in the then current USP XIX (official from July 1, 1975).

Interested persons were given until August 24, 1976, to submit written comments. One comment was received from a pharmaceutical manufacturer recommending a modification of the proposed procedure. The comment stated that because a test animal may have a tendency toward atypical responses, it is difficult to determine whether such response is a function of the administered drug or an idiopathic (unknown) reaction of the test animal. The comment suggested that the repeat test procedure provide for the use of additional animals if further testing is necessary.

The agency has considered this comment and agrees that the repeat test procedure should provide for the use of more than one animal. However, because extensive repeat testing could

distort test results, it should be limited to only one additional animal.

On July 1, 1980, the USP XX became official. The revised histamine test method now incorporates all agency requirements for repeat testing, including the use of one additional animal. This test has been entitled "Depressor substances test" to reflect the fact that histamine has not been positively identified as the substance causing the depressor response in test animals.

The agency believes that the test methods of the USP and the agency should be consistent for regulatory and quality control purposes. The agency has reviewed the USP XX depressor substances test and considers it adequate for antibiotic drug certification. Although the USP XX test method incorporates a more sophisticated statistical sampling plan and interpretation of results than was proposed in 1976, the agency believes that the differences are insubstantial refinements of the basic test procedure and reflect currently acceptable standards. Accordingly, the agency is adopting the USP XX depressor substances test as the official histamine test method for antibiotic drugs. Consistent with this amendment, the agency is also replacing the word "histamine" with the phrase "depressor substances" wherever it appears in the antibiotic drug regulations.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 512(n), 701(f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended, 82 Stat. 350–351 (21 U.S.C. 357, 360b(n), 371(f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Title 21 of the Code of Federal Regulations is amended as follows:

PART 431—CERTIFICATION OF ANTIBIOTIC DRUGS

§ 431.53 [Amended]

1. Part 431 is amended in § 431.53 *Fees* by changing the "Histamine test" to read "Depressor substance test" in the table in paragraph (b)(1).

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

2. Part 436 is amended by revising § 436.35 to read as follows:

§ 436.35 Depressor substances test.

Proceed as directed in the USP XX depressor substances test. Prepare the sample test solution as follows: For each antibiotic listed in the table below, select the appropriate diluent and test dose (concentration and volume). If the product is packaged for dispensing and is in a combination package with a container of diluent, dilute the product as directed in the labeling.

Antibiotic	Diluent [1]	Concentration of test solution [2]	Volume of test solution to be injected [3]
Bleomycin sulfate	4	[4] 0.5	1.0
Capreomycin sulfate	4	3.0	1.0
Chlortetracycline hydrochloride	3	5.0	.6
Clindamycin phosphate	4	5.0	1.0
Dihydrostreptomycin sulfate	4	3.0	1.0
Doxorubicin hydrochloride	4	1.5	1.0
Doxycycline hyclate	4	5.0	1.0
Lincomycin hydrochloride monohydrate	4	3.0	1.0
Minocycline hydrochloride	4	5.0	.6
Mithramycin	3	0.050	1.0
Mitomycin	4	0.050	1.0
Oxytetracycline [5]	3	5.0	.6
Oxytetracycline hydrochloride	4	5.0	.6
Rolitetracycline	4	5.0	.6
Rolitetracycline nitrate	4	5.0	.6
Sodium colistimethate	4	3.0	1.6
Spectinomycin hydrochloride	4	15.0	1.0
Streptomycin sulfate	4	3.0	1.0
Tetracycline hydrochloride	4	5.0	.6
Tetracycline phosphate [5]	3	5.0	.6
Vidarabine monohydrate [5]	4	1.0	1.0
Viomycin sulfate	4	5.0	.6

[1] Diluent number as listed in sec. 436.31(b).
[2] Milligrams of activity per milliliter.
[3] Milliliters per kilogram of body weight.
[4] The concentration of the test solution is expressed in units per milliliter in lieu of milligrams of activity per milliliter.
[5] To prepare the test solution, proceed as directed in the individual section of the antibiotic drug regulation in this chapter for the antibiotic to be tested.

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

§§ 444.70a and 444.270b [Amended]

3. Part 444 is amended in the following sections by changing the phrases "histamine nor histamine-like" and "histamine or histamine-like" to read "depressor" and by changing the word "histamine" to read "depressor substances" wherever they appear: § 444.70a(a)(1)(v), (3)(i), and (b)(5); and § 444.270b(a)(1), (3)(i)(*a*) and (*b*), and (b)(5).

PART 446—TETRACYCLINE ANTIBIOTIC DRUGS

§§ 446.10a, 446.20a, 446.65a, 446.67a, 446.75a, 446.76a, 446.81a, 446.220, 446.260, 446.265, 446.267, 446.275a, 446.275b, 446.276a, 446.276b, 446.281 and 446.282 [Amended]

4. Part 466 is amended in the following sections by changing the phrases "histamine nor histamine-like" and "histamine or histamine-like" to read "depressor" and by changing the word "histamine" to read "depressor substances" wherever they appear: § 446.10a(a)(1)(v), (3)(i), and (b)(5); § 446.20a(a)(1)(v), (3)(i), and (b)(5); § 446.65a(a)(1)(v), (3)(i), and (b)(5); § 446.67a(a)(1)(v), (3)(i), and (b)(5); § 446.75a(a)(1)(v), (3)(i), and (b)(5); § 446.76a(a)(1)(v), (3)(i), and (b)(5); § 446.81a(a)(1)(v), (3)(i), and (b)(5); § 446.220(a)(1), (3)(i)(*b*), and (b)(5); § 446.260(a)(1), (3)(i)(*b*), and (b)(5); § 446.265(a)(1), (3)(i)(*b*), and (b)(5); § 446.267(a)(1), (3)(i)(*b*), and (b)(5); § 446.275a(a)(1), (3)(i)(*b*), and (b)(5); § 446.275b(a)(3)(i)(*a*); § 446.276a(a)(1), (3)(i)(*b*), and (b)(5); § 446.276b(a)(3)(i)(*a*); § 446.281(a)(3)(i)(*a*); § 446.282(a)(1) and (3)(i)(*a*), and (b)(6).

PART 448—PEPTIDE ANTIBIOTIC DRUGS

§§ 448.15a and 448.80a [Amended]

5. Part 448 is amended in the following sections by changing the phrases "histamine nor histamine-like" and "histamine or histamine-like" to read "depressor" and by changing the word "histamine" to read "depressor substances" wherever they appear: § 448.15a(a)(1)(v), (3)(i), and (b)(5); § 448.80a(a)(1)(v), (4)(i), and (b)(5).

PART 450—ANTITUMOR ANTIBIOTIC DRUGS

§§ 450.10a, 450.224, 450.240 and 450.245 [Amended]

6. Part 450 is amended in the following sections by changing the phrases "histamine nor histamine-like" and "histamine or histamine-like" to read "depressor" and by changing the word "histamine" to read "depressor substances" wherever they appear: § 450.10a(a)(1)(v), and (3)(i); § 450.224(a)(1), (3)(i)(*b*), and (b)(4); § 450.240(a)(1), (3)(i)(*b*), and (b)(7); § 450.245(a)(1), (3)(i)(*b*), and (b)(5).

PART 453—LINCOMYCIN ANTIBIOTIC DRUGS

§§ 453.22a, 453.30a, 453.222 and 453.230 [Amended]

7. Part 453 is amended in the following sections by changing the phrases "histamine nor histamine-like" and "histamine or histamine-like" to read "depressor" and by changing the word "histamine" to read "depressor substances" wherever they appear: § 453.22a(a)(1)(vi), (3)(i), and (b)(6); § 453.30a(a)(1)(v), (3)(i), and (b)(5); § 453.222(a)(1), (3)(i)(*b*), and (b)(5); § 453.230(a)(1), (3)(i)(*b*), and (b)(5).

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

§ 455.80a [Amended]

8. Part 455 is amended in § 455.80a in paragraph (a)(1)(vi) by changing the

phrase "histamine nor histamine-like" to read "depressor" and in paragraphs (a)(3)(i) and (b)(6) by changing the word "histamine" to read "depressor substances."

PART 460—ANTIBIOTIC DRUGS INTENDED FOR USE IN LABORATORY DIAGNOSIS OF DISEASE

§ 460.42 [Amended]

9. Part 460 is amended in § 460.42(a)(1) by changing the word "histamine" to read "depressor substances."

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

§ 540.274d [Amended]

10. Part 540 is amended in § 540.274d(a)(4)(ii)(*c*) by changing the phrase "histamine content" to read "depressor substances."

PART 544—OLIGOSACCHARIDE CERTIFIABLE ANTIBIOTIC DRUGS FOR ANIMAL USE

§§ 544.173a, 544.173b, 544.173c, 544.173e, 544.211a, 544.211b, 544.274, 544.370a, 544.373a, 544.373b, and 544.973b [Amended]

11. Part 544 is amended in the following sections by changing the phrases "histamine nor histamine-like" and "histamine or histamine-like" to read "depressor" and the phrase "histamine content" and the word "histamine" to read "depressor substances" wherever they appear: § 544.173a(a)(1); § 544.173b(a)(1); § 544.173c(a)(1) and (b)(2); § 544.173e(a)(1); § 544.211a(b)(3); § 544.211b(a)(1)(iv), (4)(ii)(*a*), and (b)(3); § 544.274(a)(1)(ii), (4)(ii)(*a*), and (b)(2); § 544.370a(a)(4) and (b)(2); § 544.373a(a)(1); § 544.373b(a)(1); and § 544.973b(a)(1).

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

§ 546.312a [Amended]

12. Part 546 is amended in § 546.312a(a)(1)(iii) by changing the word "histamine" to read "depressor substances."

Any person who will be adversely affected by this regulation may file objections to it, request a hearing, and show reasonable grounds for the hearing. Any person who decides to seek a hearing must file (1) on or before January 11, 1982, a written notice of participation and request for hearing, and (2) on or before February 9, 1982, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order must be filed in three copies identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch (address above).

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective January 11, 1982.

(Secs. 507, 512(n), 701(f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended, 82 Stat. 350–351 (21 U.S.C. 357, 360b(n), 371(f) and (g)))

Dated: December 3, 1981.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-35166 Filed 12-10-81; 8:45 am]
BILLING CODE 4160-01-M

---

21 CFR Parts 510, 520, 522, and 526

New Animal Drugs; Change of Sponsor Names and Addresses

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 several supplemental new animal drug applications (NADA's) filed by Syntex Agribusiness, Inc., providing for change of sponsor names and addresses.

EFFECTIVE DATE: December 11, 1981.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Bureau of Veterinary Medicine (HFV–104), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4313.

SUPPLEMENTARY INFORMATION: Syntex Agribusiness, Inc., 3401 Hillview Ave., Palo Alto, CA 94304, filed several supplemental NADA's providing for changing the sponsor name and address of Syntex Laboratories, Inc., Palo Alto, CA; Diamond Laboratories, Des Moines, IA; and Syntex Agribusiness, Inc., Springfield, MO, to Syntex Agribusiness, Inc., Palo Alto, CA. In addition, certain approved NADA's now sponsored by Syntex Agribusiness, Inc., Palo Alto, CA, and not previously codified in the regulations are codified.

This action concerns the change of sponsor names and addresses, and does not involve any changes in manufacturing facilities, equipment, procedures, or production personnel. Under the Bureau of Veterinary Medicine's supplemental approval policy (see 42 FR 64367; December 23, 1977), this is a Category I change which does not require reevaluation of the safety and effectiveness data in the parent applications. The supplemental NADA's for the change of sponsor are approved and the regulations amended to reflect the approvals.

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.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 21 CFR 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Parts 510, 520, 522, and 526 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. In Part 510, § 510.600 is amended alphabetically in paragraph (c)(1) and numerically in paragraph (c)(2) by removing the entries "Diamond Laboratories, Inc." and "Syntex Laboratories, Inc.," and by revising the

entry for "Syntex Agribusiness, Inc.," to read as follows:

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

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Syntex Agribusiness, Inc., 3401 Hillview Ave., Palo Alto, CA 94304	000033
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
000033	Syntex Agribusiness, Inc., 3401 Hillview Ave., Palo Alto, CA 94304
* * * * *	

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

2. Part 520 is amended as follows:

§ 520.1628 [Amended]

a. In § 520.1628 *Oxfendazole powder and pellets*, paragraph (b), by removing "017180" and inserting in its place "000033".

§ 520.2002 [Amended]

b. In § 520.2002 *Propiopromazine hydrochloride*, paragraph (c), by removing "013947" and inserting in its place "000033".

§ 520.2122 [Amended]

c. In § 520.2122 *Spectinomycin dihydrochloride oral solution*, paragraph (b)(2) by removing "013947" and inserting in its place "000033".

§ 520.2610 [Amended]

d. In § 520.2610 *Trimethoprim and sulfadiazine tablets*, paragraph (b), by removing "013947" and inserting in its place "000033".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. Part 522 is amended as follows:

§ 522.2002 [Amended]

a. In § 522.2002 *Propiopromazine hydrochloride injection*, paragraph (c), by removing "013947" and inserting in its place "000033".

§ 522.2120 [Amended]

b. In § 522.2120 *Spectinomycin injection*, paragraph (b), by inserting after the number "043731" the phrase "and 000033".

PART 526—INTRAMAMMARY DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 526.820 [Amended]

4. In Part 526, § 526.820 *Erythromycin* is amended in paragraph (b) by inserting after the number "050604" the phrase "and 000033".

Effective date. December 11, 1981.

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

Dated: December 3, 1981.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 81-35428 Filed 12-10-81; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Part 520

Oral Dosage Form New Animal Drugs not Subject to Certification; Praziquantel Tablets

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 new animal drug application (NADA) filed by Bayvet Division of Cutter Laboratories, Inc., providing for the safe and effective use of praziquantel tablets for removel of certain cestodes from dogs and cats.

EFFECTIVE DATE: December 11, 1981.

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

SUPPLEMENTARY INFORMATION: Bayvet Division of Cutter Laboratories, Inc., P.O. Box 390, Shawnee, KS 66201, filed an NADA (111-798) providing for the safe and effective use of praziquantel tablets (Droncit Tablets) for removal of certain canine and feline cestodes. Bayvet submitted results of one controlled study demonstrating effectiveness of the drug in treating experimentally induced *Echinococcus granulosus* infections in dogs and literature references citing extensive studies in foreign countries demonstrating effectiveness against naturally infected dogs. The latter studies provided a basis for waiver from the requirements of a second adequate and well-controlled study. Based on the data and information submitted, the NADA is approved and the regulations are amended to reflect the approval.

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

The Bureau of Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Director's finding of no significant impact and the evidence supporting this finding are contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1)(ii)(*a*), (*e*) (*1*) and (*2*), and (iii) which may be seen in the Dockets Management Branch, address above.

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

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

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 520 is amended by adding new § 520.1870 to read as follows:

§ 520.1870 Praziquantel tablets.

(a) *Specifications.* Each dog tablet contains 34 milligrams (mgs) of praziquantel; each cat tablet contains 23 mgs of praziquantel.

(b) *Sponsor.* See No. 000859 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Dogs.* (i) *Indications for use.* For removal of canine cestodes *Dipylidium caninum, Taenia pisiformis,* and *Echinococcus granulosus.*

(ii) *Dosage.* Dogs 5 pounds and under, ½ tablet (17 mgs); 6 to 10 pounds, 1 tablet (34 mgs); 11 to 15 pounds, 1½ tablets (51 mgs); 16 to 30 pounds, 2 tablets (68 mgs); 31 to 45 pounds, 3 tablets (102 mgs); 46 to 60 pounds, 4

tablets (136 mgs); over 60 pounds, 5 tablets maximum (170 mgs).

(iii) *Limitations.* Administer directly by mouth or crumbled and in feed. Not intended for use in puppies less than 4 weeks of age. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cats*—(i) *Indications for use.* For removal of feline cestodes *Dipylidium caninum* and *Taenia taeniaeformis.*

(ii) *Dosage.* Cats 4 pounds and under, ½ tablet (11.5 mgs); 5 to 11 pounds, 1 tablet (23 mgs); over 11 pounds, 1½ tablets (34.5 mgs).

(iii) *Limitations.* Administer directly by mouth or crumbled and in feed. Not intended for use in kittens less than 6 weeks of age. Do not use in breeding or pregnant cats. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. December 11, 1981.

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

Dated: December 7, 1981.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 81-35426 Filed 12-10-81; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Bacitracin Zinc

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 International Minerals & Chemical Corp. providing for use of bacitracin premixes to manufacture complete swine feeds containing 20 or 20 to 40 grams of bacitracin per ton respectively for increased rate of weight gain and improved feed efficiency in growing-finishing swine.

EFFECTIVE DATE: December 11, 1981.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Bureau of Veterinary Medicine (HFV-149), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: International Minerals & Chemical Corp., P.O. Box 207, Terre Haute, IN 47808, filed a supplemental NADA (46-920) providing for use of premixes containing either 10, 25, 40, or 50 grams of bacitracin (as bacitracin zinc) per pound to manufacture a complete feed containing 20 or 20 to 40 grams of bacitracin per ton for growing-finishing swine. The 20-gram per ton medicated feed is used for increased rate of weight gain in growing-finishing swine, the 20- to 40-gram per ton medicated feed is used for improved feed efficiency in growing-finishing swine.

Bacitracin zinc at 10 to 50 grams per ton was in use for swine prior to October 10, 1962. The product was the subject of the National Academy of Sciences/National Research Council (NAS/NRC) notices published in the **Federal Register** of July 17, 1970 (DESI 0061NV, 35 FR 11531) and October 2, 1970 (DESI 0061NV, 35 FR 15408). The NAS/NRC notices concluded, and FDA concurred, that more information was needed for the growth claim in swine, and that these products were probably not effective for therapeutic claims in swine. The firm submitted a supplemental NADA in response to the NAS/NRC notice providing revised claims and restricted use levels. The supplement is supported by several well-controlled studies for effectiveness and safety. The supplemental NADA is approved and the regulations are amended to reflect the approval.

The revised claim is for a limited use of bacitracin within an already approved range. Because bacitracin zinc is currently approved for use in complete feed at levels requested, this supplemental approval will not result in a significant increase in the number of food-producing animals receiving medication, and therefore will not cause an increase in human exposure to residues of bacitracin. 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.

In the **Federal Register** of September 16, 1980 (45 FR 61289), the regulations for use of bacitracin zinc for swine feeds were inadvertently amended in the table in § 558.78(e)(1) (21 CFR 558.78(e)(1)) to add new item (iii)3. Subsequently the regulation was amended in the **Federal Register** of April 10, 1981. The item (iii)3. was redesignated (iv)3. This amendment as so redesignated is in error and is removed. This supplement to NADA 46-920 provides data and information supporting the swine weight gain and feed efficiency uses and amends the regulations accordingly.

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

The Bureau of Veterinary Medicine has 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), § 558.78 is amended in the table of paragraph (e)(1) by removing item (iv)3., by redesignating existing items (v) through (vii) as (vii) through (ix), and by adding new items (v) and (vi), to read as follows:

§ 558.78 Bacitracin zinc.

* * * * *

(e) *Conditions of use.* (1) * * *

Bacitracin zinc in grams per ton	Combinations in grams per ton	Indications for use	Limitations	Sponsors
*	*	*	*	*
(v) 20		Growing-finishing swine; increased rate of weight gain.	In complete feed	012769
(vi) 20 to 40		Growing-finishing swine; improved feed efficiency.	do	012769
*	*	*	*	*

* * * * *

Effective date. This amendment is effective December 11, 1981.

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

Dated: December 3, 1981.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 81-35291 Filed 12-10-81; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Placement of N-ethylamphetamine Into Schedule I

Correction

In FR Doc. 81-35123 appearing at page 59969, of the issue of Tuesday, December 8, 1981 make the following correction.

On page 59969, the **"Effective Date"** incorrectly reads "January 7, 1981". The **"Effective Date"** should read "January 7, 1982".

BILLING CODE 1501-01-M

DEPARTMENT OF STATE

Office of the Secretary

22 CFR Part 22

[Docket No. SD-172; Departmental Reg. 108.813]

Change in Fees for Consular Services

Corrections

In FR Doc. 81-34374 appearing on page 58071 in the issue of Monday, November 30, 1981, make the following changes:

1. On page 58072, third column, Item No. 58, paragraph (a) should read as follows:

* * * * *

58. * * *		
(a) In connection with the execution of forms or documents (except those related to applications for passports or immigrant visas) required by and to be presented to any department or agency of the Federal Government.		No fee.

* * * * *

2. On page 58073, first column, the fee for Item No. 66 should read "No fee."; the fee for Item No. 67 should read "$16.00."; and in the second column, the sixteenth line of Item No. 94, "loss * * *" should read "lost * * *".

BILLING CODE 1505-01-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—Adoption of Amendments

Correction

In FR Doc. 81-34837, appearing at page 59243, in the issue of Friday, December 4, 1981, make the following correction.

On page 59246, § 2530.203-3 (c)(2), was incorrectly designated, and contained a typographical error. As corrected, the introductory text of § 2530.203-3(c)(2) should read as set forth below:

§ 2530.203-3 Suspension of pension benefits upon employment.

* * * * *

(c) * * *

(2) *Multiemployer plans.* In the case of a multiemployer plan, as defined in section 3(37) of the Act, the employment of an employee subsequent to the time the payment of benefits commenced or would have commenced if the employee had not remained in or returned to employment results in section 203(a)(3)(B) service during a calendar month, or during a four or five week payroll period ending in a calendar month, if the employee, in such month or payroll period:

—Completes 40 or more hours of service (as defined in § 2530.200b-2(a) (1) and (2)) or

—Receives payment for any such hours of service performed on each of 8 or more days (or separate work shifts) in such month or payroll period, *Provided,* That the plan has not for any purpose determined or used the actual number of hours of service which would be required to be credited to the employee under § 2530.200(b)-(2)(a); in

—An industry in which employees covered by the plan were employed and accrued benefits under the plan as a result of such employment at the time that the payment of benefits commenced or would have commenced if the employee had not remained in or returned to employment, and

—A trade or craft in which the employee was employed at any time under the plan, and

—The geographic area covered by the plan at the time that the payment of benefits commenced or would have commenced if the employee had not remained in or returned to employment.

* * * * *

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 341

Regulations Governing United States Retirement Plan Bonds

AGENCY: Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This sixth amendment to the regulations governing United States Retirement Plan Bonds is being issued to reflect the latest improvements in the investment yield of these bonds.

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT: A. E. Martin, Office of the Chief Counsel, Bureau of the Public Debt, (202) 376-0636.

SUPPLEMENTARY INFORMATION: United States Retirement Plan Bonds have been issued since 1963 as an investment option for individuals eligible to make tax deductible contributions to a Keogh ("H.R. 10") retirement account. This amendment to the offering of these bonds implements two interest rate increases announced by the Secretary of

the Treasury. On October 30, 1980, the Secretary authorized an interest rate of 8 percent per annum, compounded semiannually for bonds issued on and after November 1, 1980. On October 2, 1981, the Secretary adopted an interest of 9 percent per annum, compounded semiannually for bonds issued on and after October 1, 1981. Accordingly, § 341.1 of the regulations is being amended and new redemption value tables E and F are being added to the appendix to reflect these rates.

This amendment is effected under authority of Sections 1 and 20 of the Second Liberty Bond Act, as amended (40 Stat. 288, 48 Stat. 343, both as amended, 31 U.S.C. 752, 754b) and 5 U.S.C. 301. The Bureau of the Public Debt, Department of the Treasury, has determined that (1) this revision does not require a notice of proposed rulemaking since it involves the fiscal policy of the United States, and (2) the revision, given its nature, is not a major rule for purposes of Executive Order 12291.

Paul H. Taylor,

Fiscal Assistant Secretary.

Dated: December 1, 1981.

PART 341—REGULATIONS GOVERNING UNITED STATES RETIREMENT PLAN BONDS

Accordingly, Department of the Treasury Circular, Public Debt Series, No. 1–63, dated January 10, 1963, as amended, is hereby further amended by the removal of § 341.1(a) and the addition of new § 341.1(a) and new Tables E and F in the Appendix to Part 341 of Title 31 of the Code of Federal Regulations, as follows:

§ 341.1 Description of bonds.

(a) *Investment yield (interest).* United States Retirement Plan Bonds, hereinafter sometimes referred to as Retirement Plan Bonds, will be issued at par. The investment yields (interest) are as follows:

(1) Bonds with issue dates of January 1, 1963, through May 1, 1966—3.75 percent per annum, compounded semiannually (see Table of Redemption Values in the Appendix).

(2) Bonds with issue dates of June 1, 1966, through December 1, 1969—4.15 percent per annum, compounded semiannually (see Table A in the Appendix).

(3) Bonds with issue dates of January 1, 1970, through January 1, 1974—5 percent per annum, compounded semiannually (see Table B).

(4) Bonds with issue dates of February 1, 1974, through July 1, 1979—6 percent per annum, compounded semiannually (see table C).

(5) Bonds with issue dates of August 1, 1979, through October 1, 1980—6.5 percent per annum, compounded semiannually (see table D).

(6) Bonds with issue dates of November 1, 1980, through September 1, 1981—8 percent per annum, compounded semiannually (see table E).

(7) Bonds with issue dates of October 1, 1981, or thereafter—9 percent per annum, compounded semiannually (see table F).

Interest will be paid only upon redemption of the bonds. The accrual of interest will continue until the bonds are redeemed or have reached maturity, whichever is earlier, in accordance with these regulations.

* * * * *

2. In the Appendix to Part 341 of title 31 of the Code of Federal Regulations, Tables E and F are added as follows:

Table E.—Table of Redemption Values Providing an Investment Yield of 8.00 Percent Per Annum for Bonds Bearing Issue Dates Beginning November 1, 1980

Note.—This table shows how Retirement Plan Bonds bearing issue dates beginning November 1, 1980, by denomination, increase in redemption value during successive half-year periods following issue. The redemption values have been determined to provide an investment yield of 8.00 percent per annum, compounded semiannually, on the purchase price from issue date to the beginning of each half-year period. The period to maturity is indeterminate in accordance with the provisions of § 341.1(b).

BILLING CODE 4810-40-M

ISSUE PRICE	$ 50.00	$100.00	$ 500.00	$1000.00
PERIOD AFTER ISSUE DATE	REDEMPTION VALUES DURING EACH HALF-YEAR PERIOD (VALUES INCREASE ON FIRST DAY OF PERIOD SHOWN)			
FIRST HALF YEAR.	$ 50.00	$100.00	$ 500.00	$1000.00
.5 TO 1.0 YEARS	52.00	104.00	520.00	1040.00
1.0 TO 1.5 YEARS	54.08	108.16	540.80	1081.60
1.5 TO 2.0 YEARS	56.24	112.48	562.40	1124.80
2.0 TO 2.5 YEARS	58.50	117.00	585.00	1170.00
2.5 TO 3.0 YEARS	60.84	121.68	608.40	1216.80
3.0 TO 3.5 YEARS	63.26	126.52	632.60	1265.20
3.5 TO 4.0 YEARS	65.80	131.60	658.00	1316.00
4.0 TO 4.5 YEARS	68.42	136.84	684.20	1368.40
4.5 TO 5.0 YEARS	71.16	142.32	711.60	1423.20
5.0 TO 5.5 YEARS	74.02	148.04	740.20	1480.40
5.5 TO 6.0 YEARS	76.98	153.96	769.80	1539.60
6.0 TO 6.5 YEARS	80.06	160.12	800.60	1601.20
6.5 TO 7.0 YEARS	83.26	166.52	832.60	1665.20
7.0 TO 7.5 YEARS	86.58	173.16	865.80	1731.60
7.5 TO 8.0 YEARS	90.04	180.08	900.40	1800.80
8.0 TO 8.5 YEARS	93.64	187.28	936.40	1872.80
8.5 TO 9.0 YEARS	97.40	194.80	974.00	1948.00
9.0 TO 9.5 YEARS	101.30	202.60	1013.00	2026.00
9.5 TO 10.0 YEARS	105.34	210.68	1053.40	2106.80
10.0 TO 10.5 YEARS	109.56	219.12	1095.60	2191.20
10.5 TO 11.0 YEARS	113.94	227.88	1139.40	2278.80
11.0 TO 11.5 YEARS	118.50	237.00	1185.00	2370.00
11.5 TO 12.0 YEARS	123.24	246.48	1232.40	2464.80
12.0 TO 12.5 YEARS	128.16	256.32	1281.60	2563.20
12.5 TO 13.0 YEARS	133.30	266.60	1333.00	2666.00
13.0 TO 13.5 YEARS	138.62	277.24	1386.20	2772.40
13.5 TO 14.0 YEARS	144.16	288.32	1441.60	2883.20
14.0 TO 14.5 YEARS	149.94	299.88	1499.40	2998.80
14.5 TO 15.0 YEARS	155.94	311.88	1559.40	3118.80
15.0 TO 15.5 YEARS	162.16	324.32	1621.60	3243.20
15.5 TO 16.0 YEARS	168.66	337.32	1686.60	3373.20
16.0 TO 16.5 YEARS	175.40	350.80	1754.00	3508.00
16.5 TO 17.0 YEARS	182.42	364.84	1824.20	3648.40
17.0 TO 17.5 YEARS	189.72	379.44	1897.20	3794.40
17.5 TO 18.0 YEARS	197.30	394.60	1973.00	3946.00
18.0 TO 18.5 YEARS	205.20	410.40	2052.00	4104.00
18.5 TO 19.0 YEARS	213.40	426.80	2134.00	4268.00
19.0 TO 19.5 YEARS	221.94	443.88	2219.40	4438.80
19.5 TO 20.0 YEARS	230.82	461.64	2308.20	4616.40
20.0 TO 20.5 YEARS	240.06	480.12	2400.60	4801.20

BILLING CODE 4810-40-C

Table F.—Table of Redemption Values Providing an Investment Yield of 9.00 Percent Per Annum for Bonds Bearing Issue Dates Beginning October 1, 1981

Note.—This table shows how Retirement Plan Bonds bearing issue dates beginning October 1, 1981, by denomination, increase in redemption value during successive half-year periods following issue. The redemption values have been determined to provide an investment yield of 9.00 percent per annum, compounded semiannually, on the purchase price from issue date to the beginning of each half-year period. The period to maturity is indeterminate in accordance with the provisions of § 341.1(b).

BILLING CODE 4810-40-M

ISSUE PRICE	$ 50.00	$100.00	$ 500.00	$1000.00
PERIOD AFTER ISSUE DATE	REDEMPTION VALUES DURING EACH HALF-YEAR PERIOD (VALUES INCREASE ON FIRST DAY OF PERIOD SHOWN)			
FIRST HALF YEAR.	$ 50.00	$100.00	$ 500.00	$1000.00
.5 TO 1.0 YEARS	52.24	104.48	522.40	1044.80
1.0 TO 1.5 YEARS	54.60	109.20	546.00	1092.00
1.5 TO 2.0 YEARS	57.06	114.12	570.60	1141.20
2.0 TO 2.5 YEARS	59.62	119.24	596.20	1192.40
2.5 TO 3.0 YEARS	62.30	124.60	623.00	1246.00
3.0 TO 3.5 YEARS	65.12	130.24	651.20	1302.40
3.5 TO 4.0 YEARS	68.04	136.08	680.40	1360.80
4.0 TO 4.5 YEARS	71.10	142.20	711.00	1422.00
4.5 TO 5.0 YEARS	74.30	148.60	743.00	1486.00
5.0 TO 5.5 YEARS	77.64	155.28	776.40	1552.80
5.5 TO 6.0 YEARS	81.14	162.28	811.40	1622.80
6.0 TO 6.5 YEARS	84.80	169.60	848.00	1696.00
6.5 TO 7.0 YEARS	88.60	177.20	886.00	1772.00
7.0 TO 7.5 YEARS	92.60	185.20	926.00	1852.00
7.5 TO 8.0 YEARS	96.76	193.52	967.60	1935.20
8.0 TO 8.5 YEARS	101.12	202.24	1011.20	2022.40
8.5 TO 9.0 YEARS	105.66	211.32	1056.60	2113.20
9.0 TO 9.5 YEARS	110.42	220.84	1104.20	2208.40
9.5 TO 10.0 YEARS	115.40	230.80	1154.00	2308.00
10.0 TO 10.5 YEARS	120.58	241.16	1205.80	2411.60
10.5 TO 11.0 YEARS	126.02	252.04	1260.20	2520.40
11.0 TO 11.5 YEARS	131.68	263.36	1316.80	2633.60
11.5 TO 12.0 YEARS	137.60	275.20	1376.00	2752.00
12.0 TO 12.5 YEARS	143.80	287.60	1438.00	2876.00
12.5 TO 13.0 YEARS	150.28	300.56	1502.80	3005.60
13.0 TO 13.5 YEARS	157.04	314.08	1570.40	3140.80
13.5 TO 14.0 YEARS	164.10	328.20	1641.00	3282.00
14.0 TO 14.5 YEARS	171.48	342.96	1714.80	3429.60
14.5 TO 15.0 YEARS	179.20	358.40	1792.00	3584.00
15.0 TO 15.5 YEARS	187.26	374.52	1872.60	3745.20
15.5 TO 16.0 YEARS	195.70	391.40	1957.00	3914.00
16.0 TO 16.5 YEARS	204.50	409.00	2045.00	4090.00
16.5 TO 17.0 YEARS	213.70	427.40	2137.00	4274.00
17.0 TO 17.5 YEARS	223.32	446.64	2233.20	4466.40
17.5 TO 18.0 YEARS	233.36	466.72	2333.60	4667.20
18.0 TO 18.5 YEARS	243.86	487.72	2438.60	4877.20
18.5 TO 19.0 YEARS	254.84	509.68	2548.40	5096.80
19.0 TO 19.5 YEARS	266.32	532.64	2663.20	5326.40
19.5 TO 20.0 YEARS	278.30	556.60	2783.00	5566.00
20.0 TO 20.5 YEARS	290.82	581.64	2908.20	5816.40

[FR Doc. 81-35467 Filed 12-10-81; 8:45 am]
BILLING CODE 4810-40-C

31 CFR Part 346

Regulations Governing United States Individual Retirement Bonds

AGENCY: Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This third amendment to the regulations governing United States Individual Retirement Bonds is being issued to reflect the latest improvements in the investment yield of these bonds.

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT: A. E. Martin, Office of the Chief Counsel, Bureau of the Public Debt, (202) 376-0636.

SUPPLEMENTARY INFORMATION: United States Individual Retirement Bonds have been issued since 1975 as an investment option for individuals eligible to make tax deductible contributions to an individual retirement account ("IRA"). This amendment to the offering of these bonds implements two interest rate increases announced by the Secretary of the Treasury. On October 30, 1980, the Secretary authorized an interest rate of 8 percent per annum, compounded semiannually for bonds issued on and after November 1, 1980. On October 2, 1981, the Secretary adopted an interest rate of 9 percent per annum, compounded semiannually for bonds issued on and after October 1, 1981. Accordingly, § 346.1 of the regulations is being amended and new redemption value tables B and C are being added to the appendix to reflect these rates.

This amendment is effected under authority of Sections 1 and 20 of the Second Liberty Bond Act, as amended (40 Stat. 288, 48 Stat 343, both as amended, 31 U.S.C. 752, 754b), and 5 U.S.C. 301. The Bureau of the Public Debt, Department of the Treasury, has determined that (1) this revision does not require a notice of proposed rulemaking since it involves the fiscal policy of the United States, and (2) the revision, given its nature, is not a major rule for purposes of Executive Order 12291.

Dated: December 1, 1981.

Paul H. Taylor,

Fiscal Assistant Secretary.

PART 346—REGULATIONS GOVERNING UNITED STATES INDIVIDUAL RETIREMENT BONDS

Accordingly, Department of the Treasury Circular, Public Debt Series, No. 1-75, dated January 28, 1975, as amended, is hereby further amended by the removal of § 346.1(a) and the addition of new § 346.1(a) and new Tables B and C in the Appendix to Part 346 of Title 31 of the Code of Federal Regulations as follows:

* * * * *

§ 346.1 Description of bonds.

(a) *Investment yield (interest).* United States Individual Retirement Bonds, hereinafter sometimes referred to as Individual Retirement Bonds, will be issued at par. The investment yields (interest) are as follows:

(1) Bonds with issue dates of January 1, 1975, through July 1, 1979—6 percent per annum, compounded semiannually (see Table of Redemption Values in the Appendix).

(2) Bonds with issue dates of August 1, 1979, through October 1, 1980—6.5 percent per annum, compounded semiannually (see Table A in the Appendix).

(3) Bonds with issue dates of November 1, 1980, through September 1, 1981—8 percent per annum, compounded semiannually (see Table B).

(4) Bonds with issue dates of October 1, 1981, or thereafter—9 percent per annum, compounded semiannually (see Table C).

Interest will be paid only upon redemption of the bonds. The accrual of interest will continue until the bonds are redeemed or have reached maturity, whichever is earlier, in accordance with these regulations.

* * * * *

2. In the Appendix to Part 346 of Title 31 of the Code of Federal Regulations, Table B and C are added as follows:

Table B.—Table of Redemption Values Providing an Investment Yield of 8.00 Percent Per Annum for Bonds Bearing Issue Dates Beginning November 1, 1980

Note.—This table shows how Individual Retirement Bonds bearing issue dates on or after November 1, 1980, by denomination, increase in redemption value during the successive half-year periods following issue. The redemption values provide an investment yield of approximately 8.00 percent per annum, compounded semiannually, on the purchase price from issue date to the beginning of each half-year period. No increase in redemption value is shown, however, until 1 year after issue date since no interest may be paid on bonds redeemed before that time. The period to maturity is fixed in accordance with the provisions of § 346.1(b) of this circular.

BILLING CODE 4810-40-M

ISSUE PRICE	$ 50.00	$ 75.00	$ 100.00	$ 500.00
PERIOD AFTER ISSUE DATE	REDEMPTION VALUES DURING EACH HALF-YEAR PERIOD (VALUES INCREASE ON FIRST DAY OF PERIOD SHOWN)			
FIRST YEAR	$ 50.00	$ 75.00	$ 100.00	$ 500.00
1.0 TO 1.5 YEARS	54.08	81.12	108.16	540.80
1.5 TO 2.0 YEARS	56.24	84.36	112.48	562.40
2.0 TO 2.5 YEARS	58.50	87.75	117.00	585.00
2.5 TO 3.0 YEARS	60.84	91.26	121.68	608.40
3.0 TO 3.5 YEARS	63.26	94.89	126.52	632.60
3.5 TO 4.0 YEARS	65.80	98.70	131.60	658.00
4.0 TO 4.5 YEARS	68.42	102.63	136.84	684.20
4.5 TO 5.0 YEARS	71.16	106.74	142.32	711.60
5.0 TO 5.5 YEARS	74.02	111.03	148.04	740.20
5.5 TO 6.0 YEARS	76.98	115.47	153.96	769.80
6.0 TO 6.5 YEARS	80.06	120.09	160.12	800.60
6.5 TO 7.0 YEARS	83.26	124.89	166.52	832.60
7.0 TO 7.5 YEARS	86.58	129.87	173.16	865.80
7.5 TO 8.0 YEARS	90.04	135.06	180.08	900.40
8.0 TO 8.5 YEARS	93.64	140.46	187.28	936.40
8.5 TO 9.0 YEARS	97.40	146.10	194.80	974.00
9.0 TO 9.5 YEARS	101.30	151.95	202.60	1013.00
9.5 TO 10.0 YEARS	105.34	158.01	210.68	1053.40
10.0 TO 10.5 YEARS	109.56	164.34	219.12	1095.60
10.5 TO 11.0 YEARS	113.94	170.91	227.88	1139.40
11.0 TO 11.5 YEARS	118.50	177.75	237.00	1185.00
11.5 TO 12.0 YEARS	123.24	184.86	246.48	1232.40
12.0 TO 12.5 YEARS	128.16	192.24	256.32	1281.60
12.5 TO 13.0 YEARS	133.30	199.95	266.60	1333.00
13.0 TO 13.5 YEARS	138.62	207.93	277.24	1386.20
13.5 TO 14.0 YEARS	144.16	216.24	288.32	1441.60
14.0 TO 14.5 YEARS	149.94	224.91	299.88	1499.40
14.5 TO 15.0 YEARS	155.94	233.91	311.88	1559.40
15.0 TO 15.5 YEARS	162.16	243.24	324.32	1621.60
15.5 TO 16.0 YEARS	168.66	252.99	337.32	1686.60
16.0 TO 16.5 YEARS	175.40	263.10	350.80	1754.00
16.5 TO 17.0 YEARS	182.42	273.63	364.84	1824.20
17.0 TO 17.5 YEARS	189.72	284.58	379.44	1897.20
17.5 TO 18.0 YEARS	197.30	295.95	394.60	1973.00
18.0 TO 18.5 YEARS	205.20	307.80	410.40	2052.00
18.5 TO 19.0 YEARS	213.40	320.10	426.80	2134.00
19.0 TO 19.5 YEARS	221.94	332.91	443.88	2219.40
19.5 TO 20.0 YEARS	230.82	346.23	461.64	2308.20
20.0 TO 20.5 YEARS	240.06	360.09	480.12	2400.60

BILLING CODE 4810-40-C

Table C.—Table of Redemption Values Providing an Investment Yield of 9.00 Percent Per Annum for Bonds Bearing Issue Dates Beginning October 1, 1981

Note.—This table shows how Individual Retirement Bonds bearing issue dates on or after October 1, 1981, by denomination, increase in redemption value during the successive half-year periods following issue. The redemption values provide an investment yield of approximately 9.00 percent per annum, compounded semiannually, on the purchase price from issue date to the beginning of each half-year period. No increase in redemption value is shown, however, until 1 year after issue date since no interest may be paid on bonds redeemed before that time. The period to maturity is fixed in acordance with the provisions of § 346.1(b) of this circular.

BILLING CODE 4810-40-M

ISSUE PRICE	$ 50.00	$ 75.00	$ 100.00	$ 500.00
PERIOD AFTER ISSUE DATE	REDEMPTION VALUES DURING EACH HALF-YEAR PERIOD (VALUES INCREASE ON FIRST DAY OF PERIOD SHOWN)			
FIRST YEAR	$ 50.00	$ 75.00	$ 100.00	$ 500.00
1.0 TO 1.5 YEARS	54.60	81.90	109.20	546.00
1.5 TO 2.0 YEARS	57.06	85.59	114.12	570.60
2.0 TO 2.5 YEARS	59.62	89.43	119.24	596.20
2.5 TO 3.0 YEARS	62.30	93.45	124.60	623.00
3.0 TO 3.5 YEARS	65.12	97.68	130.24	651.20
3.5 TO 4.0 YEARS	68.04	102.06	136.08	680.40
4.0 TO 4.5 YEARS	71.10	106.65	142.20	711.00
4.5 TO 5.0 YEARS	74.30	111.45	148.60	743.00
5.0 TO 5.5 YEARS	77.64	116.46	155.28	776.40
5.5 TO 6.0 YEARS	81.14	121.71	162.28	811.40
6.0 TO 6.5 YEARS	84.80	127.20	169.60	848.00
6.5 TO 7.0 YEARS	88.60	132.90	177.20	886.00
7.0 TO 7.5 YEARS	92.60	138.90	185.20	926.00
7.5 TO 8.0 YEARS	96.76	145.14	193.52	967.60
8.0 TO 8.5 YEARS	101.12	151.68	202.24	1011.20
8.5 TO 9.0 YEARS	105.66	158.49	211.32	1056.60
9.0 TO 9.5 YEARS	110.42	165.63	220.84	1104.20
9.5 TO 10.0 YEARS	115.40	173.10	230.80	1154.00
10.0 TO 10.5 YEARS	120.58	180.87	241.16	1205.80
10.5 TO 11.0 YEARS	126.02	189.03	252.04	1260.20
11.0 TO 11.5 YEARS	131.68	197.52	263.36	1316.80
11.5 TO 12.0 YEARS	137.60	206.40	275.20	1376.00
12.0 TO 12.5 YEARS	143.80	215.70	287.60	1438.00
12.5 TO 13.0 YEARS	150.28	225.42	300.56	1502.80
13.0 TO 13.5 YEARS	157.04	235.56	314.08	1570.40
13.5 TO 14.0 YEARS	164.10	246.15	328.20	1641.00
14.0 TO 14.5 YEARS	171.48	257.22	342.96	1714.80
14.5 TO 15.0 YEARS	179.20	268.80	358.40	1792.00
15.0 TO 15.5 YEARS	187.26	280.89	374.52	1872.60
15.5 TO 16.0 YEARS	195.70	293.55	391.40	1957.00
16.0 TO 16.5 YEARS	204.50	306.75	409.00	2045.00
16.5 TO 17.0 YEARS	213.70	320.55	427.40	2137.00
17.0 TO 17.5 YEARS	223.32	334.98	446.64	2233.20
17.5 TO 18.0 YEARS	233.36	350.04	466.72	2333.60
18.0 TO 18.5 YEARS	243.86	365.79	487.72	2438.60
18.5 TO 19.0 YEARS	254.84	382.26	509.68	2548.40
19.0 TO 19.5 YEARS	266.32	399.48	532.64	2663.20
19.5 TO 20.0 YEARS	278.30	417.45	556.60	2783.00
20.0 TO 20.5 YEARS	290.82	436.23	581.64	2908.20

[FR Doc. 81-35466 Filed 12-10-81; 8:45 am]
BILLING CODE 4810-40-C

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations; California, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are 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 either to 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).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 287–0230, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determination of flood elevation for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection 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 Part 67). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

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 (final) 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 flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain 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 flood plain and do not proscribe 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 final base (100-year) flood elevations for selected locations are:

FINAL BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
California	Fortuna (City), Humboldt County, FEMA-6121	Eel River	At Dinsmore Drive crossing of Rohner Creek	*43
		Strongs Creek	50 feet downstream of confluence with Jameson Creek.	*54
		Rohner Creek	At upstream edge of Main Street	*65
Maps available for inspection at Department of Public Works, 621 11th Street, Fortuna, California.				
California	Marin County (unincorporated areas), FEMA-6121	Coyote Creek	Intersection of Jean Street and Ross Drive	*8
		San Francisco Bay	Intersection of Seminary Drive and Hodges Drive	*6
		Tennessee Creek	Intersection of Gibson Avenue and Marin Avenue	*8
		Crest Marin Creek	Intersection of Ross Drive and Linda Way	*8
		Reed Creek	Intersection of Reed Street and Ethel Avenue	*12
		Sutton-Manor Creek	300 feet west of intersection of Meadow Drive and Tower Drive.	#2
		Eskoot Creek	Intersection of Calle del Arroyo and Calle del Resaca	*7
			20 feet upstream from center of Shoreline Highway	*41
		San Pablo Bay	Intersection of Vendola Drive and Birch Way	*6
		Bolinas Lagoon	100 feet upstream from center of Walla Vista	*6
		Novato Creek	Intersection of Creek and most downstream Corporate Limits—City of Novato.	*8
			Confluence with Bowman Canyon	*117
		Arroyo San Jose	Confluence with Ignacio Creek	*55
		Miller Creek	200 feet upstream from center of U.S. Highway 101	*32
			Intersection of Lucas Valley Road and Mt. McKinley Road.	*167
		Lagunitas Creek	Intersection of Sir Francis Drake Boulevard and 1st Street.	*15
		Olema Creek	100 feet upstream from center of Bear Valley Road Bridge.	*49
Maps available for inspection at Department of Public Works, 3rd Floor, Marin County Courthouse, San Rafael, California.				
California	Rio Dell (City), Humboldt County, FEMA-6121	Eel River	Downstream side of the northbound lane of U.S. Highway 101 over the channel (crossing in northern portion of city).	*88
			Wildwood Avenue bridge over the channel	*10E
Maps available for inspection at Department of Public Works, 675 Wildwood Avenue, Rio Dell, California.				
Illinois	(V) Pawnee, Sangamon County (Docket No. FEMA-6121).	Horse Creek	About 0.25 mile downstream of Carroll Street	*587
			About 0.39 mile upstream of Washington Street	*586
		Henkle Branch	At confluence with Horse Creek	*588
			About 0.53 mile upstream of 5th Street	*591
Maps available for inspection at the City Clerk's Office, Village Hall, 1201 7th Street, Pawnee, Illinois.				

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Illinois	(V) Thayer, Sangamon County (Docket No. FEMA-6121).	Sugar Creek	About 2000 feet downstream of Harrison Avenue	*623
			About 100 feet upstream of Illinois Route 4	*627
			About 100 feet upstream of Elm Street	*628
	Maps available for inspection at the Village Clerk's Office, Village Hall, Thayer, Illinois.			
Indiana	(C) Lebanon, Boone County (Docket No. FEMA-6121).	Prairie Creek	About 1.2 mile downstream of Lafayette Avenue	*913
			About 2900 feet upstream of upstream Conrail crossing.	*938
		New Reynolds Ditch	Approximately 1600 feet downstream of North 176th Road.	*919
			About 900 feet downstream of State Route 39	*930
			About 1300 feet upstream of Grant Boulevard	*940
	Maps available for inspection at the City Hall, Building Inspector's Office, 201 East Main Street, Lebanon, Indiana.			
Indiana	(T) Pendleton, Madison County (Docket No. FEMA-6121).	Fall Creek	About 630 feet downstream of Reformatory Road	*821
			Just upstream of State Route 38	*830
			About 300 feet upstream of State Route 67	*857
			At upstream extra-territorial limits	*862
		Prairie Creek	At mouth	*842
			Just downstream of Conrail	*848
			At upstream extra-territorial limits	*851
		Spring Branch	At mouth	*857
			Just upstream of State Route 38 (upstream crossing	*868
			Just downstream of 150 West Road	*882
	Maps available for inspection at the Town Hall, 119 West State Street, Pendleton, Indiana.			
Iowa	(C) Ft. Madison, Lee County (Docket No. FEMA-6074).	Unnamed Creek	Approximately 900 feet downstream of U.S. Highway 61.	*538
			Approximately 350 feet upstream of 48th Street	*544
			Approximately 3000 feet upstream of 48th Street	*556
		Penitentiary Creek	Just downstream of Burlington Northern railroad	*526
			At upstream corporate limits	*554
		Dry Creek	About 1100 feet downstream of Burlington Northern railroad.	*524
			About 400 feet upstream of A Avenue (at upstream corporate limits).	*572
		Fork Creek	Just downstream of Burlington Northern railroad	*525
			At upstream corporate limits	*549
		French Creek	About 100 feet downstream of Burlington Northern railroad.	*525
			Just downstream of H Avenue	*535
			Just upstream of H Avenue	*541
			Just downstream of D Avenue	*545
			Just upstream of D Avenue	*551
			At upstream corporate limits	*558
		Mississippi River	Approximately 7.3 miles downstream of Atchison, Topeka and Santa Fe Railway.	*523
			Approximately 1.4 miles above Atchison, Topeka and Santa Fe Railway.	*526
	Maps available for inspection at the Municipal Building, 811 Avenue E, Ft. Madison, Iowa.			
Iowa	(C) Johnston, Polk County (Docket No. FEMA-6121)	Beaver Creek	Just upstream of Northwest Beaver Drive	*806
			About 1900 feet upstream of Merle Hay Road	*809
			About 380 feet downstream of Northwest 62nd Street	*815
			Just downstream of Northwest 70th Avenue	*822
	Maps available for inspection at the City Building, P.O. Box 156, Johnston, Iowa.			
Iowa	(C) Pleasant Hill, Polk County (Docket No. FEMA-6121).	Little Fourmile Creek	At mouth	*799
			Just upstream of University Avenue	*808
			About 0.8 mile upstream of University Avenue	*816
		Fourmile Creek	At confluence with Des Moines River	*781
			About 1000 feet upstream of University Avenue	*803
		Des Moines River	About 1.8 miles downstream of State Highway 46	*781
			Just upstream of State Highway 46	*782
	Maps available for inspection at the City Hall, 4450 East Oakwood, Pleasant Hill, Iowa.			
Louisiana	Town of Henderson, St. Martin Parish (FEMA 5927)	Bayou Peyronnet	Just upstream of Louisiana Highway 352	*13
			Just upstream of Interstate Highway 10 Westbound Lanes.	*15
		Bayou Portage	Just upstream of Interstate Highway 10 Westbound Lanes.	*14
		True Canal	Just upstream of Patin Street	*15
	Maps available for inspection at Town Hall, Amy Street, Henderson, Louisiana 70525.			
Louisiana	Unincorporated Areas of St. Landry Parish (FEMA-5947).	Bayou Carencro	Just upstream of State Highway 182	*28
			Just upstream of South Pacific Railroad	*31
		Tributary to Bayou Carencro	Just upstream of U.S. Highway 167	*35
		Bayou Sylvain	Just upstream of confluence of Magnolia Ridge	*38
		Magnolia Ridge	Just upstream of confluence with Bayou Sylvain	*40
		Bayou Petite Prairie	Just upstream of Unnamed Road	*32
		Dry Bayou	Just upstream of Texas and Pacific Railroad Bridge	*45
		Bayou Courtableau	At confluence of Little Darbonne Bayou	*25

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		East Bayou Mallet	At approximately 500 feet downstream of Route 104	*62
		Bayou Teche	Just upstream of Missouri Pacific Railroad	*28
		Bayou Fusilier	Just upstream of State Highway 93	*23
		Bayou Little Teche	Just upstream of Missouri Pacific Railroad	*29
Maps available for inspection at St. Landry Parish Courthouse, Opelousas, Louisiana 70570.				
Louisiana	Unincorporated areas of St. Martin Parish (FEMA-5947).	WABPL Borrow Pit	Just downstream of Parish Road	*12
			Just upstream of Parish Road	*12
		Bayou Portage	Just downstream of Parish Road	*14
			Just upstream of Parish Road	*14
		Coulee Datider	At extended Route 354	*14
			Approximately 1200 feet from Route 341	*20
		Bayou Capucine	Just downstream of Parish Road	*17
			Just upstream of Parish Road	*17
		Bayou Berard	Just downstream of Parish Road	*12
			Just upstream of Parish Road	*12
		Catahoula Coulee	Just downstream of Parish Road	*13
			Just upstream of Parish Road	*14
		Coulee Coteau Holmes	Just upstream of confluence with Bayou Du Portage	*9
		Bay on Fusilier	Just downstream of State Highway 93	*23
			Just upstream of State Highway 93	*23
Maps available for inspection at St. Martin Parish Police Jury, St. Martin Parish Courthouse, St. Martinville, Louisiana 70570.				
Maine	Bridgton, Town, Cumberland County (Docket No. FEMA-8012).	Stevens Brook	Kansas Road (upstream)	*338
			Approximately 100' downstream of Smith Avenue	*348
			Approximately 250' upstream of Smith Avenue	*358
			Approximately 90' downstream of footbridge (downstream footbridge).	*365
			Upstream of footbridge (downstream footbridge)	*374
			Approximately 70' downstream of Bisbee Dam	*380
			Upstream of Bisbee Dam	*390
			Upstream of Portland Street (U. S. Route 302)	*397
			Upstream of Main Street (U. S. Route 302)	*407
			Downstream of dam and footbridge	*417
			Upstream of dam and footbridge	*427
			Downstream of Highland Lake Dam	*428
		Willett Brook	Confluence with Stevens Brook	*403
			Upstream of Willett Road	*407
		Corn Shop Brook	Confluence with Stevens Brook	*403
			Upstream of Park Street	*405
		Long Lake	Entire shoreline within corporate limits	*274
		Highland Lake	Entire shoreline within corporate limits	*428
Maps available for inspection at the Municipal Building, 48 Main Street, Bridgton, Maine.				
Michigan	(V) Homer, Calhoun County (Docket No. FEMA-6121)	South Branch Kalamazoo River	About 1200 feet downstream of Webster Street	*964
			Just downstream of Byron Street	*968
Maps available for inspection at the Clerk's Office, Village Hall, 130 East Main Street, Homer, Michigan.				
Minnesota	(C) Albert Lea, Freeborn County (Docket No. FEMA-6122).	Bancroft Creek	Mouth at Fountain Lake	*1218
			Just downstream of County Road (at upstream corporate limits).	*1219
		Goose Lake Outlet Stream	Mouth at Fountain Lake	*1218
			Just downstream of Chicago, Rock Island and Pacific Railroad.	*1222
		White Lake Outlet Stream	Mouth at Fountain Lake	*1218
			About 450 feet upstream of State Highway 13	*1219
		Fountain Lake Outlet Stream	Mouth at Albert Lea Lake	*1214
			Just upstream of Main Street	*1215
			Outlet from Fountain Lake	*1218
		Pickerel Lake Outlet Stream	Mouth at Fountain Lake	*1218
			Just upstream of State Highway 13	*1219
			Just upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*1220
		Fountain Lake	Shoreline	*1218
		Albert Lea Lake	Shoreline	*1214
Maps available for inspection at the City Hall, 221 East Clark Street, Albert Lea, Minnesota.				
Minnesota	(C) Blue Earth, Faribault County (Docket No. FEMA-6122).	Blue Earth River	About 1000 feet downstream of the confluence with East Fork Blue Earth River.	*1060
			About 2800 feet upstream of County Highway 6	*1063
		East Fork Blue Earth River	Just downstream of Old Highway 169	*1060
			About 0.72 mile upstream of 7th Street	*1065
Maps available for inspection at the City Hall, 125 West 6th Street, Blue Earth, Minnesota.				
Minnesota	(C) Emmons, Freeborn County (Docket No. FEMA-6122).	State Line Lake	Shoreline	*1272
		State Line Lake Outlet Stream	About 150 feet downstream of Lake Street	*1269
			Just upstream of Lake Street	*1271
			About 200 feet upstream of State Line Lake Outlet Dam.	*1272
Maps available for inspection at the City Hall, Emmons, Minnesota.				
Minnesota	(Uninc.) Freeborn County (Docket No. FEMA-6122)	Shell Rock River	Just upstream of U.S. Highway 65	*1210
			Just downstream of Albert Lea Lake Outlet Dam	*1214
		Goose Creek	Just upstream of County Road located at center of Section 18, T 101 N, R 21 W.	*1231

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			About 1600 feet downstream of U.S. Highway 69	*1258
		Goose Creek Tributary	Confluence with Goose Creek	*1232
			About 4675 feet upstream of confluence with Goose Creek.	*1233
		Goose Lake Outlet Stream	About 2750 feet downstream of Chicago, Rock Island and Pacific Railroad.	*1221
			Just upstream of Chicago, Rock Island and Pacific Railroad.	*1222
		Pickerel Lake Outlet Stream	About 1300 feet upstream of State Highway 13	*1220
			Just downstream of White Lake Road	*1226
			Just upstream of White Lake Road	*1239
			Just downstream of Pickerel Lake Dam	*1239
		White Lake Outlet Stream	Mouth at Fountain Lake	*1218
			Just upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*1221
		Manchester Creek	Mouth at Fountain Lake	*1218
			About 200 feet downstream of Interstate 90	*1241
		Bancroft Creek	About 150 feet upstream of mounth	*1218
			Just upstream of Interstate 90	*1223
			Just downstream of County Highway 25	*1232
		Pickerel Lake	Shoreline	*1239
		White Lake	Shoreline	*1221
		School Section Lake	Shoreline	*1237
		Goose Lake	Shoreline	*1222
		Lower Twin Lake	Shoreline	*1260
		Fountain Lake	Shoreline	*1218
		State Line Lake	Shoreline	*1272
		Albert Lea Lake	Shoreline	*1214
	Maps available for inspection at the Freeborn County Courthouse, Albert Lea, Minnesota.			
Minnesota	(C) Glenville, Freeborn County (Docket No. FEMA-6122).	Shell Rock River	About 5,800 feet dowstream of Main Street	*1212
			About 7,600 feet upstream of Main Street	*1213
	Maps available for inspection at the City Hall, West Main Street, Glenville, Minnesota.			
Minnesota	(C) St. James, Watonwan County (Docket No. FEMA-6122).	St. James Creek	About 1,200 feet dowstream of Chicago and North Western Railroad.	*1050
			Just downstream of State Highway 60	*1059
		St. James Lake	Shoreline	*1062
	Maps available for inspection at the City Hall, 120 Armstrong Boulevard South, St. James, Minnesota.			
Minnesota	(C) Twin Lakes, Freeborn County (Docket No. FEMA-6122).	Lower Twin Lake	Shoreline	*1260
		Goose Creek	About 1,775 feet downstream of Depot Street	*1237
			Just downstream of abandoned railroad (about 600 feet downstream of Depot Street).	*1247
			Just upstream of abandoned railroad (about 600 feet downstream of Depot Street).	*1255
			Just upstream of Main Street	*1259
			Outlet from Lower Twin Lake	*1260
	Maps available for inspection at the City Hall, Twin Lakes, Minnesota.			
New Hampshire	Plymouth, Town, Grafton County (Docket No. FEMA-6012).	Pemigewasset River	Downstream corporate limits	*483
			Upstream corporate limits	*490
		Baker River	Confluence with the Pemigewasset River	*485
			Upstream corporate limits	*490
		Sanborn Mill Brook	Confluence with Baker River	*488
			Downstream side of Old State Route 25	*492
			Upstream side of 1st crossing Yeaton Road	*501
			Upstream side of 2d crossing Yeaton Road	*507
			Approximately 2,700' upstream of 2d crossing Yeaton Road.	*528
	Maps available for inspection at the Town Hall, Main Street, Plymouth, New Hampshire.			
New Hampshire	Marlborough, Town, Cheshire County (Docket No. FEMA-6073).	Minnewawa Brook	Downstream corporate limits	*635
			Canada Street Bridge (upstream side)	*663
			East Terrace Street Bridge (upstream side)	*713
			State Route 124 Bridge (upstream side)	*728
			Confluence of Robbins Brook	*753
			Approximately 2,420 feet upstream from State Route 101 Bridge.	*796
		Robbins Brook	Confluence with Minnewawa Brook	*753
			Downstream crossing of State Route 101 Bridge (upstream side).	*812
			Ryan Road Bridge (downstream side)	*832
			Approximately 1,720' upstream from Ryan Road Bridge.	*877
			Approximately 4,500' upstream from Ryan Road Bridge.	*921
			Approximately 8,350' upstream from Ryan Road Bridge.	*1,028
			Approximately 10,790' upstream from Ryan Road Bridge.	*1,056
		South Branch Ashuelot River	Downstream corporate limits	*639
			Old Iron Bridge (upstream side)	*682
			Approximately 950' upstream from Old Iron Bridge	*691
	Maps available for inspection at the Marlborough Municipal Building, Main Street, Marlborough, New Hampshire.			

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New York	Syracuse, City, Onondaga County (Docket No. FEMA-6124).	Harbor Brook	Confluence with Onondaga Lake	*372
			50' downstream of State Fair Boulevard	*377
			50' upstream of Delaware Street	*404
			30' upstream of Velasko Road	*407
			450' upstream of Velasko Road	*412
		Ley Creek	Confluence with Onondaga Lake	*372
			30' downstream of 7th North Street	*375
		Meadow Brook	150' downstream of Dewitt Road (downstream crossing).	*473
			550' downstream of Dewitt Road (upstream crossing)	*483
			50' upstream of Dewitt Road (upstream crossing)	*491
			700' downstream of Carlton Road	*497
			30' upstream of Carlton Road	*505
			100' upstream of Hillsboro Parkway	*511
			Upstream of Service Road	*518
			30' upstream of Brookford Road	*526
			400' upstream of Montana Street	*534
			200' upstream of Fellows Avenue	*541
			150' upstream of Meadowbrook Drive	*544
Maps available for inspection at the Office of the City Engineer, City Hall, 233 Washington Street, Syracuse, New York 13202.				
New York	Windsor, Town, Broome County (Docket No. FEMA-6033).	Susquehanna River	Downstream corporate limits	*913
			1,200' upstream of County Route 548 extended	*917
			Fordway Road extended	*926
			6,000' upstream of Ouaguaga Bridge	*937
			Upstream corporate limits	*940
Maps available for inspection at the Town Hall, 36 Main Street, Windsor, New York.				
Ohio	(V) Genoa, Ottawa County (Docket No. FEMA-6089)	Packer Creek	About 950 feet downstream of Washington Street	*619
			About 690 feet upstream of Wilson Street	*625
Maps available for inspection at the Mayor's Office, Town Hall, 509 Main Street, Genoa, Ohio.				
Pennsylvania	LeBoeuf, Township, Erie County (Docket No. FEMA-6012).	French Creek	Upstream U.S. Route 6	*1,167
			Upstream Flatts Road	*1,179
			0.33 mile upstream Dewey Road	*1,199
Maps available for inspection at the Township Building, LeBoeuf, Pennsylvania.				
Pennsylvania	Northampton, Borough, Northampton County (Docket No. FEMA-6124).	Lehigh River	Downstream corporate limits	*285
			9th Street (downstream)	*287
			Northampton Dam (upstream)	*299
			Upstream corporate limits	*302
		Hokendauqua Creek	Confluence with Lehigh River	*288
			Approximately 700' upstream of Main Street	*292
			Conrail (2d crossing) downstream)	*311
			Dam (upstream)	*318
			State Route 329 (upstream)	*328
			Approximately 1,240' upstream of State Route 329	*329
Maps available for inspection at the Municipal Building, Northampton, Pennsylvania.				
Pennsylvania	Norwood, Borough, Delaware County (Docket No. FEMA-6073).	Darby Creek	Downstream corporate limits	*10
			Upstream corporate limits	*10
Maps available for inspection at the Borough Building, Norwood, Pennsylvania.				
Pennsylvania	Scott, Township, Allegheny County (Docket No. FEMA-6027).	Chartiers Creek	Downstream corporate limits	*763
			Downstream Carothers Avenue approximately 500 feet upstream of corporate limits.	*771
			Downstream Hiland Street extended	*781
			Upstream Pittsburgh and Washington Pike extended	*790
			Upstream corporate limits.	*795
		Whiskey Run	Downstream corporate limits	*772
			Downstream Norland Avenue extended	*779
			Upstream Noblestown Road	*789
			Downstream culvert downstream of Penn Lincoln Parkway.	*793
			Upstream Penn Lincoln Parkway	*805
			Upstream corporate limits	*818
		Georges Run	Upstream access road upstream of culvert	*817
			Downstream Charles Drive	*827
			Approximately 530 feet upstream of Charles Drive	*835
			Approximately 160 feet downstream of Hope Hollow Road.	*845
			Upstream Hope Hollow Road	*835
			Approximately 90 feet downstream culvert (Green Tree Road).	*868
			Downstream culvert (Green Tree Road)	*877
			Approximately 400 feet upstream of downstream face of culvert.	*889
			Approximately 375 feet upstream of culvert	*900
			Approximately 750 feet upstream of culvert	*906
		Scrubgrass Run	Confluence with Chartiers Creek	*786
			Downstream Green Tree Road	*796
			Downstream culvert (Norfolk and Western Railroad)	*815
			Upstream culvert (Norfolk and Western Railroad)	*821

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Upstream private drive approximately 730' upstream of culvert.	*829
			Downstream private drive approximately 190' downstream of Old Scrubgrass Road.	*839
			Upstream Old Scrubgrass Road	*849
			Upstream private drive approximately 700' upstream of Old Scrubgrass Road.	*859
			Downstream private drive approximately 1,130' upstream of Old Scrubgrass Road.	*875
			Upstream private drive approximately 1,750' upstream of Old Scrubgrass Road.	*886
			Approximately 2,040' upstream of Scrubgrass Road	*893
			Approximately 2,400' upstream of Scrubgrass Road	*904
			Approximately 2,630' upstream of Scrubgrass Road	*914
			Approximately 1,900' downstream of Raven Drive	*917
			Approximately 1,500' downstream of Raven Drive	*927
			Downstream private drive approximately 1,000' downstream of Raven Drive.	*939
			Approximately 575' downstream of Raven Drive	*953
			Downstream private drive approximately 200' downstream of Raven Drive.	*966
			Approximately 110' downstream of Raven Drive	*977
		Painters Run	Downstream corporate limits	*853
			Approximately 140' upstream of Painters Run Road	*867
Maps available for inspection at the Scott Public Works Building, 2600 Old Greentree Road, Carnegie, Pennsylvania.				
Pennsylvania	South Coatesville, Borough, Chester County (Docket No. FEMA-6073).	West Branch Brandywine Creek	Downstream corporate limits	*284
			Private road approximately 2,800' upstream of corporate limits (upstream side).	*294
			Legislative Route 15236 (upstream side)	*299
			Conrail (upstream side)	*304
			Upstream corporate limits	*308
Maps available for inspection at the South Coatesville Borough Building, Modena Road, Coatesville, Pennsylvania.				
Pennsylvania	Wayne, Township, Lawrence County (Docket No. FEMA-6124).	Beaver River	Approximately 2,000' downstream of Conrail	*763
			Approximately 1,600' upstream of State Route 288	*765
			Approximately 8,220' upstream of State Route 288	*768
		Squaw Run	Confluence with Duck Run	*919
			Upstream of Legislative Route 37017	*940
			Squaw Run Road (downstream crossing) upstream side.	*993
			Mount Hope Road (upstream side)	*1,051
			Approximately 4,330' upstream of Mount Hope Road	*1,134
		Tributary to Squaw	Confluence with Squaw Run	*1,051
			Approximately 588' upstream of the confluence with Squaw Run.	*1,095
			Approximately 1,148' upstream of the confluence with Squaw Run.	*1,138
		Duck Run	Confluence with Connoquenessing Creek	*813
			New Castle Road (upstream side)	*917
			Legislative Route 37012 (upstream side)	*944
			Confluence of Tributary to Duck Run	*1,001
		Tributary to Duck Run	Confluence with Duck Run	*1,001
			Approximately 730' upstream of private drive	*1,035
			Approximately 1,755' upstream of private drive	*1,082
		Slippery Rock Creek	Approximately 400' downstream of State Route 488	*831
			State Route 488 (upstream crossing) (upstream side)	*835
			Approximately 5,100' upstream of upstream crossing of State Route 488.	*840
			Approximately 1,400' upstream of Van Gorder Road	*849
Maps available for inspection at the Wayne Township Municipal Building, 1418 Wampum Road, Ellwood City, Pennsylvania.				
South Carolina	York (City), York County FEMA-6122	Ross Branch	25' upstream from center of California Street	*644
		Ross Branch Tributary No. 1	Intersection of tributary and center of U.S. Highway 321 Bypass.	*667
		Ross Branch Tributary No. 2	200' upstream from center of U.S. Highway 231 Bypass.	*667
		Creekside Branch	200' south from intersection of Bratton Avenue and Forrest Drive.	*649
			100' upstream from center of Railroad Avenue	*685
		Creekside Branch Tributary No. 1	400' east-southeast from intersection of Lynwood Circle and Benfield Avenue.	*687
		Creekside Branch Tributary No. 2	50' upstream from center of Woodland Drive	*668
		Langham Branch	150' upstream from center of East Liberty Street	*675
		Langham Branch Tributary No. 1	100' downstream from center of South Pacific Avenue	*685
		Fishing Creek Tributary No. 1	100' upstream from center of Nottingham Road	*643
			100' upstream from center of North Congress Street	*698
		Fishing Creek Tributary No. 1-A	100' upstream from center of Morton Street	*691
		Fishing Creek Tributary No. 1-B	175' downstream from center of Hall Street	*700
Maps available for inspection at City Hall, York, South Carolina.				
Vermont	Middlesex, Town, Washington County (Docket No. FEMA-6061).	Winooski River	Downstream corporate limits	*431
			State Route 2	*447
			Approximately 250' downstream of Middlesex Dam	*463
			Upstream of Middlesex Dam	*501

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Confluence with Great Brook	*504
			Confluence with Sunny Brook	*513
			Upstream of corporate limits	*517
		Great Brook	Confluence with Winooski River	*504
			Approximately 600' upstream of Interstate Route 89	*515
			Approximately 2,150' upstream of Interstate Route 89	*580
			Point Lookout Road	*621
			Approximately 1,800' upstream of Point Lookout Road	*640
			Approximately 4,400' upstream of Point Lookout Road	*683
		Sunny Brook	Confluence with Winooski River	*513
			Upstream of Sunny Brook Road (downstream crossing).	*529
			Upstream of Sunny Brook Road (upstream crossing)	*551
			Approximately 1,300' upstream of Sunny Brook Road (upstream crossing).	*578
Maps available for inspection at the Town Clerk's Office, Municipal Offices, Middlesex, Vermont.				
Virginia	Hallwood, Town, Accomack County (Docket No. FEMA-6073).	Messongo Creek	Downstream corporate limits	*11
			1st Conrail Bridge (upstream side)	*18
			Upstream corporate limits	*23
Maps available for inspection at the Town Hall, Hallwood, Virginia.				
Washington	Selah, City, Yakima County (Docket No. FEMA-6122)	Yakima River	Downstream corporation limits	*1,088
			Naches Avenue (downstream) (extended)	*1,096
			East Bartlett Avenue (extended) (downstream)	*1,098
			Approximately 4,200' upstream of Naches Avenue (extended).	*1,108
Maps available for inspection at City Hall, 115 West Naches Avenue, Selah, Washington.				
Wisconsin	(Uninc.) Calumet County (Docket No. FEMA-6122)	Killsnake River	About 1900 feet downstream of County Highway Y	*810
			About 400 feet upstream of Weeks Road	*820
			Just upstream of Irish Road	*839
			Just downstream of County Highway E	*860
			About 2200 feet upstream of McHugh Road	*885
			Just downstream of Faro Springs Road	*907
		Brothertown Creek	About 1200 feet downstream of Harbor Road	*750
			Just downstream of U.S. Highway 151	*793
			About 1500 feet upstream of U.S. Highway 151	*799
		Black Creek	Mouth at Spring Creek	*805
			Just downstream of State Highway 114	*810
			About 800 feet upstream of Round Lake Road	*826
			Just downstream of County Line Road	*851
		East Branch Spring Creek	At confluence with Spring Creek	*842
			Just upstream of County Highway PP	*846
			About 4100 feet upstream of County Highway PP	*876
		Mill Creek	About 2100 feet of downstream of Lakeshore Road	*805
			Just upstream of State Highway 55	*855
			About 3300 feet upstream of State Highway 55	*865
		Mud Creek	At mouth	*748
			Just downstream of Mud Creek Road	*756
			About 2450 feet upstream of Lake Shore Road (at Village of Stockbridge corporate limits).	*788
		South Branch Manitowoc River	About 2.5 miles downstream of Weeks Road	*806
			About 100 feet upstream of Weeks Road	*816
			Just upstream of dam near Weeks Road	*820
			About 1000 feet upstream of Irish Road	*842
			About 425 feet upstream of East Main Street	*850
			About 1.8 miles downstream of Colleen Road	*890
			About 200 feet upstream of Colleen Road	*894
			About 1.6 miles upstream of Harlow Road	*900
		Pine Creek	Just upstream of U.S. Highway 151	*821
			About 400 feet upstream of Honeymoon Hill Road	*828
			About 150 feet upstream of Meggars Road	*864
			About 0.57 mile upstream of Tecumseh Road (at City of New Holstein corporate limits).	*906
		North Branch Manitowoc River	About 3.5 miles upstream of mouth	*807
			About 4.6 miles upstream of mouth	*807
		Spring Creek	About 2000 feet downstream of Hacker Road (at City of Brillion corporate limit).	*825
			About 475 feet upstream of Hacker Road	*834
			About 2,400 feet upstream of Rusch Road	*851
		Stoney Brook	At mouth	*900
			About 150 feet downstream of Stoney Brook Road	*900
			About 150 feet upstream of Quinney Road	*946
			Just downstream of County Highway F	*962
		Unnamed Tributary of Pine Creek	At mouth	*826
			About 850 feet downstream of Bruckner Road	*840
			Just upstream of Hayton Road	*882
			Just downstream of State Highway 57	*895
		Unnamed Ditch-Ariens Ditch	At downstream City of Brillion corporate limit	*814
			At upstream City of Brillion corporate limit	*814
Maps available for inspection at the Zoning Administrator's Office, Chilton County Courthouse, 206 Court Street, Chilton, Wisconsin.				
Wisconsin	(V) Germantown, Washington County (Docket No. FEMA-6073.	Menomonee River	About 1.45 miles downstream of U.S. Highway 41	*842
			About 0.53 mile upstream of Lovers Lane	*853
		North Branch Menomonee River	At confluence with Menomonee River	*850

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			About 150 feet upstream of Holy Hill Road	*833
			About 150 feet downstream of Chicago and North Western railroad.	*885
			About 0.53 mile upstream of State Highway 145	*900
			About 1.1 miles upstream of State Highway 145	*925
		West Branch Menomonee River	At confluence with Menomonee River	*850
			Just upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad (upstream of Maple Drive).	*867
			Just upstream of Freistadt Road (about 0.25 mile downstream of Golden Dale Road.)	*905
			Just downstream of U.S. Highway 41	*913
			About 0.28 mile upstream of Hilltop Drive	*930
		Bonniwell Creek	Just downstream of Bonniwell Road	*860
			Just downstream of Rockfield Road	*888
		Little Cedar Creek	About 0.14 mile downstream of Chicago and North Western railroad.	*851
			About 1.0 mile upstream of Fond du Lac Road	*860
		Willow Creek	Just upstream of Lannon Road	*843
			Just upstream of State Highway 175	*857
			Just downstream of Amy Belle Road	*882
		Tributary No. 1	Just downstream of South Division Road	*844
			About 0.83 mile upstream of South Division Road	*853
			Just upstream of Glenwood Drive	*888
		Tributary No. 1A	At confluence with Tributary No. 1	*844
			About 130 feet upstream of Lilac Lane	*851
			About 0.57 mile upstream of Lilac Lane	*864
		Tributary No. 1B	At confluence with Tributary No. 1	*859
			About 0.43 mile upstream of Pilgrim Road	*873
		Tributary No. 2	About 0.48 mile downstream of Western Avenue	*848
			About 260 feet downstream of Mequon Road	*852
		Tributary No. 3	At confluence with Menom- onee River	*850
			About 0.56 mile upstream of confluence with Menomonee River.	*855
		Tributary No. 5	Just downstream of Lovers Lane	*852
			About 0.37 mile upstream of Lovers Lane	*857
		North Crossway Channel	About 0.76 mile downstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*769
			Just downstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*779
Maps available for inspection at the Office of the Engineer, Village Hall, N122 W17177 Fond du Lac Avenue, Germantown, Wisconsin.				
Wisconsin	(Uninc.) Monroe County (Docket No. FEMA–8124	Baraboo River	At downstream county limit	*963
			About 0.15 mile downstream of 33d Road	*977
			Just downstream of 33d Road	*981
			Just downstream of Glendale Highway	*995
			At Kendall corporate limits	*1005
		Beaver Creek	Just upstream of Sparta corporate limits	*787
			About 3.7 miles upstream of Sparta corporate limits	*832
		Black River	At downstream county line	*724
			Upstream county line	*732
		Brush Creek	About 0.61 mile downstream of Hoff Valley Road	*885
			Just upstream of 17th Drive	*915
			At confluence of Brush Creek	*951
		Upper Brush Creek	Just upstream of 4th Drive	*1007
			About 0.41 mile upstream of 4th Drive	*1019
		Council Creek	At City of Tomah corporate limits	*969
			Just upstream of State Highway 131	*1027
			Just upstream of 24 Court	*1092
		Kickapoo River	At Ontario corporate limits	*879
			Just downstream Wilton corporate limits	*955
			Just upstream Wilton corporate limits	*979
			About 0.28 mile upstream of Dixon Court	*1121
		La Crosse River	At downstream county line	*737
			Just upstream of State Highway 27	*766
			Just downstream of State Highway 21	*787
			Just upstream of State Highway 21	*793
			Just downstream Camp McCoy Military Reservation	*814
		Little La Crosse River	Just downstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*756
			About 1.6 miles upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad (about 0.85 mile downstream of County Highway X).	*810
			Just downstream of County Highway F	*860
			About 1.32 miles upstream of Endora Avenue	*1009
		South Fork Lemonwier River	Chicago and North Western Railroad	*917
			About 1.95 miles upstream of County Highway C	*964
		Farmers Valley Creek	Just downstream of Sparta corporate limits	*785
			About 1.67 miles upstream of Dalton Road	*874
		Unnamed Tributary in Cannon Valley.	Mouth at Little La Crosse River	*800
			About 1.86 miles upstream of State Highway 27	*837
		Unnamed tributary in Pleasant Valley.	Mouth at Little La Crosse River	*793
			About 0.52 mile upstream of State Highway 27	*799
			About 0.65 mile upstream of abandoned road bridge	*817
		Lake Tomah	About 0.7 mile downstream of County Highway C	*963
Maps available for inspection at the Office of the Zoning Administrator, Monroe County Courthouse, Sparta, Wisconsin.				

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Wisconsin	(V) Stockbridge, Calumet County (Docket No. FEMA-6122).	Mill Creek	Mouth at Lake Winnebago	*749
			At upstream corporate limits	*805
		Mud Creek	At downstream corporate limits	*788
			At upstream corporate limits	*868
		Lake Winnebago	Shoreline	*748

Maps available for inspection at the Stockbridge Village Hall—Firehouse, Highway 55, Stockbridge, Wisconsin.

(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: November 17, 1981.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 81-35221 Filed 12-10-81; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Export of Bobcat Taken in the 1981–1982 Season; Deferral of Effective Date

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Deferral of effective date of final rule.

SUMMARY: The Fish and Wildlife Service is further postponing the effective date of a final rule authorizing export, pursuant to the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), of bobcat taken during the 1981–1982 season. The final rule permitting the export of bobcat taken during the 1981–1982 season was published on October 14, 1981 (46 FR 50774). The effective date of that rule was postponed for 60 days so that the Service could seek vacation of an injunction issued by the United States District Court for the District of Columbia prohibiting the Service from authorizing export of bobcat until it promulgates new guidelines and makes findings on the basis of these guidelines. The Court has yet to rule on the Service's motion to vacate the injunction. Accordingly, the effective date of the rule published on October 14, 1981 is postponed for an additional 30 days pending the Court's ruling. This action does not affect the effective date of the rule allowing the export of species other than bobcat published on October 14, 1981.

DATES: The new effective date for the rule permitting the export of bobcat published on October 14, 1981 is January 12, 1982.

FOR FURTHER INFORMATION CONTACT: Frank Ruswick, Jr., Division of Conservation and Wildlife, Office of the Solicitor, Department of the Interior, Washington, D.C. 20240, Telephone (202) 343–2172.

Dated: December 8, 1981.

G. Ray Arnett,

Assistant Secretary of the Interior.

[FR Doc. 81-35464 Filed 12-10-81; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 46, No. 238
Friday, December 11, 1981

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service

AGENCY: Office of Personnel Management (OPM).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: OPM is initiating a study of many positions now included in the excepted service under Schedules A and B to determine whether exception of these positions from the competitive service is still appropriate. In addition to actions involving individual excepted appointing authorities, which would not require regulatory change, information gained during the study may lead to revision of the regulations setting forth the conditions under which exceptions are granted. This advance notice explains the purposes of the study, and invites comments from all interested parties.

DATE: Comments must be received on or before February 9, 1982.

ADDRESS: Noncompetitive Staffing and College Relations Branch, Staffing Services, Office of Personnel Management, Room 6A12, 1900 E Street, N.W., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: William Bohling, (202) 632–6000.

SUPPLEMENTARY INFORMATION: Positions, other than those in the Senior Executive Service, which OPM excepts from the competitive service are placed in one of three schedules: Schedule A, covering positions for which any examination is impracticable; Schedule B, covering positions for which competitive examination is impracticable; and Schedule C, covering confidential or policy-determining positions. Schedule A was established in 1903, Schedule B in 1910, and Schedule C in 1953. The appointing authorities placed in Schedule A and B have not been systematically reviewed since 1955. By contrast, all Schedule C authorities were reviewed during 1975. As a result of that review, many changes were initiated in the Schedule C program, including revocation of over 200 individual authorities, creation of the automatic revocation system for positions vacant more than 60 days, and issuance of formal guidance to agencies on the establishments and modification of Schedule C authorities. OPM expects similar program improvement and modification of Schedule C authorities. OPM expects similar program improvements may result from a study of Schedules A and B.

Purpose of This Notice

OPM believes that the views of agencies, other interested parties, and the public should be balanced when answering policy questions about which authorities can be consolidated, which bases for exception are still valid, and which are obsolete. OPM will work with agencies having single-agency Schedule A or B appointing authorities to ascertain the justification, use and need for continuation of those authorities. All other agencies, interested parties and the public are invited to comment either on use of specific authorities or on general policy relating to exceptions from the competitive service. To this end, OPM is setting forth for comment the major authorities and policies which OPM contemplates will be affected by the study.

Policy Issues

What is the present relationship between competitive service appointments and those authorized under Schedules A and B? How many excepted positions resemble positions in the competitive service? Are there clear differences—in duties, qualifications, or working conditions between the excepted jobs and their competitive counterparts, and do these differences still constitute valid bases for exception?

What criteria are appropriate for removing positions from the competitive service? Now that agencies can conduct their own examinations for certain positions, the need for agency expertise in rating qualifications for unique positions may no longer justify removal of positions from the competitive service. What should be done, about Schedule A and B exceptions previously established on that basis? If one agency has capability to examine for a particular type of position, what should be done about comparable positions in other agencies which lack that capability? Larger questions are what qualifications are basically impracticable to examine, by either the agency or OPM, what should be done with situations not susceptible to open competition, and what limits, if any, should be built into authorities which may be subject to obsolescence.

Should Schedules A and B include any positions above grade GS–15? Positions in the Senior Executive Service are already excluded from Schedules A and B. However, some positions at GS–16 and above are outside the SES; and some of these are covered by Schedule A and B appointing authorities. Would an appointing authority under the executive assignment system be more appropriate for filling these jobs?

Authorities to be Studied

OPM has authorized two kinds of Schedule A and B authorities, those for use by *any* agency—which are general in their concept and applicability—and those specific to a *single*, particular agency. A preliminary review of the rationale for excepted authorities indicates that most general authorities, on their face, are in categories for which examination is impracticable. For example: exception of chaplains and chaplains assistants reflects the Constitutional requirement for separation of church and state; exception of attorneys reflects the appropriations act prohibition against such examination; and exception of students in cooperative education programs reflects the primary role of the participating schools in selections. Single-agency authorities, on the other hand, are usually established to meet a particular situation and may become inappropriate if the situation changes. Therefore, first priority in the study will be given to review of single-agency authorities.

In addition, certain positions, found in both the general and the specific agency authorities, appear to afford a good chance for consolidation and simplification. Specifically, these are:

Temporary positions. Temporary jobs are filled under literally dozens of authorities, in both the competitive and

the excepted service. What criteria should be used to determine when to place temporary jobs in the competitive service and when to place them in the excepted service? Should the current definition of a temporary position as one lasting for 1 year or less be expanded to include positions lasting up to 2 years? Should the definition of temporary positions contain a maximum time limit and, if so, should this limit apply to the specific position, the agency, or the appointee? Should the authority make any specific provision for extension beyond 2 years? Assuming that temporary appointments to continuing positions would generally be competitive, should such appointments be excepted in any circumstances? Should other conditions, such as grade level, be considered in drawing the line between temporary positions properly included in the competitive and the excepted service?

Position requiring fluency in foreign languages. In addition to the general exception for Chinese, Japanese and Hindu interpreters, individual authorities exist in several agencies for positions requiring foreign language fluency. These authorities have been established because only a very few agencies, which have substantial foreign-language program operations, have the expertise needed to examine for these positions at reasonable cost. Could a single general authority be developed covering such positions? What level of fluency should be required? Should there be any restriction on types of positions? To what extent should individual agencies' examining capabilities under delegated examining authorities be considered in assessing feasibility of examination?

Part-time and intermittent positions. Many Schedule A authorities have been approved for one or both of the following reasons: the small amount of employment involved does not justify the costs of examination (although the break-even point varies among authorities); or the candidates who are interested in and available for intermittent assignments when needed—usually local residents—may not meet competitive qualification requirements. Could the general authority covering part-time and intermittent positions in which total annual pay does not exceed 40 percent of GS-3 step 1 be expanded without compromising its validity to take in more of the single-agency situations? Would the limits of an expanded authority be better applied to pay or service? What would be the appropriate break-even point?

Academic positions. Positions on the faculty and staff of various academic institutions operated by Federal agencies are filled under several patterns: all positions excepted; positions involving student welfare excepted; or continuing staff positions competitive, but with visiting positions excepted. Could a single staffing pattern, preferably with a single general appointing authority, be developed for academic positions?

Methodology

To produce maximum improvement within available resources, OPM proposes to limit the review to the following authorities in the listed pirority order: (1) All individual agnecy authorities listed in Schedules A and B, except those established or subjected to substantive review during fiscal years 1980 and 1981; (2) general Schedule A and B authorities for the types of positions discussed above; and (3) any other authorities suggested by agencies or other commentors which appear to warrant such a study.

Comments on the general authorities and policy issues should discuss the questions set forth in this Advance Notice and should be as specific as possible with regard to recommended coverage of general authorities (e.g., types of positions, grade levels, time limits, special conditions of employment, etc.). Recommendations for additional authorities to study should be supported by specific examples of problems encountered in administration of the authority and questions to be answered.

Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 81-35422 Filed 12-10-81; 8:45 am]

BILLING CODE 6325-01-M

MERIT SYSTEMS PROTECTION BOARD

5 CFR Parts 1252 and 1253

Whistleblower Allegations Referred to Agencies for Investigation or Report

AGENCY: Office of the Special Counsel.

ACTION: Notice of proposed amendment of rules.

SUMMARY: The Office of the Special Counsel proposes to amend its regulations to clarify requirements for whistleblower allegations referred to agencies for investigation or report. The proposed amendment also adds addresses of new field offices and makes certain other technical changes.

DATE: Comments must be received by January 30, 1982.

ADDRESS: Comments should be sent to the Office of the Special Counsel, Room 818, 1120 Vermont Avenue, N.W., Washington, D.C. 20419.

FOR FURTHER INFORMATION CONTACT: Mary Eastwood, Office of the Special Counsel (202-653-8972).

SUPPLEMENTARY INFORMATION: The Special Counsel is authorized to receive and refer to agencies for investigation or report certain disclosures of information believed to evidence a violation of law, rule or regulation, or mismanagement, abuse of authority, gross waste of funds or a substantial and specific danger to public health or safety. 5 U.S.C. 1206(b). The Special Counsel may require the agency to investigate or submit a report on the alleged wrongdoing only if the disclosure of information is submitted by or in behalf of a present or former federal employee or applicant for employment. Therefore, information received from other persons or received anonymously will be referred to the appropriate agency without a request for investigation or report.

If the Special Counsel determines that there is a substantial likelihood that the information discloses a violation of law, rule or regulation, or mismanagement, gross waste of funds, abuse of authority or substantial and specific danger to the public health or safety, he may require the agency to conduct an investigation and submit a written report. 5 U.S.C. 1206(b)(3). Agency reports required by the Special Counsel under this provision must be "reviewed and signed by the head of the agency." 5 U.S.C. 1206(b)(4). This function of the agency head is not delegable and reports received by the Special Counsel which do not bear the signature of the agency head will be returned for the personal review and signature of the agency head. Any request for an extension of the statutory 60 day time limit for submitting a report also must be reviewed and signed by the head of the agency.

When a report is required pursuant to 5 U.S.C. 1206(b)(3), the head of the agency should send a copy of the report to the Special Counsel for review, and the Special Counsel will transmit it to the Congress and to the President after the review is completed. This will insure that the report meets the requirements of the statute prior to its dissemination.

Accordingly, it is proposed that Parts 1252 and 1253 of Subchapter B of Chapter II of Title 5, Code of Federal Regulations, be amended as follows:

1. The authority citation for Parts 1252 and 1253 reads as follows:

Authority: 5 U.S.C. 1206(k); sec. 204(g) of Reorganization Plan No. 2 of 1978.

PART 1252—DISCLOSURES OF INFORMATION (WHISTLEBLOWING)

§ 1252.1 [Amended]

2. Section 1252.1 of Part 1252, relating to disclosures of information (whistleblowing), is amended by adding at the end:

* * * * *

* * * This part applies only to disclosures made by or on behalf of a present or former federal employee or applicant for employment.

§ 1252.2 [Amended]

3. Paragraph (b) of § 1252.2 is revised to read as follows:

* * * * *

(b) Any report required by the Special Counsel under this section shall be submitted within sixty (60) calendar days after the date on which the Special Counsel transmitted the information to the head of the agency, or within any reasonable longer period of time agreed to in writing by the Special Counsel. In the event the agency finds that it is unable to adequately investigate and report within the time limit imposed by the statute, the agency head shall, as soon as practicable, but not less than ten (10) days before the date the report is due to the Special Counsel, submit a written request to the Special Counsel specifying the additional time required and the reasons therefor.

* * * * *

4. Paragraph (d) of § 1252.2 is redesignated paragraph (f) and is revised to read as follows:

* * * * *

(f) Any report required under this section will be transmitted by the Special Counsel to the Congress and to the President, after review to determine whether the findings are reasonable and if the report meets the requirements of 5 U.S.C. 1206(b)(4).

5. A new paragraph (d) of § 1252.2 is added, to read as follows:

* * * * *

(d) Any report required under this section which does not bear the signature of the agency head does not meet the requirements of 5 U.S.C. 1206(b)(4) and will be returned for the personal review and signature of the agency head. Requests to the Special Counsel for an extension of time to submit a report also must be reviewed and signed by the agency head.

* * * * *

PART 1253—FILING OF COMPLIANTS AND ALLEGATIONS

6. Section 1253.1 of Part 1253, relating to filing of complaints and allegations, is revised to read as follows:

§ 1253.1 Place of filing.

All complaints, allegations, and information under this subchapter should be submitted to the Office of the Special Counsel, Merit Systems Protection Board, Room 818, 1120 Vermont Avenue, Washington, D.C. 20419, or to the appropriate field office listed below:

450 Golden Gate Avenue, Room 11454, Post Office Box 36007, San Francisco, CA 94102
Mall Building, Room 505, 325 Chestnut Street, Philadelphia, PA 19106
1100 Commerce Street, Room 2B29, Dallas, TX 75242
Pershing Point Plaza, 1365 Peachtree Street, N.E., Room 317, Atlanta, GA 30309.

Dated: December 4, 1981.

Alex Kozinski,

Special Counsel.

[FR Doc. 81-35206 Filed 12-10-81; 8:45 am]

BILLING CODE 6325-20-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

Summer Food Service Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would limit sponsor and geographic area eligibility for participation in the Summer Food Service Program (SFSP); prohibit sites serving milk under the Special Milk Program from participation in the SFSP; and make several minor changes in requirements to increase State agency administrative flexibility. The changes in sponsor eligibility are mandated by Congress by the Omnibus Reconciliation Act of 1981 (Pub. L 97-35). The other changes result from recommendations made by task forces convened by the Food and Nutrition Service to suggest regulatory reforms directed at reducing costs in the Agency's Special Nutrition Programs.

DATE: Comments must be submitted on or before December 31, 1981.

ADDRESS: Written comments may be mailed to Jordan Benderly, Director, Child Care and Summer Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Walstrom at the above address or by telephone at (202) 756-3888. Copies of all written comments will be available for review during normal business hours at room 416, 3101 Park Center Drive, Alexandria, Virginia 22302.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under Executive Order 12291 and has not been classified as major because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have a significant economic impact on competition, employment, investment, productivity, innovation or on the ability of U.S. enterprises to compete. The proposed rule has also been reviewed with regard to the requirements of Public Law 96-354. Pursuant to that review, David B. Alspach, Acting Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities.

Comment period

The President has directed each Executive Agency to adopt procedures to improve the public comment and rulemaking process (Executive Order 12291). Although the guidelines for implementing the Executive Order establish a 60-day comment period for proposed regulations, they do allow for a shorter comment period if good reason exists. Because section 13(g) of the National School Lunch Act requires that the final regulations be published by January 1 of each year, it is impossible to provide the normal 60-day comment period. A shortened comment period for this proposed rule will allow timely publication of the final rule. Therefore, 20 days, rather than 60 days, are being allowed for public comment.

Background

The SFSP is authorized by section 13 of the National School Lunch Act. Comprehensive regulations for the SFSP were last published on January 21, 1981 (46 FR 6266). That final rule implemented changes made in the SFSP by Pub. L. 96-499, the Omnibus Reconciliation Act of 1980, and Pub. L. 96-528, and appropriations act for Fiscal Year 1981. Pub. L. 96-499 limited daily meal services at sites other than camps and sites primarily serving migrant children. Pub. L. 96-528 prohibited FNS

from administering the SFSP in those States which administered the SFSP in Fiscal Year 1980.

On August 13, 1981, the Omnibus Reconciliation Act of 1981 was enacted as Pub. L. 97-35, making several changes in the SFSP to reduce expenditures and to improve Program management. This proposed rule would implement these changes.

Prior to the enactment of Pub. L. 97-35, the Department formed several task forces to suggest regulatory reforms to reduce costs and allow State agencies more administrative flexibility. The task forces were comprised of FNS, State agency and local food service personnel, and members of public interest groups. Several changes recommended by the task forces are also included in this proposed rule.

Both the changes mandated by the statute and those derived from task force recommendations are discussed below. The discussion indicates which of the changes mandated by the statute are nondiscretionary. The Department asks that commenters keep in mind that comments on the nondiscretionary changes cannot substantively affect the final rulemaking.

Statutory Changes

1. Area Eligibility

Section 809 of Pub. L. 97-35 changed the definition of "areas where poor economic conditions exist." Under the earlier definition, such areas included those in which at least 33⅓ percent of the children meet the Secretary's guidelines for free or reduced price school meals. Under the new definition, at least 50 percent of the children must meet the Secretary's guidelines. The 50 percent criterion applies to all sites other than camps. These non-camp sites must qualify either by serving a geographic area where 50 percent of the children meet the Secretary's guidelines, or by serving an enrollment of which at least 50 percent of the children meet the guidelines. This change is nondiscretionary. (§ 225.2).

2. Sponsor Eligibility

The definition of "service institutions" (sponsors) was also changed by Congress in Section 809 of Pub. L. 97-35. Reflecting the new definition, the proposed regulations specify that service institutions eligible to sponsor the SFSP include: (a) Public or nonprofit private school food authorities; (b) Public or nonprofit private residential summer camps; and (c) units of local, municipal, or county government.

Public and nonprofit private school food authorities and residential summer camps retain their eligibility status and may operate the same types of sites as under provious regulations. However, no other types of private nonprofit entities, such as private agencies which have been designated community action agencies under 42 U.S.C. 2790, and service clubs or organizations, will be eligible to sponsor the SFSP. This change is mandated by Congress and is nondiscretionary.

For the third category of eligible service institutions, governments (under (c) above), Pub. L. 97-35 does stipulate an additional requirement. Section 809(2) of the statute mandates that these sponsors shall be eligible, "only if such programs are operated directly by such governments"

The Department believes that this statutory provision is intended to emphasize that goverment sponsors shall only be eligible to operate programs which will be under their immediate control. Therefore, to ensure that government sponsors are approved only for sites over which they have direct operational control, the proposed rule establishes three criteria for their eligibility. First, these sponsors must retain authority for managing site staffs, including such areas as hiring, conditions of employment, and termination. Sites may be staffed by either sponsor employees or volunteers; however, site staffs must be finally accountable to the sponsor. Government sponsors are required to document that they are responsible for the recruitment, payment and overall personnel management of Program site staff members.

Second, the proposed rule requires that government sponsors operate only sites which are properties or facilities under the year-round auspices or control of the local, municipal, or county government. This criterion would prevent government sponsors from acting as "umbrella" sponsors for sites which are not facilities directly controlled by that government entity. For example, a county health department would be eligible to sponsor the SFSP at its own facilities or those which it controls on a year-round basis. However, it would not be eligible to sponsor the SFSP at churches or other provately-owned facilities. The proposed rule would, therefore, require applicant government sponsors to submit documentation which indicates that proposed Program sites are properties or facilities under the year-round control of the applicant. Lease or rental agreements which indicate that the sponsor is responsible for the site on a year-round basis would be acceptable documentation in cases where the government entity does not maintain direct ownership.

Finally, the proposed rule requires that applicant goverment sponsors submit information which documents that there is an on-going, year-round relationship between the applicant and the site which indicates direct control by the applicant. Applicant government sponsors would be required to submit documenation that substantiates that activities, other than the operation of the SFSP, are maintained by the applicant at the proposed Program site on an on-going basis. These three criteria are included in § 225.18(b)(9).

The Department solicits comments concerning the proposed provisions governing the eligibility of government sponsors, particularly with regard to requirements for establishing that such sponsors will directly operate their programs. Comments which give specific suggestions for demonstrating direct operation will be especially helpful.

In § 225.2, the proposed rule also includes a definition of "unit of local, municipal, or county government." The definition stipulates that such units are those which are so recognized by the State constitution, or State laws, such as State administrative procedures acts, tax laws, or other applicable State laws which delineate authority for government responsibility in the State. The Department anticipates that for the majority of applicants which apply as government entities, State agencies will be able to determine very easily whether or not the applicant is a unit of local, municipal, or county government. Whenever the State agency has reason to question that an applicant is a government entity, the State agency may wish to seek the counsel of the appropriate State attorney general, or to refer to the State constitution or applicable State laws. The Department emphasizes that it is the applicant's responsibility to demonstrate its eligibility, and the State agency may require the applicant to submit legal evidence that it is a unit of government.

3. Program Administration

Section 813 of Pub. L. 97-35 prohibits the Department from assuming the administration of the Program in states which are currently administering the Program, except that if a State educational agency is not permitted by law to disburse funds to any of the nonpublic schools in the State, the Secretary shall disburse the funds directly to such schools within the State for the same purpose and subject to the same conditions as are authorized or required with respect to the

disbursements to public schools within the State by the State educational agency. Section 817 of the statute prohibits the Department from administering the Program in any State in which the Department has not continuously operated the Program since October 1, 1980. Although a similar prohibition was included in the final rule published on January 21, 1981, in accordance with Pub. L. 96-528, the provision included in Pub. L. 97-35 extends the prohibition. Modifications in § 225.3 of the regulations include this restriction and eliminate the provision included in prior regulations which required FNS to take over the administration of the Program in cases where it was found that a State agency was not operating the Program in accordance with the regulations. This change is mandated by Congress and is nondiscretionary.

4. Claims Adjustment Authority

Section 816 of Pub. L. 97-35 provides the Secretary with the authority to adjust, settle, compromise, or deny any claim arising under Programs authorized under the National School Lunch Act and the Child Nutrition Act. Accordingly, this provision has been included in § 225.22(h). This change is nondiscretionary.

5. Special Milk Program.

Currently, under certain circumstances, sites participating in the program may simultaneously participate in the Special Milk Program. Section 807 of Pub. L. 97-35 now prohibits sites which participate in the SFSP from participating in the Special Milk Program. This prohibition has been included in § 225.18(i) of the regulations. This restriction does not prohibit an organization which sponsors the SFSP at one site from entering into a separate agreement with a State agency to operate a Special Milk Program at some other facility. This change is nondiscretionary.

6. Free Meal Policy

Section 803 of Pub. L. 97-35 makes a number of changes in the procedures used for determining the eligibility of children at certain kinds of sites. For camps and other programs which do not qualify on the basis of geographic area, the changes involve: (1) A requirement that sponsors include the Secretary's guidelines for free and reduced-price meals in the annual news release; and (2) the addition of a number of items on the application for meals distributed to parents of children enrolled in the Program. These changes in Program requirements are included in § 225.21(b), (c), and (d) and are nondiscretionary. In addition, an editorial change has been made in § 225.21(b)(1) to refer to the Secretary's guidelines rather than the State's family size and income standards.

Changes Recommended by Task Forces

1. Management and Administration Plan.

One of the task forces was convened specifically to review regulatory requirements for State plans in the FNS Special Nutrition Programs. One of the recommendations made by the task force was to eliminate any plan requirements not specifically required in the statute. The proposed rule has complied with this recommendation by using the same language as given in the statute (in section 13(a) of the National School Lunch Act) in the regulatory requirements for State Management and Administration Plans. (§ 225.6(g)).

2. Management Evaluations

The proposed rule amends the language in the provisions governing management evaluations of administering agencies. As was recommended by one of the task forces, this change is proposed to make the wording consistent with that included in the regulations for the National School Lunch Program (7 CFR 210.17). (§ 225.12(b))

3. Termination of Sponsors for Serious Deficiencies

Regulations for 1981 changed the rules governing termination of seriously deficient sponsors by providing that terminated sponsors could be allowed readmission to the SFSP. Readmission was allowed either three years after the termination, or sooner, if the State agency determined (with FNS concurrence) that the sponsor had taken appropriate corrective action.

One of the taskforce comments was that this provision can be interpreted to require readmission to the SFSP after a probation period of three years, therefore restricting State agency flexibility. Such restriction of State agency authority in dealing with deficient sponsors was not intended. To clarify the provision, and remove any implication that State agencies are required to readmit seriously deficient sponsors after three years, the three year timeframe governing readmission has been dropped. The proposed rule would allow State agencies to readmit sponsors which have been determined seriously deficient in any year following the year of termination. Readmission would only be allowed if the sponsor demonstrates, to the satisfaction of the State agency, that it has taken appropriate corrective action. To further increase State agency flexibility, the proposed rule would delete the requirement that FNS concur with a State agency's decision to readmit a sponsor. (§ 225.23(c))

4. Appeal Procedures Notification

Regulations for prior years have included several provisions requiring the State agency to notify sponsors or food service management companies of the procedures for requesting a review when the State agency takes an appealable action. In order to simplify the notification requirements and to reduce State agency workload, the proposed rule would simply require the State agency to send written notification of its appeal procedures and a list of appealable actions: (a) To each potential sponsor upon application (i.e., to each applicant), and (b) to each food service management company upon application for registration. (225.15(c))

5. Meals Prepared by Schools

The proposed rule would permit State agencies to allow sponsors serving meals prepared in schools to substitute the meal pattern requirements of the National School Lunch and School Breakfast Programs for the meal pattern requirements given in this part. This change is intended to simplify the task of complying with Program requirements for schools. (§ 225.20(o))

Other Program Changes

a. This proposed rule establishes a national deadline date by which applicant sponsors must submit written Program applications to the administering agency. Former Program regulations required administering agencies to establish the deadline date for application submission and allowed administering agencies to approve Program applications submitted after that date in cases where "failure to do so would deny the Program to an area in which poor economic conditions exist or a significant number of needy children would not otherwise have reasonable access to the Program". The proposed rule now specifies a national deadline date of June 15. The rule also provides that administering agencies may establish an earlier deadline date at their discretion.

b. This proposed rule also would delete several regulatory requirements which the Department believes unnecessarily limit State agency discretion in SFSP administration. The deleted provisions are identified below.

1. The requirement that sponsors which operate fewer than 10 days during their first month of operation must combine the claim for that month with the claim for the next month. It would be at the State agency's option to require combined claims of such sponsors.

2. The requirement that State agencies hire all administrative personnel no later than 30 days prior to the State's application deadline date, and all field staff no later than 15 days prior to commencement of SFSP operations has also been deleted. However, States would still be expected to have sufficient personnel to meet the requirements of the Program.

Accordingly, it is proposed that 7 CFR Part 225 be revised and reissued as follows:

PART 225—SUMMER FOOD SERVICE PROGRAM

Subpart A—General

Sec.
225.1 General purpose and scope.
225.2 Definitions.
225.3 Administration.

Subpart B—Assistance to States

225.4 Payments to State agencies and use of Program funds.
225.5 Commodity assistance.

Subpart C—State Agency Provisions

225.6 Program management and administration plan.
225.7 State agency responsibilities.
225.8 Program applications.
225.9 Program monitoring and assistance.
225.10 Records and reports.
225.11 Program payments.
225.12 Audits and management evaluation.
225.13 Corrective action procedures.
225.14 Claims against sponsors.
225.15 Appeal procedures.
225.16 Procedures for food service management companies.
225.17 Procurement standards.

Subpart D—Provisions for Sponsors

225.18 Requirements for sponsor participation.
225.19 Operational responsibilities of sponsors.
225.20 Meal service requirements.
225.21 Free meal policy.

Subpart E—Miscellaneous Provisions

225.22 Other provisions.
225.23 Program information.

Authority: Secs. 803, 807, 809, 816 and 817, Pub. L. 97–35, secs. 203 and 206, Pub. L. 96–499, Secs. 5, 7, 10, Pub. L. 95–627, 95 Stat. 3603 (42 U.S.C. 1771); sec. 2, Pub. L. 95–166, 91 Stat. 1325 (42 U.S.C. 1961); sec. 7; Pub. L. 91–248, 84 Stat. 211 (42 U.S.C. 1859a).

Subpart A—General

§ 225.1 General purpose and scope.

This part announces the policies and prescribes the regulations under which the Secretary will carry out a Summer Food Service Program to assist States through grants-in-aid to conduct non-profit food service programs for children during the summer months and at other approved times. The primary purpose of the Program is to provide food service to children from needy areas during periods when area schools are closed for vacation.

§ 225.2 Definitions.

"Act" means the National School Lunch Act, as amended.

"Administrative costs" means costs incurred by a sponsor related to planning, organizing, and managing a food service under the program, and excluding interest costs and operating costs.

"Advance payments" means financial assistance made available to a sponsor for its operating costs and/or administrative costs prior to the end of the month in which such costs will be incurred.

"Areas in which poor economic conditions exist" means (1) the local areas from which a site draws its attendance in which at least 50 percent of the children are eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined (i) by information provided from departments of welfare, education, zoning commissions, census tracts, and organizations determined by the State agency to be migrant organizations, (ii) by the number of free and reduced price lunches or breakfasts served to children attending public and nonprofit private schools located in the areas of Program sites, or (iii) from other appropriate sources, or (2) an enrollment program in which at least 50 percent of the children at the site are eligible for free or reduced price school meals as determined by statements of eligibility based on the sizes and incomes of the families of the children enrolled.

"Camps" means residential summer camps and nonresidential day camps which offer a regularly scheduled food service as part of an organized program for enrolled children. Nonresidential camps shall offer a continuous schedule of organized cultural or recreational program for enrolled children between meal services.

"Children" means (1) persons 18 years of age and under, and (2) persons over 18 years of age who are determined by a State educational agency or a local public educational agency of a State to be mentally or physically handicapped and who participate in a public or nonprofit private school program established for the mentally or physically handicapped.

"Costs of obtaining food" means costs related to obtaining food for consumption by children. Such costs may include, in addition to the purchase price of agricultural commodities and other food, the cost of processing, distributing, transporting, storing, or handling any food purchased for, or donated to, the Program.

"Continuous school calendar" means a situation in which all or part of the student body of a school are (1) on a vacation for periods of 15 continuous school days or more during the period October through April and (2) in attendance at regularly scheduled classes during most of the period May through September.

"Department" means the U.S. Department of Agriculture.

"Fiscal year" means the period beginning October 1 of any calendar year and ending September 30 of the following calendar year.

"FNS" means the Food and Nutrition Service of the Department.

"FNSRO" means the appropriate FNS Regional Office.

"Food service management company" means any commercial enterprise or non-profit organization which contracts with a sponsor to manage any aspect of the food service program. Food service management companies may be (1) public agencies or entities; (2) private, nonprofit organizations; or (3) private, for-profit companies.

"Income accruing to the program" means all funds used by a sponsor in its food service program, including but not limited to all monies, other than program payments, received from Federal, State and local governments, from food sales to adults, and from any other source, including cash donations or grants. Income accruing to the Program will be deducted from combined operating and administrative costs.

"Meals" means food which is served to children at a food service site and which meets the nutritional requirements set out in this part.

"Milk" means whole milk, lowfat milk, skim milk, and buttermilk. All milk must be fluid and pasteurized and must meet State and local standards for the appropriate type of milk. Milk served may be flavored or unflavored. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands of the United States, if a sufficient supply of such types of fluid milk cannot be obtained, reconstituted or recombined milk may be used. All milk

should contain Vitamins A and D at the levels specified by the Food and Drug Administration and at levels consistent with State and local standards for such milk.

"Needy children" means children from families whose incomes are equal to or below the Secretary's Guidelines for Determining Eligibility for Reduced Price School Meals.

"OIG" means the Office of the Inspector General of the Department.

"Operating costs" means the cost of operating a food service under the Program, including (1) cost of obtaining food, (2) labor directly involved in the preparation and service of food, (3) cost of nonfood supplies, (4) rental and use allowances for equipment and space and (5) costs for transporting children in rural areas to feeding sites in rural areas, but excluding (i) the cost of the purchase of land, acquisition or construction of buildings, (ii) alteration of existing buildings, (iii) interest costs, (iv) the value of in-kind donations, and (v) administrative costs.

"Private nonprofit" means tax exempt under the Internal Revenue Code of 1954, as amended.

"Program" means the Summer Food Service Program for Children authorized by Section 13 of the Act.

"Program funds" means Federal financial assistance made available to State agencies for the purpose of making Program payments.

"Program payments" means financial assistance in the form of start-up payments, advance payments or reimbursement paid to sponsors for operating and administrative costs.

"Rural" means (1) any area in a county which is not a part of a Standard Metropolitan Statistical Area or (2) any "pocket" within a Standard Metropolitan Statistical Area which, at the option of the State agency and with FNSRO concurrence, is determined to be geographically isolated from urban areas.

"Secretary" means the Secretary of Agriculture.

"Self-preparation" means the sponsor prepares the meals which will be served at its site(s), and does not contract with a food service management company for the preparation of all or a portion of the meals.

"School Food Authority" means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a lunch program in those schools.

"Session" means a specified period of time during which an enrolled group of children attend camp.

"Site" means a physical location at which a sponsor provides a food service for children and at which children consume meals in a supervised setting.

"Special account" means an account between a sponsor and a food service management company with a State or Federally insured bank in which checks from the State agency for operating costs are deposited by the sponsor and released only in accordance with the terms of the special account agreement.

"Sponsor" means a public or private nonprofit school food authority; public or private nonprofit residential summer camp; or unit of local, municipal, or county government, which develops a special summer or other school vacation program providing food service similar to that available to children during the school year under the National School Lunch and School Breakfast Programs and which is approved to participate in the Program. (Sponsors are referred to in the Act as "service institutions").

"Start-up payments" means financial assistance made available to a sponsor for administrative costs to enable it to effectively plan a summer food service, and to establish effective management procedures for such a service. These payments shall be deducted from subsequent administrative costs payments.

"State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

"State agency" means the State educational agency or an alternate State agency that has been designated by the Governor or other appropriate executive or legislative authority of the State and which has been approved by the Department to administer the Program within the State, or in States where FNS administers the Program, FNSRO.

"Unit of local, municipal, or county government" means an entity which is so recognized by the State constitution, or State laws, such as the State administrative procedures act, tax laws, or other applicable State laws which delineate authority for government responsibility in the State.

§ 225.3 Administration.

(a) FNS shall act on behalf of the Department in the administration of the Program.

(b) Within the States, responsibility for the administration of the Program shall be in the State agency, except that if FNSRO has continuously administered the Program in any State since October 1, 1980, FNS shall continue to administer the Program in that State, unless a State educational agency is not permitted by law to disburse funds to any of the nonpublic schools in the State, in which case the Secretary shall disburse the funds directly to such schools within the State for the same purposes and subject to the same conditions as are authorized or required with respect to the disbursements to public schools within the State by the State educational agency. A State in which FNS administers the Program may upon request to FNS, assume administration of the Program. Each State agency shall notify the Department by November 1 of the fiscal year involved as to whether or not it intends to administer the Program.

(c) Each State agency desiring to take part in the Program shall enter into a written agreement with FNS for the administration of the Program in the State in accordance with the provisions of this part. The agreement shall cover the operation of the Program during the period specified therein and may be extended by written consent of both parties. The agreement shall contain an assurance that the State agency will comply with the Department's nondiscrimination regulations (7 CFR Part 15), issued under Title VI of the Civil Rights Act of 1964, and any Instructions issued by FNS pursuant to those regulations.

(d) In States in which FNSRO administers the Program, it shall have all of the responsibilities of a State agency and shall earn State administrative and Program funds as set forth in this part.

Subpart B—Assistance to States

§ 225.4 Payments to State agencies and use of Program funds.

(a) *Letter of Credit for Program payments.* (1) Not later than April 15 of each fiscal year, FNS shall make available to each participating State in a Letter of Credit an amount equal to 65 percent of the preceding fiscal year's Program payments for operating costs plus 65 percent of the preceding fiscal year's Program payments for administrative costs in the State. This amount may be adjusted to reflect changes in reimbursement rates made pursuant to § 225.11(c)(11). However, the State shall not withdraw funds from this Letter of Credit until its Program management and administration plan is approved by FNS. (2) Not later than May 15, FNS shall make available, if necessary, additional funds in a Letter of Credit to ensure that at least 65 percent of the Program operating and administrative funds estimated to be

needed for the summer in the State's approved management and administration plan has been provided to each State. (3) Not later than July 1, FNS shall make available, if necessary, in a Letter of Credit an amount sufficient to ensure that at least 65 percent of the Program operating and administrative funds determined during the evaluation required in § 225.12(c) to be needed for the summer has been provided to the State. Funds made available in these Letters of Credit shall be used by the State agency to make Program payments to sponsors. FNS may make appropriate changes in the amounts included in these Letters of Credit based on any information available upon which determinations of actual Program size may be made.

(b) *Continuous school calendar.* The Letter of Credit shall include sufficient funds to enable the State agency to make advance payments to sponsors serving areas in which schools operate under a continuous school calendar. These funds shall be made available no later than the first day of the month prior to the month during which the food service will be conducted.

(c) *Remaining funds.* FNS shall make available any remaining Program funds due within 45 days of the receipt of valid Claims for Reimbursement from sponsors by the State agency. However, no payment shall be made for claims submitted for any fiscal year if they are submitted after December 31 of the following fiscal year, except as allowed under § 225.11(c)(6).

(d) *Return of funds.* Each State agency shall release to FNS any Program funds which it determines are unobligated as of September 30 of each fiscal year. Release of funds by the State agency shall be made as soon as practicable, but in no event later than 30 calendar days following demand by FNS, and shall be accomplished by an adjustment in the State agency's Letter of Credit.

(e) *State administrative funds.* For each fiscal year, FNS shall pay to each State agency for administrative expenses incurred in the Program an amount equal to (1) 20 percent of the first $50,000 in Program funds properly payable to the State in the preceding fiscal year; (2) 10 percent of the next $100,000 in Program funds properly payable to the State in the preceding fiscal year; (3) 5 percent of the next $250,000 in Program funds properly payable to the State in the preceding fiscal year; and (4) 2½ percent of any remaining Program funds properly payable to the State in the preceding fiscal year: Provided, however, That FNS may make appropriate adjustments in the level of State administrative funds to reflect changes in Program size from the preceding fiscal year as evidenced by information submitted in the State Program management and administration plan and any other information available to FNS.

(f) *Use of State administrative funds.* State administrative funds paid to any State shall be used by State agencies to employ personnel, including travel and related expenses, and to supervise and give technical asistance to sponsors in their initiation, expansion, and conduct of any food service for which Program funds are made available. State agencies may also use administrative funds for such other administrative expenses as are set forth in their approved Program management and administration plan.

(g) *State administrative funds Letter of Credit.* (1) At the beginning of each fiscal year, FNS shall make available to each participating State agency by Letter of Credit an initial allocation of State administrative funds for use in that fiscal year. This allocation shall not exceed one-third of the administrative funds provided to the State in the preceding fiscal year. For State agencies which did not receive any Program funds during the preceding fiscal year, the amount to be made available shall be determined by FNS.

(2) Additional State administrative funds shall be made available upon the receipt and approval by FNS of the State's Program management and administration plan. The amount of such funds, plus the initial allocation, shall not exceed 80 percent of the State administrative funds determined by the formula set forth in paragraph (e) of this section and based on the estimates set forth in the approved Program management and administration plan.

(3) The remaining State administrative funds shall be paid to each State agency as soon as practicable after the conduct of the funding assessment described in § 225.12(b) and (c) (but not later than September 1) and shall be in an amount equal to that determined to be needed during the funding evaluation, less the amounts paid under paragraphs (g) (1) and (2) of this section.

(h) *Funding assurance.* At the time FNS approves the State's management and administration plan, the State shall be assured of receiving State administrative funding equal to the lesser of the following amounts: 80 percent of the amount obtained by applying the formula set forth in paragraph (e) of this section to the total amount of Program payments made within the State during the prior fiscal year, or, 80 percent of the amount obtained by applying the formula to the amount of Program funds estimated to be needed in the management and administation plan. The State agency shall be assured that it will receive no less than this level unless FNS determines that the State agency has failed or is failing to meet its responsibilities under this part.

(i) *Limitation.* In no event may the total payment for State administrative costs in any fiscal year exceed the total amount of expenditures incurred by the State agency in administering the Program.

(j) *Adjustment of Letter of Credit.* Prior to May 15 of each fiscal year, FNS shall make any adjustments necessary in each State's Letter of Credit to reflect actual expenditures in the preceding fiscal year's Program.

(k) *Health inspection funds.* Each fiscal year, FNS shall make available by Letter of Credit to each State agency an amount equal to one percent of Program funds expended in the preceding fiscal year in the State. Following approval of the State's management and administration plan, FNS shall make available in a Letter of Credit any additional funds necessary to ensure that 1 percent of Program funds estimated to be needed for Program payments in the State's management and administration plan is available to the State. These funds shall be used soley to enable State or Local health departments or other governmental agencies charged with health inspection functions to carry out health inspections and meal quality tests, provided that if these agencies cannot perform such inspections or tests, the State agency may use the funds to contract with an independent agency to conduct the inspection or meal quality tests. An adjustment may be made in the amount provided for in this paragraph based on the evaluation required in § 225.12 (b) and (c), if such an adjustment is warranted. Funds so provided but not expended or obligated shall be returned to the Department by September 30 of the same fiscal year.

§ 225.5 Commodity assistance.

(a) Sponsors eligible to receive commodities under the Program include only those which prepare the meals to be served at their sites and those which have entered into an agreement with a school or school district for the preparation of meals. The State agency shall make available to these sponsors information on available commodities.

(b) Not later than June 1 of each year State agencies shall prepare a list of the names of sponsors which are eligible to receive commodities. The list shall

indicate the average daily number of eligible meals to be served by each of these sponsors. If the State agency does not handle the distribution of commodities donated by the Department, this list shall be forwarded to the agency of the State responsible for the distribution of commodities. The State agency shall be responsible for promptly revising the information included on the list to reflect additions or terminations of sponsors and for adjusting the average daily participation data as it determines necessary.

Subpart C—State Agency Provisions

§ 225.6 Program management and administration plan.

(a) Not later than February 15 of each year, each State Agency shall submit to FNSRO a Program management and administration plan for that fiscal year.

(b) Each plan shall be acted on or approved by March 15, or if it is submitted late, within 30 calendar days of receipt of the plan. If the plan initially submitted is not approved, the State agency and FNS shall work together to ensure that changes to the plan, in the form of amendments, are submitted so that the plan can be approved within 60 calendar days following the initial submission of the plan. Upon approval of the plan, the State agency shall be notified of the level of State administrative funding which it is assured of receiving under § 225.4(j).

(c) Prior to submission, the State shall ensure that interested parties have opportunity to make comments and recommendations and that timely comments and recommendations have been given full consideration in the development of the Plan.

(d) The Plan shall have the original signature of the Chief Official (Commissioner or Superintendent) of the State agency.

(e) The State agency shall give the Governor, or his delegated agent, the opportunity to comment on the management and administration plan. A period of 45 calendar days from the date of receipt of the Plan shall be afforded to make such comments.

(f) Approval of the Plan by FNS shall be a prerequisite to the withdrawal of Program funds by the State from the Letter of Credit and to the donation by the Department of any commodities for use in the State's Program.

(g) The Plan shall include, at a minimum, the following information:

(1) The State's administrative budget for the fiscal year, and the State's plans to comply with any standards prescribed by the Secretary for the use of these funds;

(2) The State's plans for use of Program funds and funds from within the State to the maximum extent practicable to reach needy children, including the State's methods for assessing need, and its plans and schedule for informing service institutions of the availability of the Program;

(3) The State's best estimate of the number and character of service institutions and sites to be approved, and of meals to be served and children to participate for the fiscal year, and a description of the estimating methods used;

(4) The State's plans and schedule for providing technical assistance and training to eligible service institutions;

(5) The State's schedule for application by service institutions;

(6) The actions to be taken to maximize the use of meals prepared by service institutions and the use of school food service facilities;

(7) The State's plans for monitoring and inspecting service institutions, feeding sites, and food service management companies and for ensuring that such companies do not enter into contracts for more meals than they can provide effectively and efficiently;

(8) The State's plan and schedule for registering food service management companies;

(9) The State's plan for timely and effective action against Program violators;

(10) The State's plan for determining the amounts of Program payments to service institutions and for disbursing such payments;

(11) The State's plan for ensuring fiscal integrity by auditing service institutions not subject to auditing requirements prescribed by the Secretary; and

(12) The State's procedure for granting a hearing and prompt determination to any service institutions wishing to appeal a State ruling, as specified in § 225.15.

§ 225.7 State agency responsibilities.

(a) The State agency shall provide sufficient qualified consultative, technical, and managerial personnel to administer the Program, monitor performance, and measure progress in achieving Program goals. The State agency shall assign Program responsibilities to personnel to ensure that all applicable requirements under this part are met.

(b) Each State agency shall inform all of the previous year's sponsors which meet current eligibility requirements and all potential sponsors of the deadline date for submitting a written application for participation in the Program. The State agency shall require that all applicant sponsors submit written applications for Program participation to the State agency by June 15. However, the State agency may establish an earlier deadline date for Program application submission.

(c) Within 30 days of receiving a complete and correct application, the State agency shall notify the applicant of its approval or disapproval. If an incomplete application is received, the State agency shall so notify the applicant within 15 days and shall provide technical assistance for the purpose of completing the application. Any disapproved applicant shall be notified of its right to appeal under § 225.15.

(d) The State agency shall determine the eligibility of applicant sponsors (and their sites) applying for participation in the Program in accordance with the applicant sponsor and site eligibility criteria outlined in § 225.18.

(e) The State agency shall review each applicant's administrative budget as a part of the application approval process, in order to assess the applicant's ability to operate in compliance with these regulations within its projected reimbursement. In approving the applicant's administrative budget, the State agency shall take into consideration the number of sites and children to be served, as well as any other relevant factors. A sponsor's administrative budget shall be subject to review for adjustments by the State agency if the sponsor's level of site participation or the number of meals served to children changes significantly.

(f) State agencies may approve the application of an otherwise eligible applicant which does not provide a year-round service to the community which it proposes to serve under the Program only if it meets one or more of the following criteria: (1) it is a residential camp, or (2) it proposes to provide a food service for the children of migrant workers, or (3) a failure to do so would deny the Program to an area in which poor economic conditions exist, or (4) a significant number of needy children will not otherwise have reasonable access to the Program.

(g) Applicants which qualify as camps shall be approved for reimbursement only for meals served free to enrolled children who meet the eligibility requirements for free and reduced price school meals.

(h) The State agency shall use the following order of priority in approving applicants to operate sites which

propose to serve the same area or the same enrolled children:

(1) Applicants which are public or nonprofit private school food authorities and other applicants which have demonstrated successful Program performance in a prior year;

(2) Applicants which propose to prepare meals at their own facilities or which operate only one site;

(3) Applicants which propose to utilize local school food service facilities for the preparation of meals;

(4) Other applicants which have demonstrated ability for successful Program operations; and

(5) Applicants which plan to integrate the Program with Federal, State, or local employment or training programs.

(i) When evaluating a proposed food service site, the State agency shall ensure that:

(1) If not a camp, the proposed site serves an area in which poor economic conditions exist, as defined by § 225.2;

(2) The area which the site proposes to serve is not or will not be served in whole or in part by another site, unless it can be demonstrated to the satisfaction of the State agency that each site will serve children not served by any other site in the same area for the same meal; and

(3) The site is approved to serve no more than the number of children for which its facilities are adequate.

(j) When approving an application, the State agency shall establish for each meal service an approved level for the maximum number of meals which may be served under the Program for each site which will serve meals prepared by a food service management company. These approved levels shall be established in accordance with the following provisions:

(1) The initial maximum approved level shall be based upon the historical record of attendance at the site if such a record has been established in prior years and the State agency determines that it is accurate. The State agency shall develop a procedure for establishing initial maximum approved levels for sites when no accurate record from prior years is available.

(2) The maximum approved level shall be adjusted, if warranted, based upon information collected during site reviews. If attendance at the site on the day of the review is significantly below the site's approved level, the State agency should consider making a downward adjustment in the approved level with the objective of providing only one meal per child.

(3) The sponsor may seek an upward adjustment in the approved level for its sites by requesting a site review or by providing the State agency with evidence that attendance exceeds the sites' approved levels.

(4) Whenever the State agency establishes or adjusts approved levels of meal service for a site, it shall document the action in its files, and it shall provide the sponsor with immediate written confirmation of the approved level.

(5) Upon approval of its application or any adjustment of maximum approved levels, the sponsor shall inform the food service management company with which the sponsor contracts of the approved level for each meal service at each site for which the food service management company will provide meals. This notification of any adjustments in approved levels shall take place within the time frames set forth in the contract for adjusting meal orders. Whenever the sponsor notifies the food service management company of the approved levels or any adjustments to these levels for any of its sites, the sponsor shall clearly inform the food service management company that an approved level of meal service represents the maximum number of meals which may be served at a site and is not a standing level for meal orders at that site. The sponsor shall adjust meal orders with the objective of serving only one meal per child, as required under § 225.19(d), when the number of children attending is below the site's approved level.

(k) Each State agency shall inform potential sponsors of the procedure for applying for advance operating and administrative costs payments as provided for in § 225.11(b), and where applicable, each State agency shall inform sponsors of the procedure for applying for start-up payments provided for in § 225.11(a).

(l) The State agency shall not approve any applicant sponsor to operate more than 200 sites or to serve an average daily attendance of more than 50,000 children unless it can demonstrate to the satisfaction of the State agency that it has the capability of managing a program of that size.

(m) The State agency shall not approve the application of any applicant sponsor identifiable through its organization or principals as a sponsor which has been determined to be seriously deficient in its Program operations. The official making the determination of denial must notify the applicant sponsor in writing stating all of the grounds on which the State agency based the denial. Serious deficiencies which are grounds for nonapproval are described in § 225.13(c).

(n) Pending the outcome of a review of a denial the State agency shall proceed to approve other applicants in accordance with its responsibilities under paragraph (h) of this section, without regard to the application under review.

(o) The State agency shall not approve the application of any applicant sponsor which submits fraudulent information or documentation when applying for Program participation or knowingly withholds information which may lead to the disapproval of its application. Complete information regarding such disapproval of an applicant shall be submitted by the State agency through FNSRO to OIG.

§ 225.8 Program applications.

(a) The applicant shall submit a written application to the State agency for participation in the Program as a sponsor. The State agency may use the application form developed by FNS or it may develop an application form for use in the Program. Application shall be made on a timely basis in accordance with the deadline date established under § 225.7(b). At a minimum, the application shall include the items listed below:

(1) A site information sheet, as developed by the State agency, for each site where a food service operation is proposed. The site information sheet shall demonstrate or describe the following:

(i) An organized and supervised system for serving meals to attending children;

(ii) The estimated number and types of meals to be served and the times of service;

(iii) Arrangements, within standards prescribed by the State or local health authorities, for delivery and holding of meals until time of service, and arrangements for storing and refrigerating any leftover meals until the next day;

(iv) Arrangements for food service during periods of inclement weather;

(v) Access to a means of communication for making adjustments as needed in the number of meals delivered in accordance with the number of children attending daily at each site;

(vi) The geographic area to be served by the site;

(vii) The percentage of children to be served by the site who meet the eligibility requirements for free or reduced price school meals; and

(viii) Whether the site is rural, as defined in § 225.2, or non-rural, and

whether the sites's food service will be self-preparation or vended.

(2) Along with its site information sheet for a site that is not a camp, documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist.

(i) For those sites at which applicants will serve children of migrant workers, the documentation requirement may be met by providing the State agency with data from an organization determined by the State agency to be a migrant organization, which supports eligibility for those children as a group, and

(ii) When a sponsor proposes to serve a site which it served in the previous year, documentation from the previous year may be used to support the eligibility of the site. For such sites applicants shall only be required to obtain new documentation every other year.

(3) Prior to filing their Claims for Reimbursement for each session or at such time as specified by the State agency, camps shall submit to the State agency family-size and income information which documents the number of children enrolled in each session who meet the eligibility requirements for free or reduced price school meals.

(4) Information in sufficient detail to enable the State agency to determine whether the applicant meets the criteria for participation in the Program as set forth in § 225.18, and the extent of Program payments needed, including a request for advance payments and start-up payments, if applicable, an administrative and operating budget, and a staffing and monitoring plan.

(5) A complete administrative budget for State agency review and approval. The budget shall contain the projected administrative expenses which a sponsor expects to incur during the operation of the Program, and shall include information in sufficient detail to enable the State agency to assess the sponsor's ability to operate under the Program within its estimated reimbursement. A sponsor's approved administrative budget shall be subject to subsequent review by the State agency for adjustments in projected administrative costs.

(6) A plan for and a synopsis of its invitation to bid for food service, if a bid is required under § 225.16.

(7) A free meal policy statement, as required in § 225.21.

(8) For each applicant which seeks approval under § 225.18(a)(3) (as a unit of local, municipal, and county government), certification that it will directly operate the Program in accordance with § 225.18(b)(9).

(b) Sponsors approved for participation in the Program shall enter into written agreements with the State agency. The agreements shall provide that the sponsor shall:

(1) Operate a nonprofit food service during any period from May through September for children on school vacation or at some other time or times during the year for children on school vacation under a continuous school calendar system;

(2) Serve meals which meet the requirements and provisions set forth in § 225.20 during a period designated as the meal service period by the sponsor, and serve the same meals to all children;

(3) Serve meals without cost to all children, except that camps may charge for meals served to children who are not served meals under the Program;

(4) Issue a policy statement in accordance with § 225.21;

(5) Meet the training requirement for its administrative and site personnel, as required under § 225.19(i).

(6) Claim reimbursement only for the type or types of meals specified in the agreement and served without charge to children at approved sites during the approved meal service period, except that camps shall claim reimbursement only for the type or types of meals specified in the agreement and served without charge to children who are eligible for free or reduced price school meals. The agreement shall specify the approved levels of meal service for the sponsor's sites for which approved levels have been established as required under § 225.7(j).

(7) Submit Claims for Reimbursement in accordance with procedures established by the State agency, and those stated in § 225.11;

(8) In the storage, preparation and service of food, maintain proper sanitation and health standards in conformance with all applicable State and local laws and regulations;

(9) Accept and use, in quantities that may be efficiently utilized in the Program, such foods as may be offered as a donation by the Department;

(10) Have access to facilities necessary for storing, preparing, and serving food;

(11) Maintain a financial management system as prescribed by the State agency;

(12) Maintain on file documentation of site visits and reviews in accordance with § 225.19(g) and (h);

(13) Upon request, make all accounts and records pertaining to the Program available to State, Federal, or other authorized officials for audit or administrative review, at a reasonable time and place. These records shall be retained for a period of 3 years after the end of the fiscal year to which they pertain, unless audit or investigation findings have not been resolved, in which case the records shall be retained until all issues raised by the audit or investigation have been resolved;

(14) Maintain children on site while meals are consumed; and

(15) Retain final financial and administrative responsibility for its program.

(c) Each State agency shall require applicant sponsors submitting Program applications, site information sheets, Program agreements or a request for advance payments, and sponsors submitting claims for reimbursement, to certify that the information submitted on these forms is true and correct and that the sponsor is aware that deliberate misrepresentation or withholding of information may result in prosecution under applicable State and Federal statutes.

(d) Within two weeks of receiving notification of their approval, but in any case prior to commencement of operations under the Program, sponsors shall submit to the State agency a copy of their letter advising the appropriate health department of their intention to provide a food service during a specific period at specific sites.

(e) In addition, the State agency may require any sponsor which contracts with a food service management company to enter into an agreement with the State agency to provide that the sponsor shall establish a special account with a State or Federally insured bank for operating costs payable to the sponsor by the State. The special account agreement shall specify that any disbursement of monies from the account must be authorized by both the sponsor and the food service management company. The special account agreement may contain other terms agreed to by both sponsor and food service management company, which are not inconsistent with the terms of the contract between the sponsor and the food service management company. A copy of the special account agreement shall be submitted to the State agency and another copy maintained on file by the sponsor. Any charges made by the bank for the account described in this section shall be considered an allowable sponsor administrative cost.

(f) In accordance with § 225.12(a) and (b) within two weeks of receiving notification of its approval, but in any case prior to commencement of operations under the Program any

sponsor whose total Program payments are expected to exceed $75,000 shall submit to the State agency a copy of its letter of agreement with the accounting firm or individual which is to conduct the audit of its program.

§ 225.9 Program monitoring and assistance.

(a) *Program availability.* By February 1 of each fiscal year, each State agency shall announce the purpose, eligibility criteria, and availability of the Program throughout the State, through appropriate means of communication. As part of this effort, each State agency shall compile a listing of potential sponsors which have not previously participated in the Program and shall contact them. State agencies shall identify rural areas, Indian tribal territories, and areas with a concentration of migrant farmworkers which qualify for the Program and shall actively seek eligible applicant sponsors to serve such areas. State shall identify priority outreach areas in accordance with FNS guidance and target outreach efforts in these areas. The State agency shall encourage potential sponsors to use their own facilities or the facilities of public or nonprofit private schools for the preparation, delivery, and service of meals under the Program.

(b) *Training.* Each State agency shall plan for an carry out Program training for sponsors, food service management company representatives, auditors, and health inspectors which will participate in the Program in that State. Prior to Program operations, each State agency shall ensure that the sponsor's supervisory personnel responsible for the food service receive training in all necessary areas of Program administration and operations. This training shall be structured and scheduled to reflect the fact that individual sponsors or groups of sponsors require different levels and areas of Program training. State agencies are encouraged to utilize sponsors which have previously participated in the Program in such training, and in the training of site personnel regarding their responsibilities. Training should be made available at convenient locations. Prior to the beginning of Program operations, each State agency shall make available training in all necessary areas of Program administration for representatives from all food service management companies and each health department which will participate in the Program in the current year.

(c) *Program materials.* Each State agency shall develop and make available all necessary Program materials in sufficient time to enable applicant sponsors to adequately prepare for their participation in the Program.

(d) *Food specifications and meal quality standards.* With the assistance of the Department, each State agency shall develop and make available to all sponsors minimum food specifications and model meal quality standards which shall become part of the contracts between sponsors and food service management companies.

(e) *Program monitoring and assistance.* The State agency shall conduct monitoring and provide Program assistance according to the following provisions:

(1) *Pre-approval visits.* The State agency shall conduct pre-approval visits of sponsors and sites as specified below, to further assess the applicant sponsor's or site's potential for successful Program operations and to verify information provided in the application. The State agency shall visit prior to approval:

(i) All applicant sponsors which did not participate in the Program in the prior year;

(ii) All other applicant sponsors which, as a result of operational problems noted in prior year, the State agency has determined need a pre-approval visit;

(iii) All proposed nonschool sites with an expected averge daily attendance of 300 children or more and which did not participate in the Program in the prior year.

(2) *Sponsor and site reviews.* The State agency shall review sponsors and sites, to ensure compliance with Program regulations and with the Department's nondiscrimination regulations (Part 15 of this title) and any other applicable instructions issued by the Department. In determining which sponsors or sites to review under this paragraph, the State agency shall, at a minimum, consider whether or not the sponsor or site has been used or reviewed in prior years, the performance of the sponsor or site in prior years, the performance of other sites operated by the same sponsor in prior years and the current year, and the performance of the applicable sponsor in prior years and the current year. Reviews shall be conducted as follows:

(i) For the following types of sponsors, State agencies shall conduct both a review of sponsor operations and reviews of sponsor operations and reviews of an average of 15 percent of their sites during the first four weeks of the sponsor's operations:

(A) Sponsors which have 10 or more sites and which did not operate the Program in the prior year, and

(B) Other sponsors of 10 or more sites which are determined by the State agency to need early reviews.

(ii) The State agency shall review the following types of sponsors and sites not reviewed under subparagraph (2)(i) of this paragraph at least once during the period of Program operations:

(A) All remaining sponsors of 10 or more sites and an average of at least 15 percent of their sites, and

(B) 70 percent of all sponsors of fewer than 10 sites and an average of 10 percent of their sites.

(3) *Follow-up reviews.* The State agency shall conduct follow-up reviews of sponsors and sites as necessary.

(4) *Monitoring system.* Each State agency shall develop and implement a monitoring system to ensure that sponsors, including site personnel, and the appropriate food service management company, if applicable, immediately receive a copy of any review reports which indicate Program violations and which could result in a Program disallowance.

(5) *Records.* Documentaton of Program assistance and results of such assistance shall be maintained on file by the State agency.

(6) *Food preparation facility visits.* As a part of the review of any sponsor which contracts with a food service management company for the preparation of meals, the State agency shall inspect the facilities of the food service management company. Each State agency shall establish an order of priority for visiting facilities at which food is prepared to be served in the Program. The State agency shall respond promptly to complaints concerning facilities with potential problems. Funds provided for in § 225.4(k) may be used for this purpose.

(7) *Forms for reviews by sponsors.* Each State agency shall develop and provide monitor review forms to all approved sponsors. These forms shall be completed by sponsor monitors. The monitor review form shall include, but not be limited to, time of reviewer's arrival and departure, site supervisor's signature, certification statement to be signed by monitor, the number of meals prepared or delivered, the number of meals served to children, the deficiencies noted, and corrective actions taken by sponsor and date of such actions.

(8) *Statistical monitoring.* State agencies may use statistical monitoring procedures in lieu of the site monitoring requirements prescribed in paragraph

(e)(2) of this section to accomplish the monitoring and technical assistance aspects of the Program. State agencies which use statistical monitoring procedures may use the findings in evaluating claims for reimbursement. Statistical monitoring may be used for some or all of a State's sponsors. Use of statistical monitoring does not eliminate the requirements for reviewing sponsors as specified in paragraph (e)(2) of this section.

(9) *Corrective actions.* Corrective actions which the State agency may take when Program violations are observed during the conduct of a review are discussed in § 225.13. The State agency shall conduct follow-up reviews as appropriate when corrective actions are required.

(f) *Food quality and preparation facility inspections.* The State agency shall make a positive effort to ensure that inspections of food preparation facilities and food service sites, including meal quality tests, are conducted. The procedures for carrying out the inspections and tests shall be consistent with procedures used by local health authorities. For inspections of facilities of food service management companies not conducted by State agency personnel, copies of the results of the inspections shall be provided to the State agency. The company and the sponsor shall also immediately receive a copy of the results of these inspections when corrective action is required.

(g) *Financial management.* Each State agency shall establish a financial management system in accordance with Office of Management and Budget Circular A–102 and FNS guidance to identify allowable Program costs and establish standards for sponsor recordkeeping and reporting. The system shall also be consistent with Federal Management Circular 74–4. The State agency shall provide guidance on these financial management standards to each sponsor.

(h) *Nondiscrimination.* (1) Each State agency shall comply with the requirements of Title VI of the Civil Rights Act of 1964, and the Department's regulations concerning nondiscrimination issued thereunder (7 CFR Part 15), including requirements for racial and ethnic participation data collection, public notification of the nondiscrimination policy, and reviews to assure compliance with such policy, to the end that no person shall, on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the Program. (2) Complaints of discrimination filed by applicants or participants shall be referred to FNS or the Secretary of Agriculture, Washington, D.C. 20250.

§ 225.10 Records and reports.

(a) Each State agency shall maintain complete and accurate current accounting records of its Program operations which will adequately identify funds authorizations, obligations, unobligated balances, assets, liabilities, income, claims against sponsors and efforts to recover overpayments, and expenditures for administrative and operating costs. These records shall be retained for a period of three years after the date of the submission of the final Program Operations and Financial Status Report (SF–269), except that, if audit findings have not been resolved, the affected records shall be retained beyond the three year period until such time as any issues raised by the audit findings have been resolved. The State agency shall also retain a complete record of each review or appeal conducted, as required under § 225.15, for a period of three years following the date of the final determination on the review or appeal. Records may be kept in their original form or on microfilm.

(b) By December 15 of each year the State agency shall provide FNS with information on the scope of Program operations within the State.

(c) Each State agency shall report information to FNS on the use of funds and on Program operations on a form provided by, and as instructed by, FNS.

(d) Not later than March 1 of each fiscal year, the State agency shall submit to FNS a final Operations and Financial Status Report for the prior fiscal year, on a form (SF–269) provided by FNS. Any requested increase in reimbursement levels for a fiscal year resulting from corrective action taken after submission of the final Program Operations and Financial Status Reports shall be submitted to FNS for approval. The request shall be accompanied by a written explanation of the basis for the adjustment and the actions taken to minimize the need for such adjustments in the future. If FNS approves of such an increase, it will make payment, subject to the availability of funds. Any reduction in reimbursement for that fiscal year resulting from corrective action taken after submission of the final fiscal year Program Operations and Financial Status Reports shall be handled in accordance with the provisions of § 225.14(d), except that amounts recovered may not be used to make Program payments.

(e) By October 15, each State agency shall submit to FNS, on a form provided by FNS, information concerning each food service management company which applied to the State agency for registration for that calendar year's Program. FNS shall allow any food service management company to review the information concerning that company which was submitted to FNS in accordance with this paragraph.

§ 225.11 Program payments.

(a) *Start-up payments.* At their discretion, State agencies may make start-up payments to sponsors which have executed Program agreements. Start-up payments shall not be made more than two months before the sponsor is scheduled to begin food service operations and shall not exceed 20 percent of the sponsor's approved administrative budget. The amount of the start-up payment shall be deducted from the first advance payment for administrative costs, if the sponsor does not receive advance payments, from the first administrative reimbursement.

(b) *Advance payments.* At the sponsor's request, State agencies shall make advance payments to assist sponsors in meeting operating costs and administrative expenses. For sponsors operating under a continuous school calendar, all advance payments shall be forwarded on the first day of each month of operation. Advance payments shall be made by the dates specified in subparagraphs (1) and (2) of this paragraph for all other sponsors whose requests are received at least 30 days prior to those dates. Requests received less than 30 days prior to those dates shall be acted upon within 30 days of receipt. When making advance payments, State agencies shall observe the following criteria:

(1) *Operating costs.* (i) State agencies shall make advance payments for operating costs by June 1, July 15, and August 15. To be eligible for the second advance payment, the sponsor must have conducted training sessions for its own personnel and site personnel covering Program duties and responsibilities. A sponsor shall not receive advance operating cost payments for any month in which it will participate in the Program for less than ten days.

(ii) To determine the amount of the advance payment to any sponsor, the State agency shall employ whichever of the following methods will result in the larger payment: (A) The total operating costs paid to the sponsor for the same calendar month in the preceding year, or (B) for sponsors contracting with a food service management company, 50 percent of the amount determined by the

State agency to be needed that month for meals, and, for sponsors preparing their own meals, 65 percent of the amount determined by the State agency to be needed that month for meals.

(2) *Administrative costs.* (i) State agencies shall make advance payments for administrative costs by June 1 and July 15. To be eligible for the second advance payment, the sponsor must certify that it is operating the number of sites for which the administrative budget was approved and that its projected administrative costs do not differ significantly from the approved budget. A sponsor shall not receive advance administrative costs payment for any month in which it will operate under the Program for less than 10 days. However, if a sponsor operates for less than 10 days in June but for at least 10 days in August, the second advance administrative costs payment shall be made by August 15.

(ii) Each payment shall equal one third of the total amount which the State agency determines the sponsor will need to administer its program. For sponsors which will operate for ten or more days only in one month and, therefore, will qualify for only one advance administrative costs payment, the payment shall be no less than one half and no more than two thirds of the total amount which the State agency determines the sponsor will need to administer its program.

(3) *Advance payment estimates.* When determining the amount of advance payments payable to the sponsor, the State agency shall make the best possible estimate based on the sponsor's request and any other available data. Under no circumstances may the amount of the advance payment for operating or administrative costs exceed the amount estimated by the State agency to be needed by the sponsor to meet operating or administrative costs, respectively.

(4) *Limit.* The sum of the advance operating and administrative costs payments to a sponsor for any one month shall not exceed $40,000 unless the State agency determines that a larger payment is necessary for the effective operation of the Program and the sponsor demonstrates sufficient administrative and managerial capability to justify a larger payment.

(5) *Deductions from advance payments.* The State agency shall deduct from either advance operating payments or advance administrative payments the amount of any previous payment which is under dispute or which is part of a demand for recovery under § 225.14.

(6) *Withholding of advance payments.* If the State agency has reason to believe that a sponsor will not be able to submit a valid Claim for Reimbursement covering the month for which advance payments have already been made, the subsequent month's advance payment shall be withheld until a valid claim is received.

(7) *Repayment of excess advance payments.* Upon demand of the State agency, sponsors shall repay any advance Program payments in excess of the amount cited on a valid Claim for Reimbursement.

(c) *Reimbursements.* Sponsors shall not be eligible for reimbursements for operating and administrative costs unless they have executed an agreement with the State agency. All reimbursements shall be in accordance with the terms of this agreement. Reimbursements shall not be paid for meals served at a site before the sponsor has received written notification that the site has been approved for participation in the Program. Income accruing to a sponsor's program shall be deducted from combined operating and adminstrative costs. The State agency may make full or partial reimbursement upon receipt of a Claim for Reimbursement, but shall first make any necessary adjustments in the amount to be paid. The following requirements shall be observed in submitting and paying claims:

(1) No reimbursement may be issued until the sponsor certifies that it operated all sites for which it is approved and that there has been no significant change in its projected administrative costs since its preceding claim or, for a sponsor receiving an advance payment for only one month, that there has been no significant change in its projected administrative costs since its initial advance administrative costs payment.

(2) Claims for reimbursement shall be submitted by the 10th day of the month following the month for which the claim is made. The State agency may require that claims be submitted more frequently than once each month.

(3) Sponsors which in the final month of operations operate less than 10 days shall submit a combined claim for the final month and the month immediately preceding within 10 days of the last day of operation.

(4) The State agency shall forward reimbursements within 45 days of receiving valid claims. If a claim is incomplete or invalid, the State agency shall return the claim to the sponsor within 30 days with an explanation of the reason for disapproval. If the sponsor submits a revised claim, final action shall be completed within 45 days of receipt.

(5) The State agency is not required to act upon any Claim for Reimbursement which is not received within 30 days of the sponsor's last day of food service operations, unless the State agency determines that the late submission is due to circumstances beyond the sponsor's control, in which case payment shall be made if the claim is valid.

(6) Claims for Reimbursement for any fiscal year shall not be considered if they are submitted later than the following December 31, with the exception of Claims submitted on or before December 31 and subsequently amended as a result of audits or investigations.

(7) Claims for reimbursement shall include data sufficient to justify the amount claimed and to enable the State agency to provide the information required in Program reports. Sponsors shall also certify that records supporting the claim are available. The cost of meals served to adults performing necessary food service labor and the cost of meals disallowed by the State agency may be included in the claim. The State agency may choose to allow sponsors to include the cost of meals disallowed as meals served to the children, in accordance with § 225.13(e) (1) and (2) in its report of operating costs on its Claim for Reimbursement. In no case shall the cost of meals in excess of a site's approved level of meal service established under § 225.7(j) be considered allowable.

(8) The State agency shall promptly take corrective action with respect to any Claim for Reimbursement for which such action is determined necessary based upon the results of Program reviews or any other information available. The corrective action must be completed in time to be reflected in the final Program Operations and Financial Status report for each fiscal year if reimbursement for the claim is to be made available for that fiscal year through the Letter of Credit system described under § 225.4(j).

(9) Payments to a sponsor for operating costs shall equal the lesser of the following totals:

(i) The actual operating costs incurred by the sponsor, or

(ii) The sum of the amounts derived by multiplying the number of meals, by type, actually served under the sponsor's program to eligible children by 85.75 cents for each lunch or supper, 47.75 cents for each breakfast and 22.50 cents for each supplement. These are base rates of reimbursement, not current

rates, and must be adjusted in accordance with paragraph (c)(11) of this section.

(10) Payments to a sponsor for administrative costs shall equal the lowest of the following totals:

(i) The amount estimated in the sponsor's approved administrative budget (taking into account any amendments);

(ii) The actual administrative costs incurred by the sponsor; or

(iii) The sum of the amounts derived by multiplying the number of meals, by type, actually served under the sponsor's program to eligible children by 6.75 cents for each lunch or supper, 3.50 cents for each breakfast and 1.75 cents for supplements, except that sponsors shall be eligible to receive an additional 1.50 cents for each lunch or supper, 1.00 cents for each breakfast, and .50 cents for each supplement served to participating children at rural or self-preparation sites. All rates in this paragraph are base rates of reimbursement, not current rates, and must be adjusted in accordance with paragraph (c)(11) of this section.

(11) Each January 1, FNS shall publish a notice in the **Federal Register** announcing any adjustment to the reimbursement rates described in paragraphs (c)(9)(ii) and (10)(iii) of this section. Adjustments shall be based upon changes in the series for food away from home of the Consumer Price Index for all Urban Consumers since the establishment of the rates.

(12) Sponsors of camps shall be reimbursed only for meals served to children in camps whose eligibility for free or reduced-price meals is documented. Any nonresidential camp reduced to fewer than four meal types per day under the terms of § 225.13(d) shall receive reimbursement only for those meals served to children eligible for free or reduced-price school meals.

(13) If a State agency has reason to believe that a sponsor or food service management company has engaged in unlawful acts in connection with Program operations, evidence found in audits, reviews, or investigations shall be a basis for nonpayment of the applicable sponsor's Claims for Reimbursement.

(d) The sponsor may claim reimbursement for any meals which are examined for meal quality by the State agency, auditors, or local health authorities and found to meet the meal pattern requirements.

(e) The sponsor shall not claim reimbursement for meals served at any site in excess of the site's approved level of meal service, if one has been established under § 225.7(j). In reviewing a sponsor's claim, the State agency may limit payments to the sponsor according to the approved level for meal service which may be claimed for reimbursement at the sponsor's sites, as provided for in § 225.7(j).

§ 225.12 Audit and management evaluation.

(a) *Audits.* (1) Upon approval of applicant sponsors whose total Claims for Reimbursement are expected to exceed $75,000, the State agency shall provide those sponsors with an aduit guide to be used in the conduct of the audit required by § 225.19(k) and any other guidance necessary to enable them to comply with the audit requirements of this part. The audit guide developed by the State agency shall, at a minimum, contain the standards set forth in the audit guide issued by the Department for the program.

(2) In addition to the plan submitted under § 225.6(g)(12), the State agency shall ensure that all sponsors within the State whose total Claims for Reimbursement are expected to be more than $75,000 provide for an annual audit of their program. Any sponsor required to provide for an audit of its program shall engage an accounting firm or individual which is independent of the sponsor to conduct the audit.

(3) The State agency shall also provide for biennial audits of sponsors whose total Claims for Reimbursement are expected to be less than $75,000 with the following exceptions: (i) sponsors under $10,000, (ii) sponsors receiving other Federal funds, and subject to an organization-wide audit in accordance with OMB Circular A–102, and (iii) sponsors for which the State agency determines an audit is unnecessary based on program performance. States must justify and document all exemptions made to the biennial audit requirement. The cost of such audits shall be considered an allowable State administrative expense, and in no case may the cost of such audits be passed through to sponsors. States which can demonstrate that compliance with the requirement will impose finanical hardship may initiate an appeal through FNSRO to FNS.

(4) Any audit of an organization which is conducted in accordance with the Program audit guide and includes the Program covered by this part may be included to meet a portion of the audit requirement contained in this section.

(5) Audits shall be conducted by: State agency internal auditors; State Auditors General; State Comptroller's Offices; and other comparable State or local government audit groups; Certified Public Accountants; or public accountants licensed on or before December 31, 1970, and currently certified or licensed by the regulatory authority of the State or other political subdivision of the United States.

(6) Within the first two weeks of the sponsor's operation of the Program, the auditor engaged by any sponsor required to have an annual audit shall submit to the sponsor and to the State agency a copy of a letter evaluating and making recommendations for the improvement of the sponsor's accounting and recordkeeping systems.

(7) Each State agency shall coordinate its monitoring review findings under § 225.9 and the audit reports provided for under § 225.19(k). Each State agency shall ensure that monitoring is conducted to result in a representative review of the sponsor's operations under the Program.

(8) While OIG shall rely to the fullest extent feasible upon State-sponsored audits, it shall, when considered necessary, (i) make audits on a State-wide basis, (ii) perform on site test audits, and (iii) review audit reports and related working papers of audits performed by or for State agencies.

(9) State agencies shall provide FNS and OIG with full opportunity to conduct management evaluations (including visits to sponsors) and audits of all operations of the State agency. Each State agency shall make available its records, including records of the receipts and expenditures of funds, upon a reasonable request by FNS or OIG. OIG shall also have the right to make audits of the records and operations of any sponsor.

(10) Use of Program audit guides available from OIG is encouraged. When this guide is utilized, OIG will coordinate its audits with State sponsored audits to form a network of intergovernmental audit systems.

(b) State agencies shall provide FNS with full opportunity to conduct management evaluations (including visits to sponsors) of all operations of the State agency. Each State agency shall make available its records, including records of the receipts and expenditures of funds, upon a reasonable request by FNS.

(c) In addition to any management evaluation, FNSRO shall collect data on the need for Program and State administrative funding within any State agency if the funding needs estimated in a State's management and administration plan are no longer accurate. Based on this data, FNS may make adjustments in the level of State administrative funding paid or payable to the State agency under § 225.4(g) to

reflect changes in the size of the State's Program as compared to that estimated its management and administration plan. The data shall be based on approved Program participation levels and collected during the period of Program operations, but no later than August 20. Immediately following this data collection, payment of State administrative funds shall be made to the State agency. The payment may reflect adjustments in the level of State administrative funding, based on the information collected. FNS shall not decrease the amount of a State's administrative funds unless the State failed to make reasonable efforts to administer the Program as proposed in its management and administration plan or the State incurred unnecessary expenses.

(d) The State agency shall fully respond to any recommendations made by FNSRO pursuant to the management evaluation.

(e) FNSRO may require the State agency to submit on 20 days notice a corrective action plan regarding serious problems observed during any phase of the management evaluation.

(f) In conducting management evaluations or audits for any fiscal year, the State agency, FNS or OIG may disregard overpayment which does not exceed $100 or, in the case of State agency administered programs, does not exceed the amount established by State law, regulations or procedures as a minimum for which claims will be made for State losses generally. No overpayment shall be disregarded, however, when there are unpaid claims for the same fiscal year from which the overpayment can be deducted or when there is substantial evidence of violation of criminal law or civil fraud statutes.

§ 225.13 Corrective action procedures.

(a) *Purpose.* The provisions in this section shall be used by the State agency to improve Program performance.

(b) *Investigations.* Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. The State agency shall maintain on file all evidence relating to such investigations and actions. The State agency shall inform the appropriate FNSRO of any suspected fraud or criminal abuse in the Program which would result in a loss or misuse of Federal funds. The Department may make investigations at the request of the State agency, or where the Department determines investigations are appropriate.

(c) *Denial of applications and termination of sponsors.* The State agency shall not enter into an agreement with any applicant sponsor identifiable through its corporate organization, officers, employees, or otherwise, as an institution which participated in any Federal child nutrition program and was seriously deficient in its operation of any such program. The State agency shall terminate the Program agreement with any sponsor which it determines to be seriously deficient. However, the State agency shall afford a sponsor reasonable opportunity to correct problems before terminating the sponsor for being seriously deficient. The State agency may approve the application of a sponsor which has been disapproved or terminated in prior years in accordance with this paragraph if the sponsor demonstrates to the satisfaction of the State agency that the sponsor has taken appropriate corrective actions to prevent recurrence of the deficiencies. Serious deficiencies which are grounds for disapproval of applications and for termination include, but are not limited to, any of the following:

(1) Noncompliance with the applicable bid procedures and contract requirements of federal child nutrition program regulations;

(2) The submission of false information to the State agency;

(3) Failure to return to the State agency any start-up or advance payments which exceeded the amount earned for serving meals in accordance with this part, or failure to submit all Claims for Reimbursement in any prior year, provided that failure to return any advance payments for months for which Claims for Reimbursement are under dispute from any prior year shall not be grounds for disapproval in accordance with this paragraph.

(4) Program violations at a significant proportion of the sites which include, but are not limited to, the following:

(i) Noncompliance with the between meal time requirements;

(ii) Failure to maintain adequate records;

(iii) Failure to adjust meal orders to conform to variations in the number of participating children;

(iv) The simultaneous service of more than one meal to any child;

(v) The claiming of Program payments for meals not served to participating children;

(vi) Service of a significant number of meals which did not include required quantities of all meal components;

(vii) Excessive instances of off-site meal consumption;

(viii) Continued use of food service management companies that are in violation of health codes.

(d) *Meal service restriction.* The State agency shall restrict to one meal service per day (1) any food service site which is determined to be in violation of the time restrictions for meal service included in § 225.20(a) when corrective action is not taken within a reasonable time as determined by the State agency, and (2) all sites under a sponsor if more than 20 percent of the sponsor's sites are determined to be in violation of the time restrictions included in § 225.20(a). If this action results in children not receiving any meals under the Program, the State agency shall make reasonable effort to locate another source of meal service for the children.

(e) *Meal disallowances.*—(1) *Meal disallowances for improper planning.* If the State agency determines that a sponsor has failed to plan and prepare or order meals with the objective of providing only one meal per child at each meal service at a site, the State agency shall disallow as meals served to children the number of meals prepared or ordered in excess of the number of children served.

(2) Meal disallowances for violations of meal service requirements. If State agency observes meal service violations during the conduct of a site review, the State agency shall disallow as meals served to children all of the meals observed to be in violation.

(3) The State agency shall also disallow any meals which are in excess of a site's approved level established under § 225.7(j).

(4) Whenever the State agency observes violations during the course of a site review, it shall require the sponsor to take corrective action. If the State agency finds a high level of meal service violations, the State agency shall require a specific immediate corrective action plan to be followed by the sponsor and shall either conduct a follow-up visit or in some other manner verify that the specified corrective action has been taken. Paragraph (f) of this section indicates actions the State agency shall undertake if corrective action has not been taken.

(f) *Termination of sites.* (1) The State agency shall terminate the participation of a sponsor's site if the sponsor fails to take action to correct the Program violations noted in a State agency review report within the timeframes established by the State agency and specified in the review report.

(2) The State agency shall immediately terminate the participation of a sponsor's site if during a review it

determines that the health or safety of the participating children is imminently threatened.

(3) Within 48 hours of terminating a site, the State agency shall, if applicable, notify the food service management company providing meals to the site of the termination.

§ 225.14 Claims against sponsors.

(a) The State agency shall disallow any portion of a Claim for Reimbursement and recover any payment to a sponsor not properly payable under this part, except as provided for in § 225.12(f). However, the State agency shall notify the sponsor of the reasons for the disallowance or demand for repayment.

(b) Minimum State agency collection procedures for unearned payments shall include: (1) written demand to the sponsor for the return of improper payments; (2) if after 30 calendar days the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, a second written demand for the return of improper payments, sent by certified mail, return receipt requested; (3) if after 60 calendar days following the original written demand, the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, a third written demand for the return of improper payments, sent by certified mail, return receipt requested; and (4) if after 90 calendar days following the original written demand, the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, the State agency shall refer the claim against the sponsor to appropriate State or Federal authorities for pursuit of legal remedies.

(c) If FNS does not concur with the State agency's action in paying a sponsor or in failing to collect overpayment, FNS shall notify the State agency of its intention to assert a claim against the State agency. In all such cases, the State agency shall have full opportunity to submit evidence concerning the action taken. The State agency shall be liable to FNS for failure to collect an overpayment unless FNS determines that the State agency has conformed with this part in issuing the payment and has exerted reasonable efforts in accordance with paragraph (b) of this section to recover the improper payment.

(d) The amounts recovered by the State agency from sponsors may be utilized (1) to make Program payments to sponsors for the period for which the funds were initially available, and (2) to repay the State for any of its own funds used to make payments on Claims for Reimbursement. Any amounts recovered which are not so utilized shall be returned to FNS in accordance with the requirements of this part.

§ 225.15 Appeal procedures.

(a) Each State agency shall establish a procedure to be followed by an applicant requesting a review of a denial of an application for participation, a denial of a request by a sponsor for an advance payment, a denial of a claim by a sponsor for reimbursement, a claim against a sponsor for remittance of a payment, the termination of the sponsor or a site, a denial of a sponsor's application for a site, a denial of a food service management company's application for registration, or revocation of that registration.

(b) At a minimum, the procedures for those reviews shall provide that:

(1) The sponsor or food service management company be advised in writing that the request for review must be made within a specified time and must meet the requirement of paragraph (b)(3) of this section. The State agency shall establish this period of time at not less than one week nor more than two weeks from the date of receipt of the notice of action;

(2) the Appellant be afforded the opportunity to review any information upon which the action was based;

(3) The appellant may refute the charges contained in the notice of action either in person or by filing written documentation with the review official. To be considered, written documentation must be submitted by the appellant within seven days of submitting the request for review, must clearly identify the State agency action being appealed, and must include a photocopy of the notice of action issued by the State agency;

(4) A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. The appellant may retain legal counsel, or may be represented by another person. Failure of the appellant's representative to appear at a scheduled hearing shall constitute the appellant's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and written information and to answer questions from the review official;

(5) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 5 days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing;

(6) The hearing shall be held within 14 days of the date of the receipt of the request for review, but, where applicable, not before the appellant's written documentation is received in accordance with paragraph (b)(4) of this section;

(7) The review official shall be independent of the original decision-making process;

(8) The review official shall make a determination based on information provided by the State agency and the appellant, and on Program regulations;

(9) Within 5 working days after the appellant's hearing, or within 5 working days after receipt of written documentation if no hearing is held, the reviewing official must make a determination based on a full review of the administrative record and inform the appellant of the determination of the review by certified mail, return receipt requested;

(10) The State agency's action shall remain in effect during the appeal process. However, participating sponsors and sites may continue to operate under the Program during an appeal of termination, and if the appeal results in overturning the State agency's decision, reimbursement shall be paid for meals served during the appeal process. However, such continued operation under the Program shall not be allowed if the State agency's action is based on imminent dangers to the health or welfare of children. If the sponsor or site has been terminated for this reason, the State agency shall so specify in its notice of action; and

(11) The determination by the State review official is the final administrative determination to be afforded to the appellant.

(c) The State agency shall send written notification of the complete appeal procedures and of the actions which are appealable, as specified in § 225.15(a):

(1) To each potential sponsor upon application, and

(2) To each food service management company upon application for registration under § 225.16(c).

(d) A record regarding each review shall be kept by the State agency as required under § 225.10(a). The record shall document the State agency's compliance with these regulations and shall include the basis for the decision.

§ 225.16 Procedures for food service management companies.

(a) Any sponsor may contract with a food service management company for the preparation of unitized meals with or without milk or juice. In all cases, the sponsor shall adhere to the procurement standards indicated in § 225.17. All meals prepared by a food service management company shall be unitized, with or without milk or juice, unless the sponsor submits to the State agency a request for exceptions to the unitizing requirement for certain components of a meal. These requests shall be submitted to the State agency in writing prior to advertising for bids. The State agency shall notify the sponsor in writing of its determination in a timely manner.

(b) Any sponsor which contracts with a food service management company shall be responsible for ensuring that the food service operation is in conformity with its agreement with the State agency and all the applicable provisions of this part. No sponsor may contract out for the management responsibilities of the Program such as monitoring, enforcing corrective action, or preparing Program applications.

(c) A sponsor may contract only with a food service management company which is registered with the State in which the sponsor will operate the Program, except that a school or school food authority acting as a food service management company and a food service management company which has an exclusive contract with a school or school food authority for year-round service (and no contracts with other sponsors) shall not be required to register with the State. The procedures for registration of all other food service management companies are as follows:

(1) By February 1, each State agency shall notify each food service management company which participated in the Program in either of the prior two years in the State that it must register with the State agency. This notification shall include at a minimum: (i) a statement that registration with the State agency is a prerequisite to participation in the Program during the fiscal year; (ii) a list of the items which must be submitted in the application for registration as set forth in subparagraph (2) of this paragraph; (iii) a complete description of the criteria developed by the State agency for determining registrant eligibility; and (iv) any other information necessary to apply for registration. In addition, each State agency shall by the same date issue a public announcement of the registration requirement, including all the information necessary to apply for registration.

(2) With the exceptions described in the first sentence of this paragraph, each food service management company shall register with the State by March 15 of each fiscal year. At a minimum, registration shall require: (i) submission of name and mailing address and any other names under which such food service management company presently or in the past two years has marketed its services; (ii) a certification that the food service management company meets applicable State and local health, safety, and sanitation standards; (iii) disclosure of present company owners, directors, and officers, and their relationship in the past two years to any sponsor or food service management company which participated in the Program; (iv) records of contract terminations, disallowances, and health, safety, and sanitation code violations related to prior Program participation during the past two years; (v) records of any other contract terminations and health, safety, and sanitation code violations during the past two years; (vi) the address or addresses of the company's food preparation and distribution facilities which will be used in the Program and the local officials responsible for the operation of the facilities; (vii) the number of meals which can be prepared in each preparation facility in a twenty-four hour period for use in the Program; (viii) a certification that the food service management company will operate in accordance with current Program regulation; (ix) a statement that the food service management company understands that it will not be paid for meals which are delivered to non-approved sites, or for meals which are delivered to approved sites outside of the agreed upon delivery time, or meals that do not meet the meal requirements and food specifications contained in the contract between the sponsor and the food service management company; and (x) submission of a Certified Public Accountant's audit report if an audit was performed during the prior year and, (xi) a statement as to whether the organization is a minority business enterprise. A minority business enterprise is a business,

(A) in which the management and daily operations of the business are controlled by a member or members of a minority group; and

(B) at least 51 percent of which is owned by a member or members of a minority group; (*1*) if the business is a corporation, at least 51 percent of all classes of voting stock of the corporation must be owned by members of a minority group; (*2*) if the business is a partnership, at least 51 percent of the partnership must be owned by a member or members of a minority group. Minority groups are Black, Hispanics, American Indians, Alaskan Natives, Orientals and Aleuts.

(3) A State agency shall consider a food service management company's application for registration submitted after March 15 of the current year, if the State agency determines and documents that the lack of registration could result in a significant number of needy children not having reasonable access to the Program.

(4) Prior to registration, the State agency shall provide for inspections of all food service management companies' food preparation facilities listed on the applications for registration, except those located outside the State. The State agency shall promptly notify FNSRO of the name and location of any out-of-State facility, and FNSRO shall insure that the facility is inspected prior to registration. The purpose of the inspection is to evaluate each facility's suitability for preparation of meals for use in the Program. The State agency may waive this inspection requirement if a facility was registered last summer and operated in accordance with Program requirements.

(5) No food service management company shall be registered by the State agency if the State agency determines that the company lacks the administrative and financial capability to perform under the Program or if it is identifiable through its organization or principals as a food service management company which participated in the Program during any previous year and was seriously deficient in its Program operation. Serious deficiencies which are grounds for non-registration include, but are not limited to, any of the following:

(i) Noncompliance with the applicable bid procedures, contract requirements or Program regulations;

(ii) Submission of false information to the State agency;

(iii) Failure to conform meal deliveries to meal orders;

(iv) Delivery of a significant number of meals which do not meet contract requirements;

(v) Failure to maintain adequate records;

(vi) Significant health code violations which were not corrected upon reinspection;

(vii) Failure to deliver meals; or

(viii) The conviction of any officer, owner, partner, or manager of the company for a crime in connection with a prior Program operation.

(6) Each State agency shall require food service management companies

submitting applications for registration to certify that the information submitted is true and correct and that the food service management company is aware that misrepresentation may result in prosecution under applicable State and Federal statutes.

(7) The State agency shall notify in writing each food service management company which applied for registration of its determination on the application within 30 calendar days after receipt of the complete application. The official making the determination of denial must notify the food service management company in writing, stating all the grounds on which the State agency based the denial.

(8) Each State agency shall submit information to FNS regarding registration of food service management companies, as required under § 225.10(e).

(d) In the absence of any applicable State or local laws governing bid procedures and with the exceptions identified in this paragraph, each sponsor which contracts with a food service management company shall comply with the competitive bid procedures described in this paragraph. Sponsors which are schools or school food authorities which have an exclusive contract with food service management companies for year-round service and sponsors whose total contracts with food service management companies will not exceed $10,000, shall not be required to comply with these procedures. These exceptions do not relieve the sponsor of the responsibility to ensure that normally accepted bidding procedures are followed in contracting with any food service management company. Each sponsor whose proposed contract is subject to competitive bidding procedure shall ensure, at a minimum, that:

(1) All proposed contracts shall be publicly announced at least once, not less than 14 calendar days prior to the opening of bids, and the announcement shall include the time and place of the bid opening;

(2) The bids shall be publicly opened; and

(3) The State agency is notified at least 14 calendar days prior to the opening of the bids, of the time and place of the bid opening.

(4) When advertising for bids, the sponsor shall adhere to the following requirements, at a minimum:

(i) the invitation to bid shall not specify a minimum price;

(ii) The invitation to bid shall contain a cycle menu approved by the State agency upon which the bid shall be based;

(iii) the invitation to bid shall contain food specifications and meal quality standards approved by the State agency upon which the bid shall be based;

(iv) the invitation to bid shall not specify special meal requirements to meet ethnic or religious needs unless such special requirements are necessary to meet the needs of the children to be served;

(v) Neither the invitation to bid nor the contract shall provide for loans or any other monetary benefit or term or condition to be made to sponsors by food service management companies;

(vi) Nonfood items shall be excluded from the invitation to bid, except where such items are essential to the conduct of the food service.

(5) A copy of the food service management company registration determination issued by the State agency shall be submitted by the food service management company with each bid;

(6) Sponsors shall submit to the State agency copies of all bids received and their reason for selecting the food service management company chosen;

(7) All bids in an amount which exceeds the lowest bid shall be submitted to the State agency for approval before acceptance. All bids totaling $100,000 or more shall be submitted to the State agency for approval before acceptance. State agencies shall respond to a request for approval of such bids within 5 working days of receipt.

(e) Each State agency shall develop a standard form of contract for use by sponsors in contracting with food service management companies. (Sponsors which are public institutions and sponsors exempt from the competitive bid procedures described in paragraph (d) of this section may use their existing or usual form of contract, if such form of contract has been submitted to and approved by the State agency.) The standard contract developed by the State agency shall expressly and without exception provide that:

(1) The sponsor shall provide to the food service management company a list of State agency approved food service sites, along with the approved level for the number of meals which may be claimed for reimbursement for each site (established under § 225.7(j)), and shall notify the food service management company of all sites which have been approved, cancelled, or terminated subsequent to the submission of the initial approved site list and of any changes in the approved level of meal service for a site. Such notification shall be provided within the time limits mutually agreed upon in the contract;

(2) The food service management company shall maintain such records (supported by invoices, receipts, or other evidence) as the sponsor will need to meet its responsibilities under this part, and shall report to the sponsor promptly at the end of each month, at a minimum;

(3) The food service management company shall have State or local health certification for the facility in which it proposes to prepare meals for use in the Program, and it shall ensure that health and sanitation requirements are met at all times. In addition, the food service management company shall provide for meals which it prepares to be periodically inspected by the local health department or an independent agency to determine bacteria levels in the meals being served. These levels shall conform to the standards which are applied by the local health authority with respect to the level of bacteria which may be present in meals served by other food service establishments in the locality. Results of the inspections shall be submitted to the sponsor and to the State agency;

(4) The meals served under the contract shall conform to the cycle menus and meals quality standards and food specifications approved by the State agency and upon which the bid was based;

(5) The books and records of the food service management company pertaining to the sponsor's food service operation shall be available for inspection and audit by representatives of the State agency, the Department, and the U.S. General Accounting Office at any reasonable time and place for a period of 3 years from the date of receipt of final payment under the contract;

(6) The sponsor and the food service management company shall operate in accordance with the current Program regulations;

(7) The food service management company shall be paid by the sponsor for all meals delivered in accordance with the contract and this part. However, neither the Department nor the State agency assumes any liability for payment of differences between the number of meals delivered by the food service management company and the number of meals served by the sponsor that are eligible for reimbursement;

(8) Meals shall be delivered in accordance with a delivery schedule prescribed in the contract;

(9) Increases and decreases in the number of meals ordered shall be made by the sponsor, as needed, within a prior notice period mutually agreed upon;

(10) All meals served under the Program shall meet the requirements of § 225.20;

(11) In cases of nonperformance or noncompliance on the part of the food service management company, the company shall pay the sponsor for any excess costs the sponsor incurs by obtaining meals from another source; and

(12) If the State agency requires the sponsor to establish a special account for the deposit of operating costs payments made by the State agency to the sponsor in accordance with the conditions given in § 225.8(e), the contract shall so specify.

(f) A food service management company entering into a contract with a sponsor under the Program shall not subcontract for the total meal, with or without milk, or for the assembly of the meal.

(g) Each State agency shall have a representative present at all procurement bid openings of sponsors which expect to receive more than $100,000 in Program payments.

(h) The State agency may require any sponsor which contracts with a food service management company to establish a special account in a State or Federally insured bank for the deposit of Program payments for operating costs. The special account shall be such that any disbursement of monies from the account must be authorized by both the sponsor and the food service management company, and shall be in accordance with the other specifications included in § 225.8(e).

(i) Copies of all contracts between sponsors and food service management companies, along with a certification of independent price determination, shall be submitted to the State agency prior to the beginning of Program operations.

(j) Each food service management company which submits a bid over $100,000 shall obtain a bid bond in an amount not less than five (5) percent nor more than ten (10) percent, as determined by the sponsor, of the value of the contract for which the bid is made. A copy of the bid bond shall accompany each bid.

(k) Each food service management company which enters into a food service contract for over $100,000 with a sponsor shall obtain a performance bond in an amount not less than ten (10) percent nor more than twenty-five (25) percent of the value of the contract as determined by the State agency. Any food service management company which enters into more than one contract with any one sponsor shall obtain a performance bond covering all contracts if the aggregate amount of the contracts exceeds $100,000. Sponsors shall require the food service management company to furnish a copy of the bond within ten days of the awarding of the contract.

(l) Food service management companies shall obtain bid bonds and performance bonds only from surety companies listed in the current Department of the Treasury Circular 570.

(m) Failure by a sponsor to comply with the provisions of this section shall be sufficient grounds for the State agency to terminate participation by the sponsor in accordance with §225.22(b). If a food service management company fails to take the actions recommended to correct violations noted by the State agency or health inspectors in the conducting of a review or inspection, the State agency shall notify the sponsor and the food service management company that reimbursement shall not be paid for meals prepared by the food service management company after a date specified in the notification.

§ 225.17 Procurement standards.

(a) State agencies and sponsors which are Federally recognized Indian tribal governments or entities of local governments (such as some school districts, elementary and secondary schools, and public park authorities) shall comply with the standards prescribed in Attachment O of Office of Management and Budget Circular A–102 in the procurement of food, supplies, goods, and other services with Program payments.

(b) All sponsors other than those identified in paragraph (a) of this section shall comply with the standards prescribed in Attachment O of Office of Management and Budget Circular A–110 in the procurement of food, supplies, goods, and other services with Program payments.

(c) The State agency shall make available to sponsors information on Office of Management and Budget Circulars A–102 and A–110, as appropriate.

(d) Sponsors may use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with Program funds conform with provisions of this section, as well as with procurement requirements which may be established by the State agency, with the approval of FNS, to prevent fraud, waste, and Program abuse.

(e) The State agency shall ensure that all sponsors are aware of the following practices specified in OMB Circular A–102, with respect to minority business enterprises:

(1) including qualified minority business enterprises on solicitation lists,

(2) soliciting minority business enterprises whenever they are potential sources,

(3) when economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by minority business enterprises,

(4) establishing delivery schedules which will assist minority business enterprises to meet deadlines, and

(5) using the services and assistance of the Small Business Administration, and the Office of Minority Business Enterprise of the Department of Commerce as required.

Subpart D—Provisions for Sponsors

§ 225.18 Requirements for sponsor participation.

(a) *Sponsor eligibility.* Applicants eligible to sponsor the Program include:

(1) Public or nonprofit private school food authorities;

(2) Public or nonprofit private residential summer camps; and

(3) Units of local, municipal or county governments.

(b) *Requirements.* No applicant sponsor shall be eligible to participate in the Program unless it:

(1) Demonstrates financial and administrative capability for Program operations and accepts final financial and administrative responsibility for total Program operations at all sites at which it proposes to conduct a food service.

(2) Has not been seriously deficient in operating the Program in the prior three years.

(3) Will conduct a regularly scheduled food service for children from areas in which poor economic conditions exist or qualifies as a camp.

(4) Has adequate supervisory and operational personnel for overall monitoring and management of each site including adequate personnel to conduct the visits and reviews required in § 225.19 (g) and (h).

(5) Provides an ongoing year-round service to the community which it proposes to serve under the Program, except as provided for in § 225.7(f);

(6) Certifies that all sites have been visited and have the capability and the facilities for the meal service planned for the number of children anticipated to be served;

(7) If not a camp, provides documentation that its food service will serve children from an area in which poor economic conditions exist, as defined in § 225.2. If a camp, certifies

that it will collect family size and income information to support its Claim for Reimbursement;

(8) If a summer school, is open to serve children in addition to those enrolled in the accredited school program or is a school serving children outside of the summer school hours; and

(9) Each applicant described under § 225.18(a)(3) shall only be approved to provide the Program at sites which the applicant will directly operate. Such direct operation means that the applicant will be responsible for: (i) managing site staff, including such areas as hiring, conditions of employment, and termination; (ii) operating only sites which are properties or facilities under the year-round auspices or control of the applicant; and (iii) operating only sites with which the applicant has an ongoing, year-round realtionship which indicates direct control by the applicant.

(c) *Applications.* Applicants shall make written application to the State agency for participation in the Program as sponsors. Such application shall be made on a timely basis in accordance with the requirements of § 225.8.

(d) *Agreements.* Each sponsor shall enter into a written agreement with the State agency upon approval of its application, as required in § 225.8(b).

(e) *Meal services.* The meals which may be served under the Program are breakfast, lunch, supper, and supplemental food. No sponsor shall be approved to provide more than two services of supplemental food per day. A sponsor shall only be reimbursed for meals served in accordance with paragraphs (f) and (g) of this section.

(f) *Camps.* Sponsors of camps shall only be reimbursed for meals served in camps to children from families which qualify for free and reduced price meals under the guidelines established for the National School Lunch Program (7 CFR Part 210.) The sponsor shall maintain a copy of the family size and income documentation of each child receiving meals under the Program. Meal service at camps shall be subject to the following provisions:

(1) A camp may serve up to four meals each day.

(2) Residential camps are not subject to the time restrictions for meal service given in § 225.20(a)(1).

(3) A camp shall be approved to serve these meals only if it has the administrative capability and, where applicable, adequate food preparation and holding facilities, and if the service period of the different meals does not coincide or overlap.

(g) *Sites other than camps and those serving migrant children.* Food service sites other than camps shall serve children in areas where poor economic conditions exist, as defined in §225.2. A sponsor which operates in accordance with this part shall receive reimbursement for all meals served to children at these sites in accordance with this part. Food services sites other than camps and those which primarily serve migrant children may serve either (1) one meal each day, a breakfast, a lunch, or a supplement, or (2) two meals each day, if one is a lunch and the other is a breakfast or a supplement.

(h) *Sites which serve children of migrant families.* Food service sites which primarily serve children from migrant families may be approved to serve up to four meals each day. These sites shall serve children in areas where poor economic conditions exist as defined in § 225.2. A sponsor which operates in accordance with this part shall receive reimbursement for all meals served to children at these sites. A site which primarily serves children from migrant families shall only be approved to serve more than one meal each day if it has the administrative capability and, where applicable, adequate food preparation and holding facilities, and if the service period of the different meals does not coincide or overlap.

(i) No site shall be eligible to participate in both this Program and the Special Milk Program (7 CFR Part 215).

§225.19 Operational responsibilities of sponsors.

(a) Sponsors shall operate the food service in accordance with the provisions of this part and any instructions and handbooks issued by FNS under this part or issued by the State agency which are not inconsistent with the provisions of this part.

(b) Each sponsor shall, to the maximum extent feasible, utilize either its own food service facilities, or obtain meals from a school food service facility. If the sponsor obtains meals from a school food service facility the applicable requirements of this part shall be embodied in a written agreement between the sponsor and the school.

(c) Upon approval of its application or any adjustment in the approved levels of meal service for its sites, established under §225.7(j), the sponsor shall inform the food service management company with which the sponsor contracts of the approved level for each meal service at each site for which the food service management company will provide meals.

(d) Sponsors shall plan for and prepare or order meals on the basis of participation trends with the objective of providing only one meal per child at each meal service. The sponsor shall make the adjustments necessary to achieve this objective using the results from its monitoring of sites. For sites for which approved levels of meal service have been established in accordance with § 225.7(j), this means that the sponsor shall adjust the number of meals ordered or prepared with the objective of providing only one meal per child whenever the number of children attending the site is below the approved level. In no case shall the sponsor order or prepare meals for any site in excess of the site's approved level. Records of participation and of preparation or ordering of meals shall be maintained to demonstrate positive action toward this objective. In recognition of the fluctuation in participation levels which makes it difficult to precisely estimate the number of meals needed and to reduce the resultant waste, any excess meals within the approved level for the site that are prepared or ordered may be served to children and claimed for reimbursement unless the State agency determines that the sponsor has failed to plan and prepare or order meals with the objective of providing only one meal per child at each meal service. Second meals shall be served only after all participating children at the site's meal service have been served a meal. In no case shall the sponsor order or prepare meals for any site in excess of its approved level, established in accordance with § 225.7(j).

(e) Sponsors shall submit Claims for Reimbursement only for meals served to children in accordance with this part. Claims shall be submitted by the 10th day of the month following the month for which the claim is made. However, the State agency may require that claims be submitted more frerquently.

(f) Sponsors shall maintain accurate records which justify all costs and meals claimed. The sponsor's records shall be available at all times for inspection and audit by representatives of the Secretary, the Comptroller General of the United States, and the State agency for a period of three years following the date of submission of the final Claim for Reimbursement for the fiscal year.

(g) Sponsors shall visit each of their sites at least once during the first week of operation under the Program and shall promptly take such actions as are necessary to correct any deficiencies.

(h) Sponsors shall review food service operations at each site at least once during the first four weeks of Program operations, and thereafter shall maintain a reasonable level of site monitoring. Sponsors shall complete a

monitoring form developed by the State agency during the conduct of these reviews.

(i) Each sponsor shall hold training sessions for its administrative and site personnel with regard to Program duties and allow no site to operate until site personnel have attended at least one of these training sessions. Training of site personnel, at a minimum, shall include: the purpose of the Program, site eligibility, recordkeeping, site operations, meal pattern requirements, and duties of a monitor. Each sponsor shall ensure that its administrative personnel attend State agency training provided to sponsors, and sponsors shall provide training throughout the summer to ensure that administrative and site personnel are thoroughly knowledgeable in all requisite areas of Program administration and operation and are provided with sufficient information to enable them to carry out their Program responsibilities. Each site shall have present at each meal service at least one person who has received this training.

(j) Sponsors shall not claim reimbursement under Parts 210, 215, 220, or 226 of this Chapter, or any other Federally-funded program for meals served under the Program.

(k) Each sponsor whose total Program payments under any Program agreement are expected to exceed $75,000 shall have an audit conducted of its Program claims and the supporting documentation for those claims. The audit shall be conducted in accordance with the provisions of § 225.12(a) and (b). A report on the audit shall be submitted to the State agency.

§ 225.20 Meal service requirements.

(a) *Time restrictions for meal service.* (1) Three hours shall elapse between the beginning of one meal service, including supplements, and the beginning of another, except that 4 hours shall elapse between the service of a lunch and supper when no supplement is served between lunch and supper. The service of supper shall begin no later than 7 p.m., unless the State agency has granted a waiver of this requirement due to extenuating circumstances. These waivers shall be granted only when the State agency and the sponsor ensure that special arrangements shall be made to monitor these sites. In no case may the service of supper extend beyond 8 p.m. The time restrictions in this subparagraph shall not apply to residential camps.

(2) The duration of the meal service shall be limited to two hours for lunch or supper and one hour for all other meals.

(3) Meals served outside of the period of approved meal service shall not be eligible for Program payments.

(4) Any permanent or planned changes in meal service periods must be approved by the State agency.

(5) Meals for each meal service which are not prepared at the food service site shall be delivered within one hour of the beginning of the appropriate meal service unless the site has adequate facilities for holding hot or cold meals within the temperatures required by State or local health regulations.

(6) The sponsor shall serve only the type(s) of meals for which it is approved under its agreement with the State agency.

(b) *Meal patterns.* The meal requirements for the Program are designed to provide nutritious and well-balanced meals to each child. Sponsors shall ensure that meals served meet all of the requirements. Except as otherwise provided in this section, the following tables present the minimum requirements for meals served to children in the program.

Breakfast[1]

(1) The minimum amount of food components to be served as breakfast are as follows:

Food components	Minimum amount
Vegetables and Fruits	
Vegetable(s) and/or fruit(s)	½ cup.[1]
or	
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetables(s), fruit(s) and juice.	½ cup (4 fl. oz.).
Bread and Bread Alternates[2]	
Bread	1 slice.
or	
Cornbread, biscuits, rolls, muffins, etc.[3],	1 serving.
or	
cold dry cereal[4]	¾ cup or 1 oz.
or	
Cooked cereal or cereal grains	½ cup.
or	
Cooked pasta or noodle products or an equivalent quantity of any combination of bread/bread alternate.	½ cup.
Milk[5]	
Milk, fluid	1 cup (½ pint, 8 fl. oz).
Meat and Meat Alternates (*Optional*)	
Lean meat or poultry or fish	1 oz.
or	
Cheese	1 oz.
or	
Eggs	1 large egg.
or	
Cooked dry beans or peas	½ cup.
or	
Peanut butter or an equivalent quantity of any combination of meat/meat alternate.	2 Tbsp.

[1] For the purposes of the requirement outlined in this subsection, a cup means a standard measuring cup.
[2] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain, enriched or fortified.
[3] Serving sizes and equivalents to be published in guidance materials by FNS.
[4] Either volume (cup) or weight (oz.), whichever is less.
[5] Milk shall be served as a beverage or on cereal, or used in part for each purpose.

Lunch or Supper [2]

(2) The minimum amounts of food components to be served as lunch or supper are as follows:

Food components	Minimum amount
Meat and Meat Alternates	
Lean meat or poultry or fish	2 oz.
or	
Cheese	2 oz.
or	
Eggs	1 large egg.
or	
Cooked dry beans or peas	1/2 cup.[1]
or	
Peanut butter or an equivalent quantity of any combination of meat/meat alternate.	4Tbsp.
Vegetables and Fruits	
Vegetable(s) and/or fruit(s) [2]	3/4 cup total.
Bread and Bread Alternates [3]	
Bread	1 slice.
or	
Cornbread, biscuits, rolls, muffins, etc.	1 serving.[4]
or	
Cooked pasta or noodle products	1/2 cup.
or	
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	1/2 cup.
Milk	
Milk, fluid, served as a beverage	1 cup (1/2 pint, 8 fl. oz.).

[1] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.
[2] Serve 2 or more kinds of vegetable(s) and/or fruit(s) or a combination of both. Full-strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.
[3] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain or enriched or fortified.
[4] Serving sizes and equivalents to be published in guidance materials by FNS.

Supplemental Food [3]

(3) The minimum amounts of food components to be served as supplemental food are as follows. Select

[1] Children age 12 and up may be served adult-size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section.

[2] Children age 12 and up may be served adult-size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section.

two of the following four components. (Juice may not be served when milk is served as the only other component.)

Food components	Minimum amount
Meat and Meat Alternates	
Lean meat or poultry or fish	1oz.
or	
Cheese	1oz.
or	
Eggs	1 large egg.
or	
Cooked dry beans or peas	½ cup.[1]
or	
Peanut butter or an equivalent quantity of any combination of meat/meat alternate.	2 Tbsp.
Vegetables and Fruits	
Vegetable(s) and/or fruit(s)	¾ cup.
or	
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s), and juice.	¾ cup (6 fl. oz.)
Bread and Bread Alternates [2]	
Bread	1 slice.
or	
Cornbread, biscuits, rolls, muffins, etc.[3].	1 serving.
or	
Cold dry cereal [4]	¾ cup or 1 oz.
or	
Cooked cereal	½ cup.
or	
Cooked pasta or noodle products	½ cup.
or	
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	½ cup.
Milk [5]	
Milk, fluid	1 cup (½ pint, 8 fl. oz.).

[1] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.
[2] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour, cereal shall be whole-grain or enriched or fortified.
[3] Serving sizes and equivalents to be published in guidance materials by FNS.
[4] Either volume (cup) or weight (oz.), whichever is less.
[5] Milk should be served as a beverage or on cereal, or used in part for each purpose.

(c) Meat or meat alternate. Meat or meat alternates served under the Program are subject to the following requirements and recommendations.

(1) The required quantity of meat or meat alternate shall be the quantity of the edible portion as served. These foods must be served in a main dish, or in a main dish and one other menu item.

(2) Cooked dry beans or peas may be used as a meat alternate or as a vegetable, but they may not be used to meet both component requirements in a meal.

(3) Textured vegetable protein products, cheese alternate products, and enriched macaroni with fortified protein may be used to meet part, but not all, of the meat/meat alternate requirement. The Department will provide guidance on the part of the meat/meat alternate requirement which these foods may be used to meet. If enriched macaroni with fortified protein is served as a meat alternate, it shall not be counted toward the bread requirement.

(4) If the sponsor believes that the recommended portion size of any meat or meat alternate is too large to be appealing to children, the sponsor may reduce the portion size of that meat or meat alternate and supplement it with another meat or meat alternate to meet the full requirement.

(d) *Varying Amounts.* The State agency may authorize the sponsor to serve food in smaller quantities than are indicated in paragraph (b) of this section to children under six years of age if the State agency determines that the sponsor has the capability to ensure that variations in portion size are in accordance with the age levels of the children served. In such cases, the sponsor shall follow the age-appropriate meal pattern requirements contained in the Child Care Food Program regulations (7 CFR Part 226).

(e) *Infant meal patterns.* Sponsors approved to serve children under one year of age shall be required to comply with the applicable meal requirements contained in the Child Care Food Program regulations (7 CFR Part 226).

(f) *Additional foods.* To improve the nutrition of participating children, additional foods may be served with each meal.

(g) *Temporary unavailability of milk.* If emergency conditions prevent a sponsor normally having a supply of milk from temporarily obtaining milk deliveries, the State agency may approve the service of breakfasts, lunches or suppers without milk during the emergency period.

(h) *Continuing unavailability of milk.* The inability of a sponsor to obtain a supply of milk on a continuing basis shall not bar it from participation in the program. In such cases, the State agency may approve service of meals without milk, provided that an equivalent amount of canned, whole dry or nonfat dry milk is used in the preparation of the components of the meal set forth in the tables included in this section. In addition, the State agency may approve the use of nonfat dry milk in meals served to children participating in activities which make the service of fluid milk impracticable, and in locations which are unable to obtain fluid milk. Such authorization shall stipulate that nonfat dry milk be reconstituted at normal dilution and under sanitary conditions consistent with State and local health regulations.

(i) *Statewide substitutions.* In American Samoa, Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, the following variations from the meal requirements are authorized: a serving of a starchy vegetable, such as ufi, tanniers, yams, plantains, or sweet potatoes may be substituted for the bread requirements.

(j) *Individual substitutions.* Substitutions may be made by sponsors in food listed in paragraph (b) of this section if individual participating children are unable, because of medical or other special dietary needs, to consume such foods. Such substitutions shall be made only when supported by a statement from a recognized medical authority which includes recommended alternate foods. Such statement shall be kept on file by the sponsor.

(k) *Special variations.* FNS may approve variations in the food components of the meals on an experimental or a continuing basis for any sponsor where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic, or physical needs.

(l) *Donated commodities.* Institutions shall efficiently use in the Program any foods donated by the Department and accepted by the institution.

(m) *Plentiful foods.* Institutions shall in so far as practicable, purchase and efficiently use in the Program foods designated as plentiful by the Department.

(n) *Sanitation.* Institutions shall ensure that in storing, preparing, and serving food, proper sanitation and health standards are met which conform with all applicable State and local laws and regulations. Institutions shall ensure that adequate facilities are available to store food or hold meals.

(o) *Additional provision.* The State agency may allow sponsors which serve meals prepared in schools participating in the National School Lunch or School Breakfast Programs to substitute the meal pattern requirements of the regulations governing those programs (7 CFR Part 210 and 7 CFR Part 220, respectively) for the meal pattern requirements contained in this section.

§ 225.21 Free meal policy.

(a) As part of the application, applicants shall submit a statement of their policy for serving free meals at all sites under their jurisdiction. No application may be approved unless its accompanying policy statement is approved. The policy statement shall consist of an assurance to the State agency that all children are served the same meals at no separate charge and that there is no discrimination in the course of the food service.

(b) In addition, the policy statement for camps and other programs not eligible under § 225.2 (areas in which poor economic conditions exist (1)) that charge separately for meals shall include the following:

(1) A statement that the eligibility standards conform to the Secretary's family size and income standards for free and reduced-price school meals;

(2) A description of the method for accepting applications;

(3) A description of the method for collecting payments from children who pay the full price of the meal while protecting the anonymity of children receiving a free meal.

(4) An assurance that the camp will establish a hearing procedure for families wishing to appeal a denial of an application for free meals which provides for the following:

(i) That a simple, publicly announced method will be used for a family to make an oral or written request for a hearing;

(ii) That the family will have the opportunity to be assisted or represented by an attorney or other person;

(iii) That the family will have an opportunity to examine the documents and records supporting the decision being appealed both before and during the hearing;

(iv) That the hearing will be reasonably prompt and convenient for the family;

(v) That adequate notice will be given to the family of the time and place of the hearing;

(vi) That the family will have an opportunity to present oral or documentary evidence and agruments supporting its position;

(vii) That the family will have an opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses;

(viii) That the hearing shall be conducted and the decision made by a hearing official who did not participate in the action being appealed;

(ix) That the decision shall be based on the oral and documentary evidence presented at the hearing and made a part of the record;

(x) That the family and any designated representative shall be notified in writing of the decision;

(xi) That a written record shall be prepared for each hearing which includes the action being appealed, any documentary evidence and a summary of oral testimony presented at the hearing, the decision and the reasons for the decision, and a copy of the notice sent to the family; and

(xii) That the written record shall be maintained for a period of three years following the conclusion of the hearing, during which it shall be available for examination by the family or its representatives at any reasonable time and place.

(5) An assurance that, if a family requests a hearing, the child shall continue to receive free meals until a decision is rendered;

(6) An assurance that there will be no overt identification of free meal recipients and no discrimination against any child on the basis or race, color, national origin, age or handicap.

(c)(1) Each sponsor shall annually announce in the media serving the area from which it draws its attendance, the availability of free meals. Camps and other programs not eligible under § 225.2 ("areas in which poor economic conditions exist (1)") shall annually announce to all participants the availability of free meals for eligible children. All media releases issued by camps and other programs not eligible under § 225.2 ("areas in which poor economic conditions exist (1)") shall include the Secretary's family-size and income standards and shall state that meals are available without regard to race, color or national origin;

(d) For purposes of determining eligibility for free meals, camps and other programs not eligible under § 225.2 ("areas in which poor economic conditions exist (1)") shall distribute applications for meals to parents or guardians of children enrolled in the program. The application, and any other descriptive material distributed to such persons, shall contain only the family-size and income levels for reduced-price eligibility with an explanation that households with incomes less than or equal to these values would be eligible for free meals. Such forms and descriptive material may not contain the income standards for free meals. The application shall include the social security numbers of all adult members of the household.

Subpart E—Miscellaneous Provisions

§ 225.22 Other provisions.

(a) *Grant closeout procedures.* Grant closeout procedures for the Program shall be in accordance with Attachment K of the Office of Management and Budget Circular A-110 (41 FR 32016, July 30, 1976), or Attachment L of the Office of Management and Budget Circular A-102 (42 FR 45828, September 12, 1977), whichever is applicable.

(b) *Termination for cause.* (1) FNS may terminate a State agency's participation in the Program in whole, or in part, whenever it is determined that the State agency has failed to comply with the conditions of the Program. FNS shall promptly notify the State agency in writing of the termination and reason for the termination, together with the effective date and shall allow the State 30 calendar days to respond. In instances where the State does respond, FNS shall inform the State of its final determination no later than 30 calendar days after the State responds. (2) A State agency shall terminate a sponsor's participation in the Program by written notice whenever it is determined by the State agency that the sponsor has failed to comply with the conditions of the Program. (3) When participation in the Program has been terminated for cause, any funds paid to the State agency or a sponsor or any recoveries by FNS from the State agency or by the State agency from a sponsor shall be in accordance with the legal rights and liabilities of the parties.

(c) *Termination for convenience.* FNS and the State agency may agree to terminate the State agency's participation in the Program in whole, or in part, when both parties agree that the continuation of the Program would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The State agency shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Department shall allow full credit to the State agency for the Federal share of the noncancellable obligations properly incurred by the State agency prior to termination. A State agency may terminate a sponsor's participation in the manner provided for in this paragraph.

(d) *Maintenance of effort.* Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under the Act and a certification to this effect shall become part of the agreement provided for in § 225.3(c).

(e) *Program benefits.* The value of benefits and assistance available under the Program shall not be considered as income or resources of recipients and their families for any purpose under Federal, State of local laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs.

(f) *State requirements.* Nothing contained in this part shall prevent a State agency from imposing additional operating requirements which are not inconsistent with the provisions of this part, provided that such additional requirements shall not deny the Program to an area in which poor economic conditions exist, and shall not result in a significant number of needy children not having access to the Program. Prior to imposing any additional requirements, the State agency must receive approval from FNSRO.

(g) *Fraud penalty.* Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this part, whether received directly or indirectly from the Department or whoever receives, conceals, or retains such funds, assets, or property to his use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of $100 or more, be fined not more than $100,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(h) *Claims adjustment authority.* The Secretary shall have the authority to determine the amount of, to settle, and to adjust any claim arising under the Program, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of the Program. This provision shall not diminish the authority of the Attorney General of the United States under section 516 of Title 28, U.S. Code, to conduct litigation on behalf of the United States.

§ 225.23 Program information.

Persons desiring information concerning the Program may write to the appropriate State agency or Regional Office of FNS as indicated below:

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FNS, U.S. Department of Agriculture, 33 North Avenue, Burlington, MA 01803.

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, One Vahlsing Center, Robbinsville, NJ 08691.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street NW., Atlanta, GA 30367.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 536 South Clark Street, Chicago, IL 60605.

(e) In the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5–C–30, Dallas, TX 75202.

(f) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 2420 West 26th Avenue, Room 430, Denver, CO 80211.

(g) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, CA 94108.

(Catalog of Federal Domestic Assistance Programs No. 10.559, Summer Food Service Program for Children).

(The Summer Food Service Program for Children is subject to Part III of Attachment A of OMB Circular No. A–95 (revised). Part III requires that Governors or their designated Plan review agency be given the opportunity to review the State plans required by Program regulations.)

Note.—The reporting and recordkeeping requirements contained in this rule are subject to review by OMB under the Paperwork Reduction Act and are not effective until approved by OMB.

Dated: December 4, 1981.

David B. Alspach,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 81-35310 Filed 12-10-81; 8:45 am]

BILLING CODE 3410-30-M

---

7 CFR Part 272

Food Stamp Program; Bilingual Services

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of intent to propose rulemaking.

SUMMARY: This action announces that the Department is considering publishing proposed rules amending the bilingual services requirements of the Food Stamp Program. The Department is soliciting public comments on the bilingual services regulations to determine whether current procedures have been effective in lowering barriers to participation for non-English speaking low-income households as well as whether the procedures are administrtively burdensome. Interested individuals and groups are invited to submit any comments, views, or arguments they may have as to whether or not the bilingual services rules should be changed and, if so, what changes should be made. Following the close of the 120 day comment period, the Department will analyze the comments submitted and, if necessary, formulate a proposed rule amending § 272.4 and pertinent provisions such as § 272.1(g). This proposed rule would then be subject to public comment and a final rule would be issued.

DATE: Comments must be received on or before April 12, 1982, to be assured of consideration.

ADDRESS: Comments should be submitted to Thomas J. O'Connor, Jr., Supervisor, Policy and Regulations Section, Program Standards Branch, Program Development Division, Food and Nutrition Service, USDA, Washington, D.C. 20250. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday), at 500 12th Street, S.W., Room 678, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Thomas J. O'Connor, Jr., Supervisor, Policy and Regulations Section, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C. 20250; Phone (202) 447–9075.

SUPPLEMENTARY INFORMATION:

Classification:

This action has been reviewed under Executive Order No. 12291 and Secretary's Memorandum No. 1512–1. This action will not result in an annual effect on the economy of $100 million or more or a major increase in cost or price for consumers, individuals, Federal, State or local governments, or geographical regions. Additionally, this action will not have significant effects on competition, employment, investment, productivity, innovation, or

the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this action has been classified "not major."

This action has also been reviewed with regard to the requirements to the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). Mr. G. William Hoagland, Administrator, Food and Nutrition Service, has certified that this action has no economic impact on small entities. This action simply announces that the Department is considering amending current regulations on the provision of bilingual services to non-English speaking low-income households.

Background

The use of bilingual services was mandated by Section 11(e) of the Food Stamp Act of 1977 (Pub. L. 95-113). The Department published regulations establishing procedures for bilingual services in the October 17, 1978 Federal Register (43 FR 47846). A technical amendment to these rules was published in the June 8, 1979 Federal Register (44 FR 33380) to correct a minor oversight. The Department's regulations prescribed various methods for State agencies to use in determining which project areas needed bilingual services. The rules also specified the type of services and the form and content of bilingual printed materials to be used. Since the final regulations were implemented, various State agencies have experienced difficulties in isolating project areas where bilingual services would be needed as well as in providing appropriate non-English language material sand services. The Department is interested in determining whether the procedures established in 1978 have been effective in lowering barriers to participation for non-English speaking low-income households. The Department is also interested in evaluating the administrative feasibility of the current procedures.

Assessing Need for Bilingual Services

Section 11(e) of the Food Stamp Act of 1977 requires State agencies to "* * * use appropriate bilingual personnel and printed material in the administration of the program in those portions of political subdivisions in the State in which a substantial number of members of low-income households speak a language other than English * * *." The Department's regulations require State agencies to provide certification materials and bilingual staff or interpreters in each certification office that provides service to an area containing 100 or more low-income households which speak the same non-english language ("single language minority households"). In project areas with less than 100 low-income households, these services are required if a majority of the low-income households are of a single language minority. See 7 CFR 272.4(c).

The October 1978 regulations also required State agencies to provide appropriate language outreach materials in each project area containing 2000 or more low-income households where over 5 percent of these households are of the same single-language minority In project areas containing less than 2000 low-income households, bilingual materials were required if 100 or more of these households were of a single-language minority. Project areas which are required to provide bilingual certification materials and bilingual staff or interpreters were also required to provide bilingual outreach materials.

Section 111 of the 1981 Omnibus Reconciliation act (Pub. L. 97-35) eliminated the mandatory requirements for outreach activities and prohibited Federal reimbursement to State agencies for the administrative costs of their outreach programs. The Department amended its regulations to delete the outreach requirements yet maintained procedures for informing applicants and participants of certain aspects of the program such as rights and responsibilities (46 FR 44712). The amended regulations adopt the same criteria to determine the need for bilingual program informational activities which, prior to the new Act, were used to gauge the need for bilingual outreach materials.

The above procedures were developed to establish a fairly uniform system for providing adequate bilingual services, and yet to offer bilingual services to sparsely populated areas in which a non-English language may predominate. As a result, many certification offices must determine the number of low-income households in the project area as well as the number of low income single-language minority households for each non-English language spoken in the area.

The regulations require State agencies to develop estimates of the number of low-income single-language minority households, both participating and nonparticipating, in each project area and certification office. The regulations suggest various sources of information such as census data and community service organizations which could be used in determining the need for bilingual services. If these sources do not provide sufficient information, each certification office must record the number of single-language minorities which visit the office. If more than 100 single language minority households visit a certification office during a 6 month period, that office must provide bilingual staff or interpreters. State agencies must also combine the figures they collected in each certification office within a project area to determine whether bilingual informational material is required in that project area.

The procedures for determining need for bilingual services have been criticized for not responding to the needs of individual States and localities. The Department is concerned that bilingual services reach all localities where they are necessary and, at the same time, that such services are not consistently required in areas where they are not needed. The Department is thus interested in comments on whether the regulations should be amended to give State agencies greater flexibility in providing bilingual services, or whether the regulations should be expanded to take into account more fully the particular circumstances of various localities.

The Department is interested in determining whether the suggested sources provide adequate information for estimating the number of low-income single-language minorities and whether the presence of the prescribed number or density of single-language minority households in a project area is an adequate indicator of the need for bilingual services in that area. Because the regulations do not prescribe a method for State agencies to use in determining the total number of low-income households (including non-participating households and households which do speak English) in each project area, the Department is interested in learning whether State agencies have experienced difficulties in making these determinations. Because the requirement for outreach activities has been replaced by a requirement for program information activities, both this requirement and the mandate for bilingual certification material and staff or interpreters are now directed towards the same group of individuals, i.e., non-English speaking participants and

applicants. The Department thus believes that a separate formula for determining the need for bilingual information activities may no longer be necessary. Interested parties are encouraged to comment on this issue.

Implementation and Review of Bilingual Needs and Services

Section 272.1(g)(1)(vii) of the regulations establishes procedures for implementing the bilingual requirements. State agencies are required to assess the need for bilingual services in particular certification offices and project areas and advise FNS of their determinations. If a State agency cannot determine, based on available information sources, whether or not bilingual services are required in a particular project area, it must so notify FNS and develop procedures to record the number of non-English speaking low-income households which contact each certification office in that project area. The regulations do not specify how often State agencies should reassess the need for bilingual services in particular project areas and whether and how often the results of such assessments should be reported to FNS. Similarly, State agencies are not required to prepare a plan describing how they are assessing the need for bilingual services and how such services are being provided.

The Department is interested in determining whether State agencies have been able to keep informed about the need for bilingual services in particular project areas. Interested parties are encouraged to comment on whether State agencies should be required to periodically reassess and report their need for bilingual services. Commentors who believe the Department should establish procedures for State agencies to use in reassessing the need for bilingual services should specify how often this need should be reassessed. Comments are also encouraged on the question of whether State agencies should be required to submit to FNS a description of the procedures they are using or intend to use in assessing and providing for bilingual needs. The Department is especially interested in comments on whether the planning and reporting burden for State agencies should be increased if State agencies are given greater flexibility in assessing bilingual needs and providing appropriate services.

Developing Bilingual Materials

State agencies are currently responsible for developing and providing bilingual certification material whenever such material is required. Certification material includes the food stamp application form, change report form and notices to households. If a certification office is required to use several languages in notifying households, it may print a notice in English and provide statements in other languages summarizing the purpose of the notice. The preamble to the October 17, 1978 regulations indicated that FNS would assist State agencies in developing such materials.

The Department is interested in determining whether bilingual certification material has helped to remove obstacles to participation for non-English speaking households and whether State agencies have experienced difficulties in providing bilingual certification materials. Commentors who have found the production of bilingual material to be an undue administrative burden are encouraged to suggest alternate procedures for providing bilingual services. The Department also encourages comments on whether a sheet explaining in detail the contents of each form or notice might be preferable to an exact translation of the English forms or notice. Similarly, comments are encouraged regarding the administrative ease and effectiveness of providing bilingual summaries of notices. Commenters should indicate whether they believe that the practice of providing statements in non-English languages summarizing the purpose of certain notices should be expanded to cover other notices and certification materials.

Conclusion

The Department has not decided whether or not any amendments to the bilingual requirements will be necessary. The decisions that are made will depend largely on the information received in response to this notice. Therefore, we encourage all interested parties to submit any comments they may have. All comments and suggestions will be given full consideration during the preparation of proposed rulemaking.

(91 Stat. 958 (7 U.S.C. 2011–2027))

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps)

Dated: December 7, 1981.

David B. Alspach,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 81-35423 Filed 12-8-81; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Stabilization and Conservation Service

7 CFR Part 701

Conservation and Environmental Programs

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture, (USDA).

ACTION: Proposed rule.

SUMMARY: The Agricultural Stabilization and Conservation Service (ASCS) proposes to amend the regulations governing the Forestry Incentives Program (FIP). Under the proposed rule, the maximum level at which ASCS will share the costs with landowners for performing a practice under the program would be reduced from 75 percent to 65 percent of the actual cost of performing such practice. The effect of the proposed rule would be to make assistance under the program available to a greater number of producers within the funding limits established for the program.

DATE: Comments must be received on or before February 8, 1982, in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments to: Director, Conservation and Environmental Protection Division, ASCS, USCS, USDA, P.O. Box 2415, Washington, D.C. 20013, telephone 202–447–6221.

FOR FURTHER INFORMATION CONTACT: John R. Henry, Chief, Conservation Program Branch, Conservation and Environmental Protection Division, ASCS, USDA, P.O. Box 2415, Washington, D.C. 20013, telephone 202–447–7333. The draft Impact Analysis describing the options considered in developing this rule is available on request from the above named office.

SUPPLEMENTARY INFORMATION: This action has been reviewed in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified as "not major." It has been determined that these program provisions will not result in: (1) an annual effect on the economy of $100 million or more; (2) major increase in costs or prices for consumers, individuals, industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal Assistance Program to which this notice applies are: Title—Forestry Incentives Program; Number—10.064; as found in the Catalog of Federal Domestic Assistance. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local governments are informed of this action.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since ASCS is not required to publish a notice of proposed rulemaking pursuant to 5 U.S.C. 553 or any other provision of law with respect to the subject matter of this rule.

The FIP is authorized by Section 4 of the Cooperative Forestry Assistance Act of 1978 (Pub. L. 95-313, 92 Stat. 365). Under the program, the Secretary of Agriculture is authorized, in consultation with a committee of at least five State foresters or equivalent State officials, to develop and implement a forestry incentives program to encourage the development and protection of the Nation's nonindustrial private forest lands. The purpose of the program is to encourage landowners to apply forestry practices that will provide for the forestation of suitable open lands and reforestation of cutover or understocked forest lands. The program is also designed to encourage intensive multipurpose forest resource management and protection in order that cost-effective timber production and other related forest resource benefits can be realized.

The proposed change in the regulations would reduce the maximum level at which ASCS will cost-share with a landowner for performing a practice under the program from 75 percent to 65 percent of the actual cost incurred by the landowner. Because of the high demand for assistance under the program and the limited funding available, it has been difficult for the Department to fund otherwise eligible FIP applicants. It is felt that if a maximum cost-share level of 65 percent were imposed under FIP, the available program funds could be used more effectively thus achieving the maximum forestry benefits possible. Comments on the proposed rule will be received and considered for a period of 60 days after the date of the publication of this proposed rule in the **Federal Register**. (On or before February 8, 1982)

Any comments that are offered during the public comment period for this amendment to the regulations will be evaluated in the development of the final rule.

Proposed Rule

PART 701—CONSERVATION AND ENVIRONMENTAL PROGRAMS

Accordingly, it is proposed that 7 CFR 701.37(b) be revised to read as follows:

§ 701.37 Level and rates of cost-sharing.

* * * * *

(b) Levels of cost-sharing shall be approved by the State ASC committee and shall not be in excess of 65 percent of actual costs incurred by the landowners.

* * * * *

Signed at Washington, D.C., December 3, 1981.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 81-35329 Filed 12-10-81; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 357

[Docket No. RM82-5]

Proposed Rulemaking To Amend Annual Report Of Carriers By Pipeline: Form P

Issued: December 4, 1981.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to revise Form P, which is an annual report filed by oil pipeline companies in accordance with § 357.2 of the Commission's regulations (18 CFR 357.2). The proposed revisions will include deleting certain schedules and data columns in the Form P, adding new data elements, and consolidating and clarifying other information in the form. The Commission proposes to designate this revised annual report as "FERC Form No. 6 Annual Report of Oil Pipeline Companies". The proposed revisions are made as part of the Commission's ongoing program to review all of its reporting requirements and to eliminate those requirements that are not necessary to the performance of the Commission's responsibilities.

DATES: Written comments are due February 2, 1982.

ADDRESSES: Comments to this Notice should be sent to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 and should reference Docket No. RM82-5.

Copies of the proposed Form No. 6 are available at: Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol Street, NE., Room 1000, Washington, D.C. 20426 (202) 357-8055.

FOR FURTHER INFORMATION CONTACT: Elaine Dawson, Office of Chief Accountant, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 3405N, Washington, DC 20426 (202) 357-9190.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (Commission) is proposing to amend the annual report, Form P, which oil pipeline companies file in accordance with § 357.2 of the Commission's regulations (18 CFR 357.2). The Commission proposes to replace Form P with "FERC Form No. 6, Annual Report of Oil Pipeline Companies".[1] The proposed Form No. 6 is modeled after Form P but deletes certain schedules that collect information not pertinent to the Commission's regulation of these companies and includes other information requirements. This proposal is part of the Commission's ongoing program to review its reporting requirements and reduce unnecessary burdens by eliminating the collection of data that are not necessary to the performance of the Commission's regulatory responsibilities.

A. Background

Authority to regulate oil pipline companies was transferred from the Interstate Commerce Commission (ICC) to this Commission by section 402(b) of the Department of Energy Organization Act (DOE Act). (42 U.S.C. 717(b)) [2]

The authority in section 402(b) to regulate the rates and charges of oil pipeline companies is provided in section 1 of the Interstate Commerce Act (ICA) (49 U.S.C. 1). The ability of the Commission to regulate rates effectively depends on its authority to collect pertinent information from the regulated companies. The Commission, therefore,

---

[1] The proposed Form No. 6 (Appendix C) is not being printed in the **Federal Register**. Copies of the proposed form are available at the Commission's Division of Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8055.

[2] Section 402(b) provides that: [t]here are hereby transferred to, and vested in, the Commission all functions and authority of the Interstate Commerce Commission or any officer of component of such Commission where the regulatory function establishes rates and charges for the transportation of oil by pipeline or establishes the valuation of any such pipeline.

exercises the authority under Section 20 of the ICA to require pipeline companies to file annual reports that include that information.[3]

Annual Report Form P was developed by the ICC to collect information that would enable it to carry out its rate regulation responsibility under the ICA. The form had been specifically required in § 1241.61 of the ICC's regulations (49 CFR 1241.61).[4] The Commission believes that many of the schedules in the report have been modeled after schedules in annual reports that were filed by other comon carriers regulated by the ICC. Such carriers were subject to a broader regulatory scheme than oil pipeline companies. Therefore, some of the information collected on Form P is unnecessary for the rate regulation of pipeline companies. For example, Schedule 205, "Compensating Balances and Short-Term Borrowing Arrangements," and Schedule 206, "Special Deposits," were included in Form P to collect information relating to Security and Exchange Commission disclosure requirements.

The Commission has also determined that some of the information collected by Form P need not be collected in the detail required by that report. For example, Schedule 210, "Notes Receivable," collects detailed information which could be obtained by the Commission from a specific company if the Commission determines at a later date that the information is necessary for rate regulation. A total figure for notes receivable is collected, however, on Schedule 200, "Comparative Balance Sheet Statement," which is not proposed to be revised in this rulemaking.

The Commission believes that reporting the type of information described under Form P constitutes a filing burden on the oil pipeline companies that can be reduced without impairing the Commission's ability to effectively regulate the rates and charges of these companies. As a result of the changes proposed in this form, the respondent burden should be reduced by about 20 percent.

[3] Section 20 of the ICA authorizes the Commission to require reports from "carriers, lessors, and associations" and require answers to "questions upon which the Commission may deem information to be necessary * * *." This authority was transferred to the Commission in support of its responsibilities under section 402(b) of the DOE Act.

[4] By Order No. 119, (Docket No. RM81-8, issued December 19, 1980 46 FR 9043, January 28, 1981), the Commission transferred to Title 18 of the Code of Federal Regulations those regulations in Title 49 applicable to the Commission's oil pipeline jurisdiction. As part of this transfer, 49 CFR 1241.61 became 18 CFR 357.2.

The following are the proposals to revise Form P and to amend 18 CFR 357.2.

B. Proposed Revisions

The Commission proposes to revise Form P by redesignating that form as "FERC Form No. 6, Annual Report of Oil Pipeline Companies", by eliminating serveral schedules entirely, by eliminating columns from certain other schedules; and by redesigning the form and consolidating and clarifying the instructions. A new schedule would also be included to require certain additional information. The proposed revisions to the Form P are summarized on a chart in Appendix A attached to this notice.

The most significant deletions from the Form P are the deletions of the following schedules in their entirety:

Title of schedule and reference to schedule No. in Form P

Guaranties and suretyships, 110
Compensating balances and short-term borrowing arrangements, 205
Special deposits, 206
Notes receivable, 210
Accounts receivable, 212
Companies controlled through nonreporting intermediaries, 223
Sinking and other funds, 225
Rental expense of lessee, 243
Minimum Rental commitments, 244
Lessee disclosure, 245
Lease commitments—Present value, 246
Income impact—Leasee, 247
Notes payable, 250
Accounts payable, 252
Long-term debt changes during the year, 261
Security for long-term debt, 262
Stock liabilities for conversion of securities of other companies, 272
Abstracts of terms and conditions of leases, 342
Rentals, 420
Abstracts of leasehold contracts, 422
Compensation of officers, directors, etc., 562
Competitive bidding—Clayton Antitrust Act, 595 [1]

The new schedule to be added would be entitled, "Statement of Changes in Financial Position" (a copy of which is attached to this proposal as Appendix B). It would require additional information on the finanical condition of pipelines that would be reported in place of other deleted data.

The Commission proposes to amend § 357.2 of the Commission's regulations by redesignating "Form P' as "FERC Form No. 6, Annual Report of Oil Pipeline Companies". The format regulations would also be revised to describe more clearly the requirements for filing the form. The changes, however would not change the substance of the current regulations.

[1] The deletion of Schedule 595 in no way affects the requirement to file a statement of the competitive bidding transaction under 49 C.F.R. Part 1010.

C. Certification of No Significant Economic Impact

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires certain statements, descriptions, and analyses of proposed rules that will have a "significant economic impact on a substantial number of small entities".

Pursuant to section 605(b) of the RFA, the Commission certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Virtually all oil pipeline companies required to file the annual report are large entities. Moreover this rule, if promulgated, should result in an overall reduction in the filing burden on the oil pipeline companies as most of the proposed revisions either delete or consolidate the schedules presently including in the annual report.

V. Written Comment Procedures

The Commission invites interested persons to submit written data, views, and other information concerning matters set out in this notice. All comments in response to this notice should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 and should refer to Docket No. RM82–5. An original and 14 copies of such comments should be filed with the Commission by February 2, 1982.

All written submissions to this rulemaking will be placed in the Commission's public file and will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426, during regular business hours.

(Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 142 (1978); Interstate Commerce Act, 49 U.S.C. 1, et seq.)

In consideration of the foregoing, the Commission proposes to amend Part 357 of Subchapter R, Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 357—ANNUAL SPECIAL OR PERIODIC REPORTS; CARRIERS SUBJECT TO PART 1 OF THE INTERSTATE COMMERCE ACT

Section 357.2 is revised to read as follows:

§ 357.2 FERC No. 6, annual report of oil pipeline companies.

(a) *Prescription.* The form, Annual Report FERC Form No. 6 (Carriers by Pipeline), is prescribed for the year ending December 31, 1982, and for each year thereafter.

(b) *Filing Requirements.*—(1) *Who must file.* Each carrier by pipeline subject to the provisions of Section 20 of the Interstate Commerce Act, shall prepare and file with the Commission an original and conformed copies of FERC Form No. 6 pursuant to the General Instructions set out in that form.

(2) *When to file.* The report shall be filed on or before March 31st of the year following the year to which it relates.

The following Appendices A and B will not appear in the Code of Federal Regulations.

BILLING CODE 6717-01-M

PROPROSED REVISIONS - FORM P

Title	Schedule No.	Retain - As is	Retain - Revise Instructions	Retain - Delete Columns	Delete Complete Schedule	Explanation
Notice	-		X			In the final redesign format this page will become a part of the instructions, with minor editorial revisions.
Table of Contents	-		X			The title will be changed to "List of Schedules;" delete the page numbers;and add a column "Remarks" to indicate the schedules which are not applicable or omitted.
Identity of Respondent	101	X				
Directors	102		X	X		Revise instruction by deleting No. 2 to reflect the deletion of columns (c), (d), (e) and (f).
Principal General Officers	103			X		Delete column (d).
Corporate Control Over Respondent	108	X				
Stockholders Report	108A		X			To be included in the General Instructions with the non-filing reported in the List of Schedules.
Voting Powers and Elections	109			X		Column (e) and (f) merged into one column for reporting preferred stocks
Guaranties and Suretyships	110				X	
Comparative Balance Sheet Statement	200	X				Minor editorial revision to line numbers
Notes to above	200	X				Moved to separate page and to include all notes to the financial statements on a single schedule.
Income Statement	300	X				
Analysis of Federal Income and Other Taxes Deferred	300A	X				
Working Capital	302	X				
Notes and Remarks	-					Will be merged with one schedule to report all notes to the financial statements.
Unappropriated Retained Income Statement	305	X				
Dividend Appropriations of Retained Income	306			X		Delete columns (b) and (c).
Compensating Balances and Short-term Borrowing Arrangements	205				X	
Special Deposits	206				X	
Notes Receivable	210				X	
Receivables from Affiliated Companies	211	X				
Accounts Receivable	212				X	
General Instructions Concerning Returns in Schedules 220 and 221	-	X				
Investments in Affiliated Companies	220		X	X		Delete columns (e) through (h), (j) and (l).
Investments in Common Stocks of Affiliated Companies	220A	X				
Other Investments	221		X	X		Delete columns (d) through (g), (i) and (k).
Companies Controlled Directly by Respondent Other Than Through Title of Securities	222	X				
Companies Controlled Through Nonreporting Intermediaries	223				X	
Securities, Advances, and Other Intangibles Owned or Controlled through Nonreporting Carriers and Noncarrier Subsidiaries	224			X		Delete columns (c) and (e) and (g).
Sinking and Other Funds	225				X	
Carrier Property	230	X				
Depreciation Base and Rates - Carrier	231	X				
Depreciation Base and Rates - System	231a	X				
Accrued Depreciation - Carrier Property	232	X				
Accrued Depreciation - System Property	232A	X				

Title	Schedule No.	Retain - As is	Retain - Revise Instruction	Retain - Delete Columns	Delete Complete Schedule	Explanation
Amortization Base and Reserve	233	X				
Noncarrier Property	234	X				
Other Deferred Charges	240	X				
Rental Expense of Lessee	243				X	
Minimum Rental Commitments	244				X	
Lessee Disclosure	245				X	
Lease Commitments - Present Value	246				X	
Income Impact-Lessee	247				X	
Notes Payable	250				X	
Payables to Affiliated Companies	251	X				
Accounts Payable	252				X	
Long-Term Debt Payable Within One Year	253				X	Except column (l) relocated to schedule 260.
Long-Term Debt Payable After One Year	260		X	X		Delete columns (d) thru (h). Added one column for above.
Long-Term Debt Changes During the Year	261				X	
Security for Long-Term Debt	262				X	
Capital Stock	270			X		Delete columns (n), (o), (p), (r), (s) and (u). Revise heading for column (v) to read " Book Value."
Capital Stock Changes During the Year	271		X			Revise title headings for columns (d) and (i) to read: Number of Shares.
Stock Liability for Conversion of Securities of Other Companies	272				X	
Additional Paid-in Capital	274	X				
Appropriated Retained Income	275	X				
Operating Revenue Accounts	310	X				
Operating Expense Accounts	320	X				
Pipe-Line Taxes (Other Than Income Taxes)	330	X				
Income From Noncarrier Property	340			X		Delete column (d).
Abstracts of Terms and Conditions of Leases	342				X	
Interest and Dividend Income	345	X				
Miscellaneous Items in Income and Retained Income Accounts for the Year	360	X				
Statistics of Operations	400	X				
Miles of Pipe Line Operated at Close of Year	410	X				
Rentals	420				X	
Abstracts of Leasehold Contracts	422				X	
Employees and Their Compensation	561	X				
Compensation of Officers, Directors, etc.	562				X	
Payments for Services Rendered by Other Than Employees	563	X				
Important Changes During the Year	591	X				Schedule will be moved to the front of the form as part of the schedule for notes to financial statements.
Competitive Bidding - Clayton Antitrust Act	595				X	
Verification , Oath, Supplemental Oath	-		X			Delete the requirement for Notary and Supplemental Oath.
Memoranda (for use of Commission only)	-				X	
Index	-		X			Will be revised to reflect deleted schedules and renumbered schedules.
Statement of Changes in Financial Position	-					Schedule added to allow for a more complete financial presentation of the financial condition of the pipelines to compensate for the loss of deleted data.

* Data requirements will remain the same, with only a redesign in the format presentation.

Appendix B

SPECIMEN

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 19___

STATEMENT OF CHANGES IN FINANCIAL POSITION

1. This statement is not restricted to those items which are non-current in nature. It is intended that this statement be flexible enough in nature so that latitude can be given, under the classification of "Other," to allow for disclosure of all significant changes and transactions, whether they are within or without the current asset and liability groups.

2. If the notes to the funds statement in the respondent's annual report to stockholders are applicable in every respect to this statement, such notes should be attached to page 122.

3. Under "Other" specify significant amounts and group others.

4. Codes Used:
   (a) Such as net increase-decrease in working capital, etc., other than changes in short term investments shown as item 4(e).
   (b) Bonds, debentures and other long-term debt.
   (c) Net proceeds or payments.
   (d) Include commercial paper.
   (e) Identify separately such items as investments, fixed assets, intangibles, etc.

5. Enter on page 122 clarifications and explanations.

Line No.	SOURCES OF FUNDS *(See instructions for explanation of codes)* (a)	Amounts (b)
1	Funds from Operations	
2	Net Income	
3	Principal Non-Cash Charges (Credits) to Income	
4	Depreciation	
5	Amortization	
6	Provision for Deferred Taxes	
7	Other (Net)	
8		
9		
10		
11		
12	TOTAL Funds from Operations *(Enter Total of lines 2 thru 11)*	
13	Funds from Outside Sources (New Money)	
14	Long-Term Debt (b) (c)	
15	Capital Stock (c)	
16	Net Increase in Short-Term Debt (d)	
17	Other (Net)	
18		
19		
20		
21	TOTAL Funds from Outside Sources *(Enter Total of lines 14 thru 20)*	
22	Sale of Non-Current Assets (e)	
23		
24	Contributions from Associated and Subsidiary Companies	
25	Other (Net) (a)	
26		
27		
28	TOTAL Sources of Funds *(Enter Total of lines 12, 21, 22 thru 27)*	

SPECIMEN

SPECIMEN

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 19___

STATEMENT OF CHANGES IN FINANCIAL POSITION (Continued)

Line No.	APPLICATION OF FUNDS (a)	Amounts (b)
29	Gross Additions to Carrier Property	
30	Gross Additions to Noncarrier Property	
31	Other	
32		
33		
34		
35		
36	TOTAL	
37		
38	Dividends on Capital Stock	
39	Funds for Retirement of Securities and Short-Term Debt	
40	Long-term Debt (b) (c)	
41	Redemption of Capital Stock	
42	Net Decrease in Short-term Debt (d)	
43	Other (Net)	
44		
45		
46	Purchase of Other Non-Current Assets (e)	
47		
48		
49	Investments in and Advances to Associated and Subsidiary Companies	
50	Other (Net) (a):	
51		
52		
53	TOTAL Applications of Funds *(Enter Total of lines 36 thru 52)*	

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 19___

NOTES TO FINANCIAL STATEMENTS

1. Use the space below for important notes regarding the Balance Sheet, Statement of Income for the year, Statement of Retained Earnings for the year, and Statement of Changes in Financial Position, or any account thereof. Classify the notes according to each basic statement, providing a subheading for each statement except where a note is applicable to more than one statement.

2. If the notes to financial statements relating to the respondent company appearing in the annual report to the stockholders are applicable and furnish the data required by instructions above and on pages , such notes may be attached hereto.

SPECIMEN

[FR Doc. 81-35418 Filed 12-10-81; 8:45 am]
BILLING CODE 6717-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 168

[Docket No. 81N-0238]

Fructose; Advance Notice of Proposed Rulemaking on the Possible Establishment of a Standard

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is offering to interested persons an opportunity to review the Recommended International Standard for Fructose (Codex standard) developed by the Codex Alimentarius Commission and to comment on the desirability and need for a U.S. standard for this food. The Codex standard was submitted to the United States for consideration for acceptance. If the comments received do not support the need for a U.S. standard for the food, FDA will not propose a standard.

DATE: Comments by February 9, 1982.

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

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: The Food and Agriculture Organization (FAO) and the World Health Organization (WHO) jointly sponsor the Codex Alimentarius Commission, which conducts, a program for developing worldwide food standards. The program has developed a large number of Codex standards, among which is that for fructose.

As a member of the Codex Alimentarius Commission, the United States is under treaty obligation to consider all Codex standards for acceptance. The rules of procedure of the Codex Alimentarius Commission state that a Codex standard may be accepted by a participating country in one of three ways: full acceptance, target acceptance, or acceptance with specified deviations. A commitment to accept at a designated future date constitutes target acceptance. A country's acceptance of a Codex standard signifies that, except as provided for by specified deviations, a product that complies with the Codex standard may be distributed freely within the accepting country. A participating country that concludes that it will not accept a Codex standard is requested to inform the Codex Alimentarius Commission of this fact and the reasons therefor, the manner in which similar foods marketed in the country differ from the Codex standard, and whether the country will permit products complying with the Codex standard to move freely in that country's commerce.

For the United States to accept some or all of the provisions of a Codex standard for any food to which the Federal Food, Drug, and Cosmetic Act (the act) applies, it is necessary either to establish a standard under the authority of section 401 of the act (21 U.S.C. 341) or to revise an existing standard to incorporate the provisions within the U.S. standard. At present, there is no U.S. standard for fructose.

Under the procedure prescribed in § 130.6(b)(3) (21 CFR 130.6(b)(3)), FDA is providing an opportunity for review and informal comment (1) on the need for, and desirability of, a standard for this food, (2) on the specific provisions of the Codex standard and any modifications that should be included in a U.S. standard, if established, and (3) on any other pertinent points.

FDA advises that, in keeping with the current policy to limit the number of new regulations, if the comments received do not support the need for a U.S. standard for this food, no U.S. standard will be proposed. If this decision is reached, FDA will inform the Codex Alimentarius Commission that an imported food that complies with the requirements of the Codex standard may move freely in interstate commerce in this country providing it complies with applicable U.S. laws and regulations.

Owing to the large number of countries, often with diverse food regulations, that are associated with Codex, certain provisions found in Codex standards may not be in keeping with aspects of U.S. policy and regulations. Codex standards customarily include hygiene requirements, limits on contaminants, certain basic labeling requirements, and other factors. These factors are not considered a part of food standards under section 401 of the act. Rather, they are dealt with under other sections of the act and are not included in a proposed U.S. standard.

In addition, the Codex standard for fructose specifies analytical methods by which compliance with certain provisions is to be determined. As stated in 21 CFR 2.19, FDA uses the methods published in the latest edition of "Official Methods of Analysis of the Association of Official Analytical Chemists," when these are available, in preference to other methods. FDA will adhere to this policy in any U.S. standard proposed under this notice.

Under § 130.6(c), all persons who wish to submit comments are encouraged and requested to consult with different interested groups (consumers, industry, the academic community, professional organizations, and others) in formulating their comments, and to include a statement of any meetings or discussions that have been held with other groups.

The Codex standard under consideration is as follows:

[CAC/RS 102-1978]

Recommended International Sandard for Fructose

1. *Description:* Fructose is purified and crystallized D-fructose.

2. *Essential Composition and Quality Factors:*

2.1 *Specific Rotation*

$$[\infty]_D^{20} = \frac{100\,\infty}{1c} = -89° \text{ to } -93.5°$$

2.2 *Loss on drying* (5 hours at 70°C) not more than 0.5% m/m

2.3 *Conductivity Ash* not more than 0.1% m/m

2.4 *Colour* not more than 30 ICUMSA units

2.5 *pH (solution 10% m/m) 4.5-7.0*

3. *Food Additives:* Sulphur dioxide (residue from raw material) not more than 20 mg/kg

4. *Contaminants:*

4.1 Arsenic (As) not more than 1 mg/kg

4.2 Copper (Cu) not more than 2 mg/kg

4.3 Lead (Pb) [1]

5. *Hygiene:* It is recommended that the product covered by the provisions of this Standard be prepared in accordance with the appropriate sections of the General Principles of Food Hygiene recommended by the Codex Alimentarius Commission (Ref. No. CAC/RCP 1-1969).

6. *Labelling:* In addition to Sections 1, 2, 4 and 6.1 of the General Standard for the Labelling of Pre-packaged Foods (Ref. No. CAC/RS 1-1969), the following specific provisions apply:

6.1 *The Name of the Food:* The name of the product shall be "fructose", or "laevulose".

6.2 *Net Contents:* The net contents shall be declared by weight in either the metric "Systeme International" units) or avoirdupois or both systems of measurement, as required by the country in which the product is sold.

[1] The proposed maximum level of 2 mg/kg for lead has not been endorsed by the Codex Committee on Food Additives pending a revision of maximum levels for lead in Recommended International Standards for sugars.

6.3 *Name and Address:* The name and address of the manufacturer, packer, distributor, importer, exporter or vendor of the product shall be declared.

6.4 *Country of Origin:* The country of origin of the product shall be declared if its omission would mislead or deceive the consumer.

7. *Methods of Sampling and Analysis:* The methods of sampling and analysis referred to hereunder are international referee methods.[1]

7.1 *Determination of Specific Rotation:* The solution if prepared by dissolving 10 g of fructose in 50 ml of distilled water, adding 0.2 ml of diluted ammonia solution (10% m/m ammonia making up to 100ml with distilled water and allowing to stand for 30 minutes. Preparation of the solution and measurement of specific rotation should be carried out at 20°C ± 0.1°C. The specific rotation is calculated with reference to the anhydrous substance and according to the formula:

$$[\infty] \frac{20}{D} = \frac{100\infty}{1c}$$

Where:

∞ is the observed rotation

1 is the length of the observed layer in dm

c is the number of g of anhydrous substance contained in 100 ml of solution

7.2 *Determination of Loss on Drying:* According to the FAO/WHO Codex Alimentarius Methods of Analysis for Sugars (CAC/RM 1–1969, *Determinaton of Total Solids Content*), but dry the fructose at 70°C for 5 hours. Loss on drying is calculated according to the formula:

$$\% \text{ m/m loss on drying} = \frac{\text{sample mass (g)-dry samples mass (g)}}{\text{samples mass (g)}} \times 100$$

7.3 *Determination of Conductivity Ash:* According to the FAO/WHO Codex Alimentarius Methods of Analysis for Sugars (CAC/RM 8–1969, *Determinaton of Conductivity Ash*). Results are expressed as % m/m conductivity ash.

7.4 *Determination of Colour:* According to the FAO/WHO Codex Alimentarius Methods of Analysis for Sugars (CAC/RM 6–1969, *Determination of Colour*). Results are expressed in ICUMSA units.

7.5 *Determination of pH:* According to the ICUMSA method of pH measurement (ICUMSA Methods of Sugar Analysis, 1964, p. 59) except that a 10% m/m solution of fructose is used for the determination.

7.6 *Determination of sulphur dioxide:* According to the FAO/WHO Codex Alimentarius Methods of Analysis for Sugars (CAC/RM 4–1969, *Determination of sulphur dioxide*) (according to Monier-Williams method). Results are expressed as mg SO_2/kg.

7.7 *Determination of Arsenic:* According to the colorimetric (silver diethyldithiocarbamate) method of the Assocation of Official Analytical Chemists (Official Methods—AOAC 1975, 25.006–25.013). Results are expressed as mg arsenic/kg.

7.8 *Determination of Copper:* According to the ICUMSA method (ICUMSA Methods of Sugar Analysis, 1964, p. 106, b. *Copper*). Results are expressed as mg copper/kg.

7.9 *Determination of Lead:* According to the ICUMSA "wet-ashing" (ICUMSA Methods of Sugar Analysis, 1964, p. 48, c. "Wet-ashing" Procedure for Low Grade Product). Results are expressed as mg lead-kg.

Interested persons may, on or before February 9, 1982, submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Each comment should identify the title of the Codex standard and the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Executive Order 12291 does not apply to regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557). Food standards promulgated under 21 U.S.C. 341 and 371(e) fall under this exemption. However, any comments submitted in support of establishing a U.S. standard for this food should be supported by appropriate information and data regarding impact on small business consistent with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354).

Dated: December 4, 1981.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 81-35421 Filed 12-10-81; 8:45 am]

BILLING CODE 4160-01-M

[1] See last paragraph of the section of this publication entitled "Introduction".

---

21 CFR Part 168

[Docket No. 81N-0256]

Powdered Dextrose (Icing Dextrose); Advance Notice of Proposed Rulemaking on the Possible Establishment of a Standard

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is offering to interested persons an opportunity to review the Recommended International Standard for Powdered Dextrose (Icing Dextrose) (Codex standard) developed by the Codex Alimentarius Commission and to comment on the desirability and need for a U.S. standard for this food. The Codex standard was submitted to the United States for consideration for acceptance. If the comments received do not support the need for a U.S. standard for the food, FDA will not propose a standard.

DATE: Comments by February 9, 1982.

ADDRESS: Written comments, data, or other information to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF–214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–1164.

SUPPLEMENTARY INFORMATION: The Food and Agriculture Organization (FAO) and the World Health Organization (WHO) jointly sponsor the Codex Alimentarius Commission, which conducts a program for developing worldwide food standards. The program has developed a large number of Codex Standards, among which is that for powdered dextrose (icing dextrose).

As a member of the Codex Alimentarius Commission, the United States is under treaty obligation to consider all Codex standards for acceptance. The rules of procedure of the Codex Alimentarius Commission states that a Codex standard may be accepted by a participating country in one of three ways: full acceptance, target acceptance, or acceptance with specified deviations. A commitment to accept at a designated future date constitutes target acceptance. A country's acceptance of a Codex standard signifies that, except as provided for by specified deviations, a product that complies with the Codex standard may be distributed freely within the accepting country. A participating country that concludes that it will not accept a Codex standard is requested to inform the Codex Alimentarius Commission of this fact and the reasons therefore, the manner in which similar foods marketed in the country differ from the Codex standard, and whether the country will permit products complying with the Codex standard to move freely in that country's commerce.

For the United States to accept some or all of the provisions of a Codex standard for any food to which the Federal Food, Drug, and Cosmetic Act (the act) applies, it is necessary either to establish a standard under the authority of section 401 of the act (21 U.S.C. 341), or to revise an existing standard to incorporate the provisions within the U.S. standard. At present, there is no

U.S. standard for powdered dextrose (icing dextrose).

Under the procedure prescribed in § 130.6(b)(3) (21 CFR 130.6(b)(3)), FDA is providing an opportunity for review and informal comment (1) on the need for, and desirability of, a standard for this food, (2) on the specific provisions of the Codex standard and any modifications that should be included in a U.S. standard, if established, and (3) on any other pertinent points.

FDA advises that, in keeping with the current policy to limit the number of new regulations, if the comments received do not support the need for a U.S. standard for this food, no U.S. standard will be proposed. If this decision is reached, FDA will inform the Codex Alimentarius Commission that an imported food that complies with the requirements of the Codex standard may move freely in interstate commerce in this country providing it complies with applicable U.S. laws and regulations.

Owing to the large number of countries, often with diverse food regulations, that are associated with Codex, certain provisions found in Codex standards may not be in keeping with aspects of U.S. policy and regulations. Codex standards customarily include hygiene requirements, limits on contaminants, certain basic labeling requirements, and other factors. These factors are not considered a part of food standards under section 401 of the act. Rather, they are dealt with under other sections of the act and are not included in a proposed U.S. standard.

Section 7, "Methods of Analysis and Sampling" of the Codex standard does not specify analytical methods by which compliance with certain provisions is to be determined. As stated in 21 CFR 2.19, FDA uses the methods published in the latest edition of "Official Methods of Analysis of the Association of Official Analytical Chemists," when these are available, in preference to other methods. FDA will adhere to this policy in any U.S. standard proposed under this notice.

Under § 130.6(c), all persons who wish to submit comments are encouraged and are requested to consult with different interested groups (consumers, industry, the academic community, professional organizations, and others) in formulating their comments, and to include a statement of any meetings or discussions that have been held with other groups.

The Codex standard under consideration is as follows:

[CAC/RS 54-1971]

Recommended International Standard for Powdered Dextrose (Icing Dextrose)

1. *Description:* Powdered dextrose (icing dextrose) is finely pulverized *dextrose anhydrous* or *dextrose monohydrate* or mixtures thereof, with or without the addition of an anti-caking agent.

2. *Essential Composition and Quality Factors:*

2.1 *Optional Ingredients:* Starch not more than 5% m/m of the product, provided that no other anti-caking agent is used.

2.2 *Quality Criteria:* That part of powdered dextrose, other than the anti-caking agent or agents, shall conform to the following specifications:

2.2.1 *Reducing sugar content (dextrose equivalent):* not less than 99.5% m/m on a dry basis

2.2.2 *Total Solids Content:*

2.2.2.1 *Powdered dextrose* made from *dextrose anhydrous:* not less than 98.0% m/m

2.2.2.2 *Powdered dextrose* made from *dextrose monohydrate:* not less than 90.0% m/m

2.2.2.3 *Powdered dextrose* made from *dextrose anhydrous* or *dextrose monohydrate* or *mixtures thereof:* the total solids content shall be proportional to the characteristics of the mixture.

2.2.3 *Sulphoted ash* not more than 0.25% m/m on a dry basis

3. *Food Additives:*

3.1 *Sulphur dioxide* (residue resulting from the dextrose used) not more than 20 mg/kg

3.2 *Anti-caking agents:* The following may be used, singly or in combination, provided that starch is not present:

Calcium silicate;
Calcium phosphate, tribasic;
Magnesium carbonate;
Magnesium stearate;
Silicon dioxide, amorphous (dehydated silica gel);
Silicates:
  Magnesium trisilicate;
  Sodium calcium alumino-silicate; (not more than 1.5% m/m)

4. *Contaminants:*

4.1 Arsenic (As) not more than 1 mg/kg

4.2 Copper (Cu) not more than 2 mg/kg

4.3 Lead (PB) not more than 2 mg/kg

5. *Hygiene:* It is recommended that the product covered by the provisions of this Standard be prepared in accordance with the appropriate sections of the General Principles of Food Hygiene recommended by the Codex Alimentarius Commission (Ref. No. CAC/RCP 1-1969).

6. *Labelling:* In addition to Sections 1, 2, 4 and 6.1 of the General Standard for the Labelling of Prepackaged Foods (Ref. No. CAC/RS 1-1969), the following specific provisions apply:

6.1 *The Name of the Food:* The name of the food shall be Powdered Dextrose or Icing Dextrose. The name shall be accompanied by a reference to *dextrose anhydrous* or *dextrose monohydrate* appropriate or, in the case of mixtures, *dextrose anhydrous and dextrose monohydrate.*

6.2 *List of Ingredients:*

6.2.1 The presence of *starch* and the maximum amount present shall be declared on the label or container of powdered dextrose.

6.2.2 The presence of *anti-caking agents* (other than starch) shall be declared on the label or container of powdered dextrose either by the generic term "anti-caking agent" or by the chemical name, or names, of the specific anti-caking agent or agents present.

6.3 *Net Contents:* The net contents shall be declared by weight in either the metric ("Système International" units) or avoirdupois or both systems of measurement, as required by the country in which the product is sold.

6.4 *Name and Address:* The name and address of the manufacturer, packer, distributor, importer, exporter or vendor of the product shall be declared.

6.5 *Country of Origin:*

6.5.1 The country of origin of the product shall be declared if its omission would mislead or deceive the consumer.

6.5.2 When the product undergoes processing in a second country which changes its nature, the country in which the processing is performed shall be considered to be the country of origin for the purposes of labelling.

7. *Methods of Analysis And Sampling:* (To be finalized later).

Joint FAO/WHO Food Standards Programme—Codex Alimentarius Commission

Amendment 1 to CAC/RS 54-1971

September 1976

Amendment to the Endorsement of Food Additive Provisions in the Recommended International Standard for Powdered Dextrose (Icing Dextrose)

The Codex Alimentarius Commission, at its eleventh session, adopted the following change to the endorsement of food additive provisions in the above standard, CAC/RS 54-1971:

3.2 *Anti-caking agents*: Magnesium trisilicate changed from "endorsed" to "temporarily endorsed"

Issued by the Secretariat of the Joint FAO/WHO Food Standards Progamme, FAO, Rome.

Interested persons may, on or before February 9, 1982, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Each comment should identify the title of the Codex standard and the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Executive Order 12291 does not apply to regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557). Food standards promulgated under 21 U.S.C. 341 and 371(e) fall under this exemption. However, any comments submitted in support of establishing a

U.S. standard for this food should be supported by appropriate information and data regarding impact on small business consistent with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354).

Dated: December 4, 1981.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 81-35425 Filed 12-10-81; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 168

[Docket No. 81N-0260]

Powdered Sugar (Icing Sugar); Advance Notice of Proposed Rulemaking on the Possible Establishment of a Standard

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is offering to interested persons an opportunity to review the Recommended International Standard for Powdered Sugar (Icing Sugar) (Codex standard) developed by the Codex Alimentarius Commission and to comment on the desirability and need for a U.S. standard for this food. The Codex standard was submitted to the United States for consideration for acceptance. If the comments received do not support the need for a U.S. standard for the food, FDA will not propose a standard.

DATE: Comments by February 9, 1982.

ADDRESS: Written comments, data, or other information to the Dockets, Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF–214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–1164.

SUPPLEMENTARY INFORMATION: The Food and Agriculture Organization (FAO) and the World Health Organization (WHO) jointly sponsor the Codex Alimentarius Commission, which conducts a program for developing worldwide food standards. The program has developed a large number of Codex standards, among which is that for powered sugar (icing sugar).

As a member of the Codex Alimentarius Commission, the United States is under treaty obligation to consider all Codex standards for acceptance. The rules of procedure of the Codex Alimentarius Commission state that a Codex standard may be accepted by a participating country in one of three ways: full acceptance, target acceptance, or acceptance with specified deviations. A commitment to accept at a designated future date constitutes target acceptance. A country's acceptance of a Codex standard signifies that, except as provided for by specified deviations, a product that complies with the Codex standard be distributed freely within the accepting country.

A participating country that concludes that it will not accept a Codex standard is requested to inform the Codex Alimentarius Commission of this fact and the reasons therefor, the manner in which similar foods marketed in the country differ from the Codex standard, and whether the country will permit products complying with the Codex standard to move freely in that country's commerce.

For the United States to accept some or all of the provisions of a Codex standard for any food to which the Federal Food, Drug, and Cosmetic Act (the act) applies, it is necessary either to establish a standard under the authority of section 401 of the act (21 U.S.C. 341) or to revise an existing standard to incorporate the provisions within the U.S. standard. At present, there is no U.S. standard for powdered sugar (icing sugar).

Under the procedure prescibed in § 130.6(b)(3) (21 CFR 130.6(b)(3)), FDA is providing an opportunity for review and informal comment (1) on the need for, and desirability of, a standard for this food, (2) on the specific provisions of the Codex standard and any modifications that should be included in a U.S. standard, if established, and (3) on any other pertinent points.

FDA advises that, in keeping with the current policy to limit the number of new regulations, if the comments received do not support the need for a U.S. standard for this food, no U.S. standard will be proposed. If this decision is reached, FDA will inform the Codex Alimentarius Commission that an imported food that complies with the requirements of the Codex standard may move freely in interstate commerce in this country providing it complies with applicable U.S. laws and regulations.

Owing to the large number of countries, often with diverse food regulations, that are associated with Codex, certain provisions found in Codex standards may not be in keeping with aspects of U.S. policy and regulations. Codex standards customarily include hygiene requirements, limits on contaminants, certain basic labeling requirements, and other factors. These factors are not considered a part of food standards under section 401 of the act. Rather, they are dealt with under other sections of the act and are not included in a proposed U.S. standard.

Section 7, "Methods of Analysis and Sampling," of the Codex standard does not specify analytical methods by which compliance with certain provisions is to be determined. As stated in 21 CFR 2.19, FDA uses the methods published in the latest edition of "Official Methods of Analysis of the Association of Official Analytical Chemists," when these are available, in preference to other methods. FDA will adhere to this policy in any U.S. standard proposed under this notice.

Under § 130.6(c), all persons who wish to submit comment are encouraged and requested to consult with different interested groups (consumers, industry, the academic community, professional organizations, and others) in formulating their comments and to include a statement of any meetings or discussions that have been held with other groups.

The Codex standard under consideration is as follows:

CAC/RS 5–1969

Recommended International Standard for Powered Sugar (Icing Sugar)

1. *Description. Powdered sugar* (icing sugar) is finely pulverized *white sugar* with or without the addition of an *anti-caking agent.*

2. *Essential Composition and Quality Factors.*

2.1 *Optional ingredients:*

Starch—not more than 5% m/m of the product provided that no other anti-caking agent is used.

2.2 *Quality criteria.* That part of powdered sugar, other than the anti-caking agent or agents, shall conform to the following specifications:

2.2.1 *Polarization*—not less than 99.7° S.

2.2.2 *Invert sugar content*—not more than 0.04% m/m.

2.2.3 *Conductivity ash*—not more than 0.04% m/m.

2.2.4 *Loss of drying (3 hours at 105° C)*—not more than 0.1% m/m.

2.2.5 *Colour*—not more than 60 ICUMSA units.

3. *Food Additives:*

3.1 *Sulphur dioxide* (residue resulting from the white sugar used)—not more than 20 mg/kg.

3.2 *Anti-caking agents.* The following may be used, singly or in combination, provided that starch is not present:

Calcium phosphate, tribasic—not more than 1.5% m/m.

Magnesium carbonate—not more than 1.5% m/m.

Magnesium stearate—not more than 1.5% m/m.

Silicon dioxide, amorphous (dehydrated silica gel)—not more than 1.5% m/m.
Silicates:
Calcium silicate—not more than 1.5% m/m.
Magnesium trisilicate—not more than 1.5% m/m.
Sodium calcium aluminosilicate—not more than 1.5% m/m.

4. *Contaminants:*
4.1 Arsenic (As)—not more than 1 mg/kg.
4.2 Copper (Cu)—not more than 2 mg/kg.
4.3 Lead (Pb)—not more than 2 mg/kg (temporarily endorsed).

5. *Hygiene.* It is recommended that the product covered by the provisions of this Standard be prepared in accordance with the appropriate sections of the General Principles of Food Hygiene recommended by the Codex Alimentarius Commission (Ref. N° CAC/RCP 1-1969).

6. *Labelling.* In addition to Sections 1, 2, 4 and 6.1 of the General Standard for the Labeling of Prepackaged Foods (Ref. N° CAC/RS 1-1969), the following specific provisions apply:

6.1 *The Name of the Food.* All products designated as *powdered sugar* or *icing sugar* must conform to this Standard and products not conforming may not be so designated.

6.2 *List of Ingredients:*
6.2.1 The presence of *starch* and the maximum amount present shall be declared on the label or containers of powdered sugar.
6.2.2 The presence of anti-caking agents (other than starch) shall be declared on the label or container of powdered sugar either by the class title "anti-caking agent", or by the chemical name or names of the specific anti-caking agent or agents present.

6.3 *Net Contents.* The net contents shall be declared by weight in either the metric ("Système International" units) or avoirdupois or both systems of measurement, as required by the country in which the product is sold.

6.4 *Name and Address.* The name and address of the manufacturer, packer, distributor, importer, exporter or vendor of the product shall be declared.

6.5 *Country of Origin:*
6.5.1 The country of origin of the product shall be declared if its omission would mislead or deceive the consumer.
6.5.2 When the product undergoes processing in a second country which changes its nature, the country in which the processing is performed shall be considered to be the country of origin for the purposes of labelling.

7. *Methods of Analysis and Sampling* (to be developed later).

Joint FAO/WHO Food Standards Programme, Codex Alimentarius Commission

Amendment 1 to CAC/RS 5-1969

September 1976.

Amendment to the Endorsement of Food Additive Provisions in the Recommended International Standard for Powdered Sugar (Icing Sugar)

The Codex Alimentarius Commission, at its eleventh session, adopted the following change to the endorsement of food additive provisions in the above standard, CAC/RS 5-1969:

3.2 *Anti-caking agents.* Magnesium trisilicate—changed from "endorsed" to "temporarily endorsed".

Issued by the Secretariat of the Joint FAO/WHO Food Standards Programme, FAO, Rome.

Interested persons may, on or before February 9, 1982, submit to the Dockets Management Branch (address above), written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Each comment should identify the title of the Codex standard and the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Executive Order 12291 does not apply to regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557). Food standards promulgated under 21 U.S.C. 341 and 371(e) fall under this exemption. However, any comments submitted in support of establishing a U.S. standard for this food should be supported by appropriate information and data regarding impact on small business consistent with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354).

Dated: December 4, 1981.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 81-35424 Filed 12-10-81; 8:45 am]
BILLING CODE 4160-01-M

Social Security Administration

45 CFR Parts 400 and 401

Refugee Resettlement Program and Cuban and Haitian Entrant Program; Cash and Medical Assistance Policies

AGENCY: Social Security Administration (SSA), HHS.

ACTION: Proposed rule.

SUMMARY: This notice proposes to amend the refugee resettlement program regulations (45 CFR Part 400) and establish new policies on cash and medical assistance available to refugees and Cuban and Haitian entrants who are ineligible for Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), adult assistance (OAA, AB, APTD, and AABD) in the Territories and Medicaid.

The Refugee Resettlement Program (RRP) provides Federal reimbursement to States for 100 percent of the costs of cash and medical assistance provided to such refugees in accordance with applicable program rules and requirements and the administrative costs of providing such assistance. Cash assistance provided to such refugees under the RRP is termed "refugee cash assistance" (RCA); medical assistance provided to such refugees under the RRP is termed "refugee medical assistance" (RMA). The proposed changes would limit 100 percent Federal reimbursement for RCA and RMA for an eligible refugee to the first 18 months that a refugee is in the United States.

For a refugee who has been in the U.S. more than 18 months but less than 36 months, a State could, at its option, seek RRP reimbursement for the cost of General Assistance (GA) provided to such a refugee.

The proposed policy changes support several major objectives: (1) to reduce the likelihood of unnecessary welfare dependency resulting from extended periods of special support; (2) to reduce the degree of special treatment afforded to refugees, which results in unequal treatment among low-income populations; and (3) to relieve States of refugee cash and medical assistance costs during a refugee's first 36 months in this country.

Putting the proposed program modifications into effect will enable the Department to operate the RRP within the anticipated FY 1982 budget.

DATES: Written comments will be considered if received no later than January 11, 1982. The comment period is limited to 30 days since limitation upon the funds expected to be available for FY 1982 necessitate implementation of a change in assistance policy by February 1, 1982.

ADDRESS: Please submit written comments in duplicate to: Ellen McGovern, Office of Refugee Resettlement, Room 1229, Switzer Building, 330 C Street SW., Washington, D.C. 20201. Comments will be available approximately two weeks after publication in Room 1319, 330 C Street SW., on Monday through Friday of each week from 9:30 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Ellen McGovern (202) 472-6510.

SUPPLEMENTARY INFORMATION: The proposed amendments to part 400 would revise policy relating to the provision of cash and medical assistance to refugees under chapter 2 of title IV of the Immigration and Nationality Act, as amended by the Refugee Act of 1980 (henceforth the Refugee Act), 8 U.S.C. 1521 *et seq.*

The proposed new part 401 addresses the Cuban and Haitian Entrant Program, which is authorized under title V of the Refugee Education Assistance Act of 1980, Pub. L. 96-422. Section 501(a) of

the Refugee Education Assistance Act directs the President of the United States to "exercise authorities with respect to Cuban and Haitian entrants which are identical to the authorities which are exercised under chapter 2 of title IV of the Immigration and Nationality Act." These authorities, which the Department has interpreted to include the administration of a program of reimbursement to States for cash and medical assistance provided to Cuban and Haitian entrants as defined by the Refugee Education Assistance Act, have been delegated to the Secretary of Health and Human Services by Executive Order 12251 (November 15, 1980).

The proposed policy changes support several major objectives: (1) to reduce the likelihood of unnecessary welfare dependency resulting from extended periods of special support; (2) to reduce the degree of special treatment afforded to refugees, which results in unequal treatment among low-income populations; and (3) to relieve States of refugee cash and medical assistance costs during a refugee's first 36 months in this country.

We believe the changes proposed represent the best method of targeting program expenditures according to these objectives and the provisions and the purposes of the Refugee Act. The Refugee Act permits, but does not require, HHS to provide up to 100 percent Federal reimbursement for expenditures that States incur on behalf of a refugee for up to 36 months after the refugee arrives in this country. The House Report on the Act includes discussion of the Congress' intent that State and local governments "will not be unduly burdened by Federal decisions to admit refugees." H. Rep. No. 96-608, 96th Cong., 1st Sess. 6 (1979). Although the Department considered options which would have reduced both the level and duration of Federal reimbursement, the proposed policy continues 100 percent reimbursement for 36 months to States for cash and medical assistance costs which State and local governments are required to incur under their AFDC, SSI or adult assistance, Medicaid, and GA programs.

Also as reflected in the House Report, the Congress felt that greater benefits should be available at the beginning of the refugee's presence in the United States in order to reduce long-term welfare dependency. *Id.* at 24. Similarly, our consultations with voluntary resettlement agencies have suggested that the period immediately following entry is the time of refugees' greatest vulnerability and need. The proposed policy responds to this concern by concentrating on the crucial first 18 months a refugee is in the United States. During that period, the policy provides for RCA and RMA benefits which are equal to AFDC level benefits but which are generally greater than GA benefits.

We also believe that after a refugee's transitional 18-month period, assistance should be available to the refugee on the same basis as to a non-refugee. After that period, we believe refugees ineligible for AFDC, SSI, adult assistance programs, and Medicaid should receive aid under programs generally available to other needy residents in a State or locality. Although we considered not allowing reimbursement for costs incurred to assist refugees under such programs, we opted for a policy which does not shift costs to the States and localities. Therefore, when the 18-month period of RCA and RMA ends, this proposed rule permits States to claim reimbursement for assistance provided to refugees under GA programs administered and funded by the State or a county, municipality, or other local government unit within the State, and for the administrative costs of providing such assistance.

Putting the proposed program modifications into effect will enable the Department to operate the RRP within the anticipated FY 1982 budget. Section 414 of the Immigration and Nationality Act (the Act) (8 U.S.C. 1524) authorizes appropriations for the purpose of providing cash and medical assistance under section 412 of the Act (8 U.S.C. 1522). The Act does not mandate that refugees receive an established level of benefits. Section 412(a) expressly limits the Director of ORR's authority to provide assistance, including cash and medical assistance, under the Act "to the extent of available appropriations." We anticipate implementing the proposed policy February 1, 1982.

By separate **Federal Register** notice, the Department will be announcing a new program of flexible, targeted assistance through which a State may apply for project grants to assist its refugee/entrant population in areas where specific needs exist for supplementation of currently available resources.

Current Policy

Under current RRP policy, when a refugee applies for cash and/or medical assistance, a State must first determine eligibility under the AFDC, SSI or adult assistance programs and/or Medicaid. States must comply with all regulations operative in the State regarding applications, determinations of eligibility, and furnishing of assistance under these federally aided programs. If the refugee is determined eligible, a State must provide assistance or services to that refugee under the appropriate program or programs. For refugees eligible for such programs, the RRP reimburses States for the State share costs for 36 months and the applicable program budget funds the Federal share.

If a refugee does not meet the categorical requirements of the AFDC, SSI, or adult assistance programs (i.e., family composition, the presence of children, age, disability, etc.), the State must determine eligibility for refugee cash assistance (RCA). The term "refugee cash assistance" refers specifically to cash assistance to needy refugees who do not meet all eligibility requirements for AFDC, SSI, or adult assistance programs, but who meet the AFDC need standard in their State of residence, after consideration of income and resources in accordance with standards and criteria set forth at 45 CFR 233.20(a) (3) through (11). RCA currently is provided for the first 36 months after a refugee enters the United States, and payments are made at the appropriate AFDC payment level in the State.

If a refugee does not meet categorical requirements of the Medicaid program, the State must determine eligibility for refugee medical assistance (RMA). The term "refugee medical assistance" referes specifically to medical assistance to needy refugees who do not meet all eligibility requirements for Medicaid, but who meet financial eligibility requirements as follows: In States with a medically needy program, the State applies the medically needy financial eligibility standards established for the Medicaid program in regulations at 42 CFR Part 435, Subpart I. In States without a Medicaid medically needy program, the State applies the financial need standard used in the State's AFDC program, after consideration of income and resources in accordance with standards and criteria set forth at 45 CFR 233.20(a) (3) through (11). RMA currently is provided for the refugee's first 36 months in the United States, and covers the same services which are provided under the State's Medicaid program or which are generally available to destitute residents of the State or locality through public facilities.

Changes Contained in This Proposed Regulation

In developing policy to target the anticipated appropriation as effectively

and efficiently as possible, we have attempted to balance such factors as comparability between the assistance available to refugees and non-refugees; reimbursement to States for the costs of providing assistance; refugee need and incentives for employment and self-sufficiency; and administrative burden on States. As indicated above, we considered several options in balancing these factors. For example, some options would not have continued 100 percent Federal reimbursement for 36 months. Some would have shortened further the period for RCA and RMA. Some would not have permitted reimbursement of State and local GA costs. Others would have required percentage phasedown in level of benefits and increased the complexity of program administration.

We believe the policy we propose represents a fair balance of essential program concerns and provides support to refugees during the transitional period when they have the greatest need. The policy is intended to promote self-sufficiency and strengthen employment incentives by reducing the period of special assistance. The policy shortens the period of special assistance to refugees to an initial 18 month period after which assistance would be available to refugees and non-refugees on the same basis. However, the policy offsets burdens to States and localities by continuing to permit Federal funding of the costs they would otherwise incur for refugees under GA programs during a refugee's second 18 months in this country. Also, by using AFDC standards instead of imposing new standards for eligibility determinations, the policy minimizes the administrative burden on States.

Under this proposal, a State must continue to determine eligibility and calculate the RCA payment according to the State's AFDC need standard and payment level during the 18-month period which begins with the month the refugee entered the United States. However, under section 400.62(c) of this proposed rule, a $30 plus one-third disregard shall not be applied in determining the eligibility of refugees for RCA. (The $30 plus one-third or other applicable disregards would, of course, continue to apply in determining benefits to refugees receiving AFDC, SSI or adult assistance.)

Eliminating the $30 plus one-third disregard in determining RCA eligibility reduces the special treatment previously afforded to refugees not eligible for AFDC, SSI, or adult assistance. A $30 plus one-third disregard is not generally applied in State or local GA programs on which non-refugees must often depend when they are ineligible for federally funded programs. While we do not believe that only general assistance should be available to non-categorically eligible refugees during their first 18 months in this country, we do not believe that all of the special disregards must apply in the RCA program to maximize effective resettlement.

With respect to RMA, this proposed rule does not change current eligibility policy during a refugee's first 18 months in the United States, except with respect to application of the $30 plus one-third disregard as explained above.

The policy makes the duration of RCA and RMA coincide, and, after a refugee's first 18 months in the United States, provides for cash and medical assistance to refugees on the same basis as to other needy State residents.

During the refugee's second 18 month period in the United States, the State would not provide RCA or RMA. However, during the refugee's second 18 months, the State would have the option of seeking reimbursement under the RRP for financial or medical assistance provided under a State or locally administered and funded GA program to any refugee who is eligible for and receives aid under such a program. A State could seek reimbursement for all or any part of State or local GA program expenditures resulting from provision of assistance to an eligible refugee. A State could not establish a GA program which limits eligibility to refugees, but otherwise would have discretion on whether to claim allowable State or local GA program expenses from RRP funds.

The proposed regulations would also establish the rules for federally reimbursable assistance to Cuban and Haitian entrants under the Cuban and Haitian entrant program (CHEP). Pursuant to legislative intent in the enactment of the Refugee Education Assistance Act, the proposed rule would provide federally reimbursed cash and medical assistance and services to Cuban and Haitian entrants under the same conditions and to the same extent as such assistance and services are made available to refugees. (See comments of Congressman Fascell in the House of Representatives on September 30, 1980, 125 Cong. Rec. No. 153 Part II at p. H10122.)

The proposed regulation pertaining to CHEP also provides that procedures and requirements identical to those applicable under the Refugee Program for Federal Reimbursement of State costs, including those relating to the submission and approval of State plans, are also applicable in CHEP.

The proposed regulation also establishes the period of time for which the Federal Government will reimburse cash and medical assistance costs incurred on behalf of a Cuban and Haitian entrant. Under CHEP, reimbursement starts from the date on which the entrant first was granted parole status under the Immigration and Nationality Act or on which an individual meeting the definition of a "Cuban and Haitian entrant" set forth in the Refugee Education Assistance Act otherwise began residing in an American community. The basis for this policy is that the Cuban and Haitian entrants are not all considered to have "entered" the United States within the meaning of the Immigration and Nationality Act. Therefore, it is not possible in all cases to reimburse States for cash and medical assistance provided during a prescribed period of months after initial "entry" into the country, as is done for refugees in the Refugee Program. For other Cuban and Haitian entrants it is impossible to verify their actual date of entry to the U.S. The Department has determined that, for CHEP purposes, the point in time at which a Cuban and Haitian entrant residing in an American community was first granted parole or otherwise issued documentation by the Immigration and Naturalization Service is the most reasonable and appropriate point from which to count the period of assistance authorized by Congress.

Regulatory Procedures

Executive Order 12291: These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act: We certify that these regulations will not, if promulgated, have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act because the regulations affect individuals only.

Paperwork Reduction Act. All reporting and recordkeeping forms resulting from this regulation will be submitted to OMB for review and approval prior to the issuance of final regulations.

PART 400—REFUGEE RESETTLEMENT PROGRAM

45 CFR Part 400 is proposed to be amended as follows:

(1) Sections 400.12 through 400.61 are added and reserved.

§ 400.12–400.61 [Reserved]

(2) A new § 400.62 is added to read as follows:

§ 400.62 Refugee cash and medical assistance: Need standards; consideration of income and resources; payment levels; and duration of eligibility.

(a) *Definitions.* For purposes of this section—

(1) "filing unit" means an individual or individuals whose needs are taken into account in determining eligibility for, and the amount of, assistance for which Federal reimbursement is claimed under this part.

(2) "General Assistance program" means a financial and/or medical assistance program existing in a State or local jurisdiction and which: (i) is funded entirely by State and/or local funds. (ii) is generally available to needy persons residing in the State or locality who meet specified income and resource requirements. (iii) consists of one-time, emergency, or ongoing assistance intended to meet basic needs of recipients, such as for food, clothing, shelter, medical care or other essentials of living.

(3) "refugee cash assistance" means cash assistance provided under section 412(e) of the Act to refugees who are ineligible for AFDC, the adult assistance programs (OAA, AB, APTD, AABD), or SSI, and who have resided in the United States for less than an 18-month period from their initial entry to the country.

(4) "Refugee medical assistance" means medical assistance provided under section 412(e) of the Act to refugees who are ineligible for Medicaid benefits and who have resided in the United States for less than an 18-month period from their initial entry to the country.

(b) *Need standards.* In determining need for refugee cash assistance, a State must use the State's AFDC need standards established under § 233.20(a) (1) and (2) of this title.

(c) *Condiseration of income and resources.* In considering the income and resources of applicants for and recipients of refugee cash assistance, the State agency must apply standards and criteria identical to those provided for in regulations at § 233.20(a) (3) through (11) of this title for considering income and resources of AFDC applicants, except that the State agency shall not apply an earned income disregard of $30 plus one-third of the remainder of the earnings as is provided for in § 233.20(a)(11)(ii) of this title.

(d) *Payment levels.* In determining the amount of the refugee cash assistance payment to an eligible refugee who meets the need standards in paragraph (b) of this section, and applying the consideration of income and resources in paragraph (c), a State must pay 100 percent of the payment level which would be appropriate for an eligible filing unit of the same size under the AFDC program.

(e) *Duration of eligibility.* Refugee cash assistance and refugee medical assistance are not available to refugees who have been in the United States for more than 18 months.

(f) *Reimbursement to States.* (1) During the 36-month period beginning with the month a refugee entered the United States, Federal financial participation is available to States, subject to availability of funds, for—

(i) The non-federal share of assistance provided to a refugee who is determined eligible for AFDC, adult assistance programs, or Medicaid; and

(ii) A State supplementary payment provided by the State to a refugee who is determined eligible for SSI.

(2) During the 18-month period beginning with the month a refugee entered the United States, reimbursement is available to States, subject to availability of funds, for refugee cash assistance and refugee medical assistance provided to a refugee who is determined eligible under this section. –

(3) During the second 18-month period a refugee is in the United States, Federal financial participation is available to States, subject to availability of funds, for financial and/or medical assistance under a State or local General Assistance program provided to a refugee who is determined eligible for the General Assistance program.

(Sec. 412(a)(9) and 412(e), Immigration and Nationality Act (8 U.S.C. 1522(a)(9) and 1522(e))

45 CFR Chapter IV is amended by adding a new Part 401 to read as follows:

PART 401—CUBAN/HAITIAN ENTRANT PROGRAM

Sec.
401.1 [Reserved]
401.2 Definitions.
401.3–401.11 [Reserved]
401.12 Cuban and Haitian entrant cash and medical assistance.

Authority: Sec. 501(a), Pub. L 96–422, 94 Stat. 1810 (8 U.S.C. 1522 note).

§ 401.1 [Reserved]

§ 401.2 Definitions.

For purposes of this part a "Cuban and Haitian entrant" or "entrant" is defined as:

(a) Any individual granted parole status as a Cuban/Haitian Entrant (Status Pending) or granted any other special status subsequently established under the immigration laws for nationals or Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and

(b) Any other national of Cuba or Haiti

(1) Who—

(i) Was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act;

(ii) Is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or

(iii) Has an application for asylum pending with the Immigration and Naturalization Service; and

(2) With respect to whom a final, nonappealable, and legally enforceable order of deportation or exclusion has not been entered.

§§ 401.3–401.11 [Reserved]

§ 401.12 Cuban and Haitian entrant cash and medical assistance.

Except as may be otherwise provided in this section, cash and medical assistance shall be provided to Cuban and Haitian entrants by the same agencies, under the same conditions, and to the same extent as such assistance is provided to refugees under Part 400 of this title.

(a) For purposes of determining the eligibility of Cuban and Haitian entrants for cash and medical assistance under this section and the amount of assistance for which they are eligible under this section, the same standards and criteria shall be applied as are applied in the determination of eligibility for an amount of cash and medical assistance for refugees under § 400.62 of this title.

(b) Federal reimibursement will be provided to States for the costs of providing cash and medical assistance to Cuban and Haitian entrants according to procedures and requirements, including procedures and requirements relating to the submission and approval of a State plan, identical to those applicable to the Refugee Program and set forth in Part 400 of this title.

(c) The number of months during which an entrant may be eligible for cash and medical assistance for which Federal reimbursement is available under this section shall be counted starting with the first month in which an individual meeting the definition of a Cuban and Haitian entrant in § 401.2 of this part was first issued documentation

by the Immigration and Naturalization Service indicating:

(1) That the entrant has been granted parole by the Attorney General under the Immigration and Nationality Act,

(2) That the entrant is in a voluntary departure status, or

(3) That the entrant's residence in a United States community is known to the Immigration and Naturalization Service.

The proposed amendments are to be issued under the authority contained in Sec. 412(a)(9) and 412(e), Immigration and Nationality Act (8 U.S.C. 1522(a)(9) and 1522(e)).

(Catalog of Federal Domestic Assistance Programs, Nos. 13.814 and 13.817)

Dated: November 30, 1981.

John A. Svahn,

Commissioner of the Social Security Administration.

Approved: December 2, 1981.

Richard S. Schweiker,

Secretary of the Department of Health and Human Services.

[FR Doc. 81-35658 Filed 12-10-81; 8:45 am]

BILLING CODE 4190-11-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 81 and 83

[Gen. Docket No. 81-822; FCC 81-546]

Proposed Addition of Gulf Intracoastal Waterway to Authorized Service Area of Inland Waterways Communications Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to add the Gulf Intracoastal Waterway (GIWW) to the authorized service area of Inland Waterways Communications Systems providing marine communications in the 216–220 MHz band. This action was requested by Waterway Communications System, Inc. in the context of a separate proceeding. The intended effect is to permit maritime communications in the 216–220 MHz band to be expanded from the Mississippi River System to include the GIWW from Brownsville, Texas to the Florida Panhandle.

DATES: Comments must be received on or before January 18, 1982, and reply comments must be received on or before February 2, 1982.

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

FOR FURTHER INFORMATION CONTACT: Robert H. McNamara, Private Radio Bureau (202) 632–7175.

SUPPLEMENTARY INFORMATION:

Adopted: November 24, 1981.

Released: December 10, 1981.

1. In this Notice we are proposing to add the Gulf Intracoastal Waterway to the authorized service area of Inland Waterways Communications Systems operating in the 216–220 MHz band.

Background

2. In General Docket No. 80–1 the Commission consolidated a number of related requests to provide radio frequencies for an automated, integrated, interconnected marine communications system on the Mississippi River and connecting waterways. Primarily, these request for an Inland Waterways Communications System (hereafter IWCS) had been from tug, towboat and barge operators who serve the Mississippi River transportation system. Essentially, these tug and barge operators complained that the existing ship-shore communications service on the rivers was not adequate to meet their needs.

3. With the benefit of considerable in-depth public comment on the *Notice* in that proceeding,[1] the Commission, in the subsequent *Report and Order*,[2] took the actions indicated in the paragraphs below.

4. In light of the record of strong support, the Commission affirmed its earlier tentative conclusion that a need existed for an automatic, intergrated, interconnected inland waterways communications system(s) on the Mississippi River and connecting waterways.

5. The Commission allocated the 216–220 MHz band for use by maritime communications systems on the Mississippi River System. Certain technical requirements were prescribed to prevent potential interference with reception on television channels 10 and 13. This allocation was viewed to be in the public interest because (1) it is consistent with the U.S. Proposal adopted for Region 2 at the 1979 World Administrative Radio Conference (WARC) of the International Telecommunicaton Union, (2) sufficient spectrum is provided for such communications for the foreseeable future, (3) the propagation characteristics are favorable and the equipment and technology should be readily adaptable, and (4) of great importance to the maritime community, an IWCS can likely be implemented without significant delays.

6. In regard to system and equipment standards, the Commission concurred with the view of the majority of the commenters that detailed technical standards, particularly for nonvoice services, should not be adopted at this time. Therefore, the Commission amended the rules to provide a framework under which system development could commence, but which would not unduly hinder innovation and flexibility.

7. Additionally, an application (file No. W–P–C 2279) submitted by Waterway Communications Systems, Inc. (hereafter Watercom) seeking a determination that an IWCS was needed and authority to operate such a system (initially utilizing four VHF maritime public correspondence frequencies) was dismissed without prejudice. In effect, the application had been superseded by the rulemaking proceeding.

8. A number of petitions were filed in response to the *Report and Order*. As relevant here, Watercom filed a Petition For Clarification which, among other things, argued that the Gulf Intracoastal Waterway (hereafter GIWW) is an integral part of the Mississippi River System and that it was erroneously omitted from the list of waterways defining the Mississippi Rvier System. Therefore, Watercom requested that the Mississippi River System be redefined in the rules to include the GIWW.

9. The Commission denied Watercom's request.[3] The GIWW was not mentioned during the lengthy proceedings in General Docket No. 80–1. Neither the Commission nor any of the numerous commenters, including Watercom, specifically suggested that the GIWW was or ought to be included in a discussion of frequency allocation for an automatic "inland" waterways communications system. The entire proceeding focused on the Mississippi River and connecting inland rivers. The Commission did not intend, nor was it believed interested parties considered, General Docket NO. 80–1 to include some 1100 miles of Gulf Coast in the Mississippi River System. Accordingly, the Commission felt that it would be fundamentally unfair to expand the area of IWCS service along the Gulf Coast

[1] *Notice of Proposed Rule Making Order and Notice of Inquiry*, General Docket No. 80–1, FCC 80–2, 45 FR 3064. Three Errata were issued: Mimeo 15497, 45 FR 6967; mimeo 15647, 45 FR 13477; mimeo 15775, 45 FR 17043.

[2] General Docket No. 80–1, released March 11, 1981, FCC 81–24, 46 FR 15690; An Errata was released April 29, 1981, mimeo 29348, 46 FR 26485.

[3] See, *Memorandum Opinion and Order*, Gen. Docket No. 80–1, adopted November 24, 1981 FCC 81–541, —— FR ——.

approximately from Brownsville, Texas, to the St. Mark's River on the Flordia Panhandle without providing interested parties adequate notice and an opportunity to comment.

10. However, since (1) substantial waterborne traffic flows between the GIWW and the Mississippi River System, (2) Watercom seeks to have the rules amended to include the GIWW in the service area of the IWCS, and (3) during the reconsideration process there appeared to be little opposition from the numerous parties who participated in General Docket No. 80–1, the Commission indicated it would initiate a separate rulemaking proceeding proposing to expand the IWCS service area to include the GIWW. This would provide the public adequate notice and an opportunity to comment on the merits of such an expansion of the subject maritime communications system.

Proposal

11. As we indicated in the *Memorandum Opinion and Order* referenced above, we believe that since the GIWW connects with the lower Mississippi River and from a waterborne transportation point of view is an extremely important traffic interchange (only the Ohio River has a higher rate of traffic interchange with the Mississippi River), it is reasonable to include the GIWW within the authorized service area of the IWCS. Accordingly, we propose to amend the rules by adding the GIWW to the authorized service area of Inland Waterway Communications Systems described in Parts 2, 81 and 83.

12. The proposed amendments to the Commission's rules as set forth in the attached Appendix, are issued pursuant to the authority contained in sections 4(i) and 303(d) and (r) of the Communications Act of 1934, as amended.

13. Interested persons who desire to submit comments on these, or related matters may do so on or before January 18, 1982. Replies to any suggestions or comments may be submitted not later than February 2, 1981. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. An original and 5 copies will be furnished of all statements, briefs or comments filed in response to this Notice. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

14. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral cummunication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of the oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

15. These rules will make 80 channels in the 216–220 MHz band available for assignment to Inland Waterways Communications Systems for ship-shore communications along the Gulf Intracoastal Waterway. If an IWCS is ultimately constructed along the GIWW, it will provide the maritime community with another means to fulfill its ship-shore communications needs in that area. In most cases, these proposed rules will only provide a basis for marginal improvement in the efficiency of vessel participating in an IWCS or a marginal decrease in the traffic handled by existing coast stations operating along the GIWW. Therefor, we have determined that Sections 603 and 604 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) do not apply to this rule making proceeding, because the rules will not, if promulgated, have a significant economic impact on a substantial number of small entities.

16. For further information of this proceeding, contact Robert H. McNamara at (202) 632–7175.

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

William J. Tricarico,
Secretary.

Appendix

Parts 2, 81 and 83 of Chapter I of Title 47 of the Code of Federal Regulations are amended as followed:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

A. In § 2.106, footnote NG121 is revised to read as follows:

§ 2.106 Table of frequency allocations.

* * * * *

NG121 The maritime mobile use of this band is limited to operation along the Mississippi River and connecting waterways, and the Gulf Intracoastal Waterway.

* * * * *

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

§ 81.913 [Amended]

B. In § 81.913, the second sentence of paragraph (a) is amended by adding ", and the Gulf Intracoastal Waterway" after the words "and the Yazoo rivers".

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

§ 83.1100 [Amended]

C. In § 83.1100, the second sentence is amended by adding ", and the Gulf Intracoastal Waterway" after the words "and the Yazoo rivers".

[FR Doc. 81–35447 Filed 12–10–81; 8:45 am]
BILLING CODE 6712–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Parts 7, 22, and 34

Acquisition Planning, Equal Employment Opportunity, and Major System Acquisition

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Notice of availability and request for comment on draft Federal acquisition regulations.

SUMMARY: The Office of Federal Procurement Policy is making available for public and government agency review and comment a segment of the draft Federal Acquisition Regulation (FAR). Availability of additional

segments for comment will be announced on later dates. The FAR is being developed to replace the current system of procurement regulations.

DATE: Comments must be received on or before January 29, 1982.

ADDRESS: Obtain copies of the draft regulation from and submit comments to William Maraist, Assistant Administrator for Regulations, Office of Federal Procurement Policy, 726 Jackson Place, N.W., Room 9025, Washington, D.C. 20503. Federal agency requests must be directed to the FAR Agency Contact Point (see **Federal Register**, Vol. 46, No. 50, March 16, 1981, p. 16818 for list).

FOR FURTHER INFORMATION CONTACT: William Maraist, (202) 395–3300.

SUPPLEMENTARY INFORMATION: The fundamental purposes of the FAR are to reduce proliferation of regulations; to eliminate conflicts and redundancies; and to provide an acquisition regulation that is simple, clear and understandable. The intent is not to create new policy. However, because new policies may arise concurrently with the FAR project, the notice of availability of draft regulations will summarize the section or part available for review and describe any new policies therein.

The following parts of the draft Federal Acquisition Regulation are available upon request for public and Government agency review and comment.[1]

Part 7—Acquisition Planning

Subpart 7.1 Acquisition Plans

This subpart prescribes policies and procedures for developing acquisition plans. It states the policy that for acquisitions, other than small repetitive buys, agencies shall perform coordinated planning, integrating the efforts of all personnel responsible for significant aspects of the acquisition. It requires agencies to: (a) establish thresholds of cost and/or complexity that will determine the degree of formality and detail in acquisition planning; (b) conduct planning for the acquisition of services as well as supplies; and (c) rely on the designated planner to prepare and maintain the acquisition plan.

Part 22—Application of Labor Laws to Government Acquisitions

Subpart 22.8 Equal Employment Opportunity

This subpart prescribes policies and procedures pertaining to nondiscrimination in employment by Government contractors and subcontractors. It implements Executive Order 11246 as amended which requires that all Government contracting agencies include an Equal Opportunity clause in all nonexempt Government contracts and to act to ensure compliance with the clause and the regulations of the Secretary of Labor to promote the full realization of equal employment opportunity for all persons, regardless of race, color, religion, sex, or national origin.

Part 34—Major System Acquisition

This part prescribes the policies and procedures to be followed in acquiring major systems and implements the relevant acquisition policies of OMB Circular A–109. Although the FPR contains no implementing coverage for OMB Circular A–109 and the DAR has but a single paragraph, this FAR coverage does not propose any new policy.

Dated: December 7, 1981.

LeRoy J. Haugh,

Associate Administrator for Regulatory Policies and Practices.

[FR Doc. 81–35463 Filed 12–10–81; 8:45 am]

BILLING CODE 3110–01–M

[1] Filed as part of original document.

Notices

Federal Register
Vol. 46, No. 238
Friday, December 11, 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.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Interpreters in Courts of the United States; Announcement of Spanish/English Certification Examination

AGENCY: Administrative Office of the United States Courts.

ACTION: Notice of Spanish/English Certification Examination for Court Interpreters.

SUMMARY: The Director of the Administrative Office of the United States Courts announces that the agency will conduct the written portion of the certification examination for individuals who desire to be certified to serve as Spanish English interpreters in courts of the United States in accordance with the Court Interpreters Act, Pub. L. No. 95–539, 92 Stat. 2040 (1978) (28 U.S.C. 1827). To sit for the examination, an individual must file written or telephone application.

DATES: The agency will administer the written portion of the examination March 20, 1982 at 9 a.m. The deadline for filing of applications is 4:00 p.m. on January 15, 1982. The oral portion will be administered in June/July, 1982.

ADDRESS: Applicants may sit for the written examination at any of the locations identified in the attached schedule. Applicants must identify the city for taking both the written and oral portions. For 1982, oral examination sites are limited to: Phoenix, AZ; Los Angeles and San Francisco, CA; Washington, DC; Miami, FL; Atlanta, GA; New Orleans, LA; Boston, MA; Albuquerque, NM; New York, NY; San Juan, PR; Houston and San Antonio, TX.

FILING: To make application for the examination, either *telephone* or *write* the following information:

1. Name
2. Mailing address
3. Date of birth
4. Daytime telephone number
5. Social security number
6. City where you wish to take the written and oral examinations
7. Any special arrangements that should be made due to physical disability or keeping of the Sabbath.

Applicants will then receive an admission form to the written examination and the specific location of the examination site.

Telephone or mail applications with the above information *must be received not later than 4:00 p.m. on January 15, 1982* to: Office of Court Reporting and Interpreting Services, Administrative Office of the United States Courts, 811 Vermont Avenue, NW., Room 776, Washington, D.C. 20544; Telephone: (202) 633–6212.

FOR FURTHER INFORMATION CONTACT: Jon A. Leeth at the above address (FTS 633–6212).

SUPPLEMENTARY INFORMATION:

I. Background

The Director of the Administrative Office of the United States Courts (AOUSC) is responsible for the establishment of a program to facilitate the use of interpreters in courts of the United States. He must prescribe, determine and certify the qualifications of persons who may serve as certified interpreters in bilingual proceedings and proceedings involving the hearing impaired. 28 U.S.C. 1827(b). Whenever an interpreter is required for a person in any criminal or civil action initiated by the United States, the presiding judicial officer must utilize the services of a certified interpreter, unless no certified interpreter is reasonably available.

The AOUSC will provide the courts with a roster of certified court interpreters selected on the basis of the successful completion of written and oral examinations in English and a foreign language.

II. This Examination

This examination will be a comprehensive written and oral examination for bilingual proficiency in Spanish and English.

The written portion of the examination does not necessarily require the special knowledge of court vocabulary. Each applicant who completes successfully the written portion will be eligible for the oral examination. Successful applicants will receive notice of the time and place of the oral portion of the examination.

The oral portion of the examination will test, in simulated settings, the applicant's ability to: (1) Interpret precisely from Spanish to English, in consecutive, simultaneous, and summary modes; (2) interpret from English to Spanish in consecutive, simultaneous, and summary modes; and (3) perform sight interpretation. The oral portion of the examination does not necessarily require previous experience in court interpreting.

III. Qualifications

There are no formal educational requirements for certification, either in languages or interpreting. However, the difficulty of the examination is at the college degree level of proficiency. Successful completion of the oral portion of the examination normally would require prior training or professional experience in simultaneous, consecutive, and summary interpreting.

IV. Duties

Successful completion of the examination will not necessarily lead to full-time employment. Interpreters satisfy most court needs as independent contractors. However, where full-time interpreters are needed, only certified interpreters will be eligible for appointment.

As the Federal Courts require full-time salaried interpreters, the interpreter will be chosen from the eligibility lists. The annual salary range is JSP–10 and JSP–11 ($21,449–$30,640) for full-time salaried interpreters. For certified interpreters who provide services as independent contractors, the fee is $145 per day.

Court interpreters perform all or some of the following duties: (1) Intrepret verbatim in simultaneous, consecutive, or summary mode a foreign language into English, and vice versa, at arraignments, preliminary hearings, pretrial hearings, trials, and other court proceedings; (2) transcribe from electronic sound recordings; and (3) translate technical, medical and legal documents and correspondence for introduction as evidence.

Issued at Washington, D.C., on December 7, 1981.

William E. Foley,

Director.

[FR Doc. 81-35444 Filed 12-10-81; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

1981 Wheat and Barley Crops; Determinations Regarding the Proclamation of National Program Acreages and Allocation Factors

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of Determination of National Program Acreages and Program Allocation Factors for 1981 Crops of Wheat and Barley.

SUMMARY: This notice is to announce the revised national program acreages and the determination of the program allocation factors for the 1981 crops of wheat and barley. The national program acreages were originally published on August 22, 1980 (45 FR 56118) for wheat and on November 21, 1980 (45 FR 77095) for barley. The national program acreages which were announced for wheat and barley were 71.0 and 9.7 million acres, respectively. The revised national program acreages are 84.5 and 10.2 million acres for wheat and barley, respectively. Based upon these revised national program acreages, the program allocation factors for both wheat and barley are 100 percent. These actions are taken in accordance with applicable provisions of the Agricultural Act of 1949, as amended, which (1) authorize the Secretary of Agriculture to revise the national program acreages if it is determined to be necessary based upon the latest information and (2) requires the Secretary of agriculture to determine a program allocation factor for the 1981 crop of wheat and barley.

EFFECTIVE DATE: December 12, 1981.

FOR FURTHER INFORMATION CONTACT: Bruce R. Weber, Agricultural Program Specialist, Analysis Division, ASCS–USDA, 3738 South Building, P.O. Box 2415, Washington, D.C. 20013, Telephone (202) 447–4146. This Notice of Determination serves as the impact statement.

SUPPLEMENTARY INFORMATION: this notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified as "designated nonmajor." It has been determined that these provisions will not result in: (1) Major increases in costs or prices for consumers, individual industries, Federal, State, or local Government agencies or geographic regions; or (2) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based industries to compete with foreign-based enterprises in domestic or foreign markets. In addition, it has been determined that while the provisions will not have an annual impact on the economy of $100 million or more, they could affect budget outlays substantially.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of determination since ASCS is not required by 5 U.S.C. 553 or any other provisions of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

The title and number of the federal assistance programs that this notice applies to are: TITLE-Wheat Production Stabilization: NUMBER 10.056, and TITLE-Feed Grain Production Stabilization: Number 10.055, as found in the Catalog of Federal Domestic Assistance. This action will not have a significant impact specifically on area and community development. Therefore, a review as established by OMB Circular A–95 was not used to assure that units of local Government are informed of this action.

The purpose of this notice is (1) to revise the national program acreages for the 1981-crop wheat and barley first proclaimed on August 22, 1980, and November 21, 1980, respectively, and (2) to determine the national program allocation factors for such commodities. Sections 107A(d)(1) and (2) and sections 105A(d)(1) and (2) of the Agricultural Act of 1949, as amended, authorize the Secretary to make such determinations. Under these provisions, the Secretary may revise the national program acreages first proclaimed for any crop year for the purpose of determining the allocation factor if the Secretary determines it necessary based upon the latest information, and the Secretary shall proclaim such national program acreage as soon as it is made.

The national program acreages for wheat and barley are revised to reflect the most recent 1981/82 marketing year utilization estimates. Based on these estimates the revised 1981 National Program Acreage for wheat will be 84.5 million acres and for barley 10.2 million acres.

It has also been determined that the program allocation factors for the 1981 crops of wheat and barley will be 100 percent since the revised National Program Acreages for wheat and barley are greater than the reported national harvested acreage for the 1981 crop of these commodities.

Since the revised national program acreages and the determinations of the program allocation factors impact upon the calculations of the deficiency payments which may be made for the 1981 crop of wheat and barley, it is essential that this notice be made effective as soon as possible. Accordingly, it has been determined that it is impracticable and contrary to the public interest to comply with any further public rulemaking requirements of 5 U.S.C. 553. Thus, this notice of determination shall become effective upon December 10, 1981.

Accordingly, the final national program acreages and allocation factors for the 1981 crops of wheat and barley are determined to be the following:

DETERMINATIONS

1. *Revised National Program Acreage for 1981-Crop Wheat.* It is hereby proclaimed that the final revised national program acreage for the 1981 crop of wheat shall be 84.5 million acres. The revised national program acreage is based on the following data:

(a) Estimated Domestic use, 1981–82 (million bushels)	932
(b) Plus estimated exports, 1981–82 (million bushels)	1900
(c) Minus estimated imports, 1981–82 (million bushels)	2
(d) Plus adjustment for carryover 1981–82 (million bushels)[1]	93
(e) Divided by national weighted average farm program yield (bushel/acre)	34.6
(f) Equals: 1981 National Program Acreage (million acres)	84.5

2. *Program Allocation Factor for 1981-Crop Wheat.* It is hereby proclaimed that the program allocation factor for the 1981 crop of wheat shall be 100 percent. The program allocation factor is based on the following data:

(a) National Program Acreage	84.5
(b) Divided by Harvested Acreage	80.7
(c) Equals: Program Allocation Factor[2]	= 100

3. *Revised National Program Acreage for 1981-Crop Barley.* It is hereby proclaimed that the final national program acreage for the 1981 crop of barley shall be 10.2 million acres. The revised national program acreage is based on the following data:

(a) Estimated domestic use, 1981–82 (million bushels)	375
(b) Plus estimated exports, 1981–82 (million bushels)	100
(c) Minus estimated imports, 1981–82 (million bushels)	10
(d) Plus adjustment for carryover (million bushels [3])	49
(e) Divided by national weighted average farm program yield (bushels/acre)	50.2
(f) Equals: 1981 National Program Acreage (million acres)	10.2

4. *Program Allocation Factor for 1981-Crop Barley.* It is hereby proclaimed that the program allocation factor for the 1981 crop of barley shall be 100 percent. The program allocation factor is based on the following data:

(a) National Program Acreage	10.2
(b) Divided by Harvested Acreage	9.1
(c) Equals: Program Allocation Factor[4]	= 100

[1] An appropriate carryover level of U.S. wheat stocks has been determined to be equal to 6.6 percent of world consumption of wheat. Such consumption during the 1980–81 marketing year is estimated to be 447.5 million metric tons (MMT) (447.5 × .066 = 29.5 MMT × 36.74 (bushel conversion factor) = 1,084 million bushels (maximum level of U.S. carryover wheat stocks)). 1981–82 carryin wheat stocks were 991 million bushels resulting in a 93 million bushel stock adjustment.

[2] The program allocation factor shall not be less than 80 percent or more than 100 percent. Thus, the program allocation factor is established at 100 percent even though the actual quotient equals 104.7 percent.

[3] An appropriate carryover level of U.S. feed grain stocks has been determined to be equal to 6.7 percent of world consumption of coarse grains. Such consumption during the

1980–81 marketing year is estimated to be 741.8 million metric tons (MMT) (741.8 × 0.067 = 49.4 MMT maximum level of U.S. feed grain carryover stocks). The barley component of the feed grain total has been determined to be 185 million bushels (4.02 MMT × 45.93 (bushel conversion factor)). 1981–82 carryin barley stocks are 136 million resulting in a 49 million bushel stock adjustment.

[4] The program allocation factor shall not be less than 80 percent or more than 100 percent. The actual factor is 112.1 percent for barley.

[5] Percent.

Signed in Washington December 2, 1981.

John R. Block,

Secretary.

[FR Doc. 81–35167 Filed 12–10–81; 8:45 am]

BILLING CODE 3410–05–M

Soil Conservation Service

Tilghman Park; Water Based Recreation RC&D Measure, Maryland; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald R. Calhoun, State Conservationist, Soil Conservation Service, 4321 Hartwick Road, College Park, Maryland 20740, telephone 301–344–4180.

Notice: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tilgman Park Water Based Recreation RC&D Measure, Talbot County, Maryland.

The enviornmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Gerald R. Calhoun, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for water based recreation on the Chesapeake Bay at Tilghman Island. Planned works of improvement include a boardwalk, observation tower, picnic area, tot lot, and a parking lot.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Gerald R. Calhoun. The FNSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until January 11, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular No. A–95 regarding State and local Clearinghouse review of Federal and federally assisted programs and projects is applicable)

[FR Doc. 81–35321 Filed 12–10–81; 8:45 am]

BILLING CODE 3410–16–M

Baiting Brook Watershed, Massachusetts; Availability of a Record of Decision

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Availability of a Record of Decision.

FOR FURTHER INFORMATION CONTACT: Sherman L. Lewis, State Conservationist, Soil Conservation Service, 451 West Street, Amherst, Massachusetts 01002, Telephone 413–256–0441.

Notice: Sherman L. Lewis, responsible Federal official for projects administered under the provisions of Pub. L. 83–566, 16 U.S.C. 1001–1008, in the State of Massachusetts, is hereby providing notification that a record of decision to proceed with the installation of the Baiting Brook Watershed project is available. Single copies of this record of decision may be obtained from Sherman L. Lewis at the above address.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: December 2, 1981.

Sherman L. Lewis,

State Conservationist.

[FR Doc. 81–35311 Filed 12–10–81; 8:45 am]

BILLING CODE 3410–16–M

Jackson Gulch Diversion Farm Irrigation R.C. & D. Measure, Colorado

AGENCY: Soil Conservation Service, Agriculture.

ACTION: Notice of Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Mr. Sheldon G. Boone, State Conservationist, Soil Conservation Service, P.O. Box 17107, Denver, Colorado 80217, telephone (303) 837–4275.

Notice: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Jackson Gulch Diversion Farm Irrigation RC&D Measure, Montezuma County, Colorado.

The environmental assessment of this federally assisted action indicates that the measure will not cause significant, local, regional, or national impacts on the environment. As a result of these findings, Mr. Sheldon G. Boone, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this measure.

The measure concerns a plan for rehabilitating a diversion structure for the Jackson Gulch irrigation system. The planned works of improvement include replacing the old diversion with a concrete structure. The new structure has designed capacity of 250 CFS with water control and sluice gates.

This Notice of Finding of No Significant Impact (FMSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental evaluation are on file and may be reviewed by contacting Mr. Sheldon G. Boone. The FMSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FMSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until January 11, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: November 23, 1981.

Sheldon G. Boone,

State Conservationist.

[FR Doc. 81–35384 Filed 12–10–81; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Montana Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights,

that a meeting of the Montana Advisory Committee to the Commission will convene at 9:00 a.m. and will end at 12:00 noon, on January 9, 1982, at the Northern Hotel, in the Midland Empire Room, on the corner of 28th and 1st Avenue, North, Billings, Montana 59102. The purpose of this meeting is to orientate the new members of the Advisory Committee; review the preliminary research into juvenile justice for Native American youth, and to plan for future projects.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Angela V. Russell, Box 333 Lodge Grass, Billings, Montana 59050, (406) 248–7421 or contact the Rocky Mountain Regional Office, Brook Towers, 1020 Fifteenth Street, Suite 2235, Denver, Colorado 80202, (303) 837–2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 8, 1981.

Donald A. Deppe,

Acting Advisory Committee Management Officer.

[FR Doc. 81-35443 Filed 12-10-81; 8:45 am]

BILLING CODE 6335-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Soliciting Public Comment on Bilateral Negotiations During 1982

December 8, 1981.

The U.S. Government anticipates holding negotiations during 1982 concerning the bilateral agreements covering certain cotton, wool and man-made fiber textile and apparel products from Brazil, China, Colombia, Haiti, Hong Kong, India, the Republic of Korea, Pakistan, the Philippines, Romania, Taiwan and Thailand.

The purpose of this notice is to invite any party wishing to comment or provide data or information regarding these agreements, or to comment on domestic production or availability of textiles and apparel affected by these agreements, to submit such comments or information in ten copies to Mr. Paul T. O'Day, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the negotiations is not yet established, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 2808, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230. Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding the bilateral agreements, or the implementation thereof, is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) and 554(a)(4) for matters which constitute "a foreign affairs function of the United States".

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 81-35502 Filed 12-10-81; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; Amendment to System Notice

AGENCY: Department of the Army, DOD.

ACTION: Amendment to a system notice.

SUMMARY: The Department of the Army proposes to amend the system notice for one of its system of records subject to the Privacy Act of 1974. The proposed amendments followed by entire system notice as amended is set forth below.

DATES: The amended system will become effective on January 11, 1982 unless public comments are received which result in a contrary determination.

ADDRESSES: Send any comments to the system manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Mrs. Dorothy Karkanen, Records Management Division, HQDA (DAAG-AMR-S) Hoffman Building No. 1, 2561 Eisenhower Ave., Alexandria, VA 22331.

SUPPLEMENTARY INFORMATION: The Department of Army inventory of systems of records notices as prescribed by the Privacy Act of 1974, Title 5 United States Code Section 552a (Pub. Law 93-579, 88 Stat. 1896 *et seq.*) have been published in the **Federal Register** at:

FR Doc. 79-37052 (44 FR 73729), December 17, 1979
FR Doc. 81-85 (46 FR 1002), January 5, 1981
FR Doc. 81-697 (46 FR 6460), January 21, 1981
FR Doc. 81-3374 (46 FR 9692), January 29, 1981
FR Doc. 81-5883 (46 FR 13544), February 23, 1981
FR Doc. 81-7250 (46 FR 15531), March 6, 1981
FR Doc. 81-7621 (46 FR 16111), March 11, 1981
FR Doc. 81-10724 (46 FR 21220), April 9, 1981
FR Doc. 81-10791 (46 FR 21221), April 9, 1981
FR Doc. 81-12660 (46 FR 23523), April 27, 1981
FR Doc. 81-15109 (46 FR 27518), May 20, 1981
FR Doc. 81-16678 (46 FR 29981), June 4, 1981
FR Doc. 81-19043 (46 FR 33069), June 26, 1981
FR Doc. 81-25194 (46 FR 43231), August 27, 1981
FR Doc. 81-26729 (46 FR 45793), September 15, 1981
FR Doc. 81-32240 (46 FR 55134), November 6, 1981
FR Doc. 81-33755 (46 FR 57337), November 23, 1981

An altered system report as required by 5 U.S.C. 552a(o) was submitted for this system on November 11, 1981.

M. S. Healy,

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

December 8, 1981.

Changes

A0914.04aDASG

System Name:

Change "Clinical Investigation Record System" to "Research and Experimental Case Files."

System Location:

Delete current entry and insert:

"U.S. Army Medical Research Institute of Chemical Defense (USAMRICD), Aberdeen Proving Ground, MD 21010.

Individual research/test/medical documents (paper records) are contained in individual's health record which, for reserve and retired military members, is at the U.S. Army Reserve Components Personnel and Administration Center, St. Louis, MO; for other separated military members, is at the National Personnel Records Center (NPRC), St. Louis, MO; for other separated military members, is at National Personnel Records Center (NPRC), St Louis, MO; for military members on active duty, is at the servicing medical facility/center; for civilians (both Federal employees and prisoners) is in a special file at NPRC.

As paper records are coverted to microfiche, the original (silver halide) and 1 copy of the microfiche will be located at the Washington National Records Center; 1 copy will be located at the Surgeon General's Office (DASG-PSA), Headquarters, Department of the Army, Washington, D.C. 20310; 1 copy will reside with the Army contractor—the National Academy of Sciences; and 1 copy retained at the U.S. Army

Medical Research Institute of Chemical Defense.

Historical 16mm film and audio visual tapes are at Norton Air Force Base, CA."

Catagories of Individuals Covered by the System:

Delete present entry and insert: "Volunteers (military members, Federal civilian employees, state prisoners) who participated in Army tests of potential chemical agents and/or antidotes from the early 1950's until the program ended in 1975."

Categories of Records in the System:

Delete present entry and insert: "Individual pre-test physical examination records and test records of performance and biomedical parameters measured during and after test exposure."

Routine Uses of Records Maintained in the System Including Categories of Users and the Purposes of Such Uses:

Delete present entry and insert: "By the Department of the Army: (1) to follow up on individuals who voluntarily participated in Army chemical/biological agent research projects for the purpose of assessing risks/hazards to them, and (2) for retrospective medical/scientific evaluation and future scientific and legal significance.

Disclosed to the Veterans Administration in connection with benefits determinations.

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System:

Delete entire present entry and insert: *"Storage:* Paper records in individual's medical file folders; see system location above for storage of microfiche, computer magnetic tapes and paper printouts, video tapes, and 16mm film."

"Retrievability: Paper records in individual's health record are retrieved by surname and/or service number/social security account number. Microfiche are retrieved by individual's surname. Film/video tape is accessed by case number and/or volunteer's number. Automated records are accessed by volunteer's number or case number.

"Safeguards: Paper records and microfiche are kept in locked rooms/compartments with access limited to authorized personnel. Access to computerized data is by use of a valid site ID number assigned to the individual terminal and by a valid user ID and password code assigned to authorized user changed periodically to avoid compromise. Data entry is on-line using a dial-up terminal. Computer files are controlled by keys known only to USAMRICD personnel assigned to work on the data base. Data base output is available only to designated computer operators at USAMRICD. Computer facility has double barrier physical protection. The remote terminal is in a room which is locked when vacated and the building is secured when unoccupied. The contractor (National Academy of Sciences) employs equal safeguards which meet Army standards for Privacy Act data."

"Retention and Disposal: Records stored in the computer and on microfiche are retained indefinitely at the sites identified under "system location". Paper medical records in an individual's health record are retained permanently."

System Manager(s):

Delete present entry and insert: "The Surgeon General, Headquarters, Department of the Army (DASG/PSA), The Pentagon, Washington, D.C. 20310."

Notification Procedures:

Delete present entry and insert: "Individuals wishing to inquire whether this system of records contains information about them should contact the Commander, U.S. Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD 21010. Written requests should include the full name, social security account number, current address, and telephone number of the requester. For personal visits, the individual should be able to provide acceptable identification such as valid driver's license, employer or other individually identifying number, building pass, etc."

Contesting Record Procedures:

Delete present entry and insert: "The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505)."

Record Source Categories:

Delete present entry and insert: "From the individual through test/questionnaire forms completed at test location; from medical authorities/sources by evaluation of data collected previous to, during, and following tests while individual was participating in this research program."

AO914.04aDASG

SYSTEM NAME:

Research and Experimental Case Files.

SYSTEM LOCATION:

US Army Medical Research Institute of Chemical Defense (USAMRICD), Aberdeen Proving Ground, MD 21010.

Individual research/test/medical documents (paper records) are contained in individual's health record which, for reserve and retired military members, is at the US Army Reserve Components Personnel and Administration Center, St Louis, MO; for other separated military members, is at the National Personnel Records Center (NPRC), St Louis, MO; for military members on active duty, is at the servicing medical facility/center; for civilians (both Federal employees and prisoners) is in a special file at NPRC.

As paper records are converted to microfiche, the original (silver halide) and 1 copy of the microfiche will be located at the Washington National Records Center; 1 copy will be located at The Surgeon General's Office (DASG–PSA), Headquarters, Department of the Army, Washington, DC 20310; 1 copy will reside with the Army contractor—the National Academy of Sciences; and 1 copy retained at the US Army Medical Research Institute of Chemical Defense.

Historical 16mm film and audio visual tapes are at Norton Air Force Base, CA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Volunteers (military members, Federal civilian employees, state prisoners) who participated in Army tests of potential chemical agents and/or antidotes from the early 1950's until the program ended in 1975.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual pre-test physical examination records and test records of performance and biomedical parameters measured during and after test exposure.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10 U.S.C., Sections 3012e and 4503.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

By the Department of the Army: (1) to follow up on individuals who voluntarily participated in Army chemical/biological agent research projects for the purpose of assessing risks/hazards to them, and (2) for retrospective medical/scientific evaluation and future scientific and legal significance.

Disclosed to the Veterans Administration in connection with benefits determinations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in individual's medical file folders; see "system location" above for storage of microfiche, computer magnetic tapes and paper printouts, video tapes, and 16mm film.

RETRIEVABILITY:

Paper records in individual's health record are retrieved by surname and/or service number/social security account number. Microfiche are retrieved by individual's surname. Film/video tape is accessed by case number and/or volunteer's number. Automated records are accessed by volunteer's number or case number.

SAFEGUARDS:

Paper records and microfiche are kept in locked rooms/compartments with access limited to authorized personnel. Access to computerized data is by use of a valid site ID number assigned to the individual terminal and by a valid user ID and password code assigned to authorized user, changed periodically to avoid compromise. Data entry is on-line using a dial-up terminal. Computer files are controlled by keys known only to USAMRICD personnel assigned to work on the data base. Data base output is available only to designated computer operators at USAMRICD. Computer facility has double barrier physical protection. The remote terminal is in a room which is locked when vacated and the building is secured when unoccupied. The contractor (National Academy of Sciences) employs equal safeguards which meet Army Standards for Privacy Act data.

RETENTION AND DISPOSAL:

Records stored in the computer and on microfiche are retained indefinitely at the sites identified under "system location". Paper medical records in an individual's health record are retained permanently.

SYSTEM MANAGER(S):

The Surgeon General, Headquarters, Department of the Army (DASG–PSA), The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the Commander, US Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD 21010. Written requests should include the full name, social security account number, current address, and telephone number of the requester. For personal visits, the individual should be able to provide acceptable identification such as valid driver's license, employer or other individually identifying number, building pass, etc.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual through test/questionnaire forms completed at test location; from medical authorities/sources by evaluation of data collected previous to, during, and following tests while individual was participating in this research program.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 81–35491 Filed 12–10–81; 8:45 am]

BILLING CODE 3710–08–M

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

The DoD Advisory Group on Electron Devices (AGED) will meet in closed session on January 21, 1982 at the Palisades Institutes for Research Services, Inc. 1925 North Lynn St., Arlington, Virginia, 22209.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the areas of Electron Devices.

The AGED meeting will be limited to review of research and development programs which the Military Department propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance wih 5 U.S.C. App. 1 10(d) (1976), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552(b)(c) 1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,

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

December 7, 1981.

[FR Doc. 81–35445 Filed 12–10–81; 8:45 am]

BILLING CODE 3810–01–M

DELAWARE RIVER BASIN COMMISSION

Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, December 16, 1981, commencing at 1:30 p.m. The hearing will be a part of the Commission's regular December business meeting, which is open to the public. Both the hearing and the meeting will be held in the Goddard Conference Room at the Commission's offices in West Trenton, New Jersey. The subjects of the hearing will be as follows:

A. *Current Expense Budget:*

A proposed current expense budget for the fiscal year beginning July 1, 1982, in the aggregate amount of $1,848,500, and a capital budget for the same period in the amount of $27,000. The following amounts would be apportioned among the signatory parties, along with the additional appropriations by the Commission, to balance the current expense budget: Delaware $149,800; New Jersey $398,000; New York $250,000; Pennsylvania $459,600; and the Federal Government $269,000. Copies of the current expense and capital budget are available from the Commission on request.

B. *Applications for Approval of the Following Projects Pursuant to Article 11 of the Compact and/or Section 3.8 of the Compact:*

1. *Village of Hancock (D–77–8 CP Rev.).* A wastewater collection and treatment project serving the Village of Hancock, Delaware County, New York. The project involves collecting sewers, two pumping stations and a treatment plant. The treatment plant, located in the Town of Hancock, is designed to remove 85 percent BOD and 90 percent suspended solids. Treated effluent will discharge to the Delaware River approximately 800 feet downstream of the confluence of the East and West Branches.

2. *Brush Wellman, Inc. (D–80–81).* An industrial waste treatment facility at the company's copper-beryllium alloy production plant in Perry Township, Berks County, Pennsylvania. A new, larger clarifier and lined lagoon will be utilized to remove about 97 percent of suspended solids from an average wastewater flow of 250,000 gallons per

day. Treated effluent will dicharge to a storm drainage ditch to the Schuylkill River.

Documents relating to the above-listed projects may be examined at the Commission's offices. Contact Mr. David B. Everett. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the date of the hearing.

W. Brinton Whitall,

Secretary.

December 1, 1981.

[FR Doc. 81-35440 Filed 12-10-81; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Service to Coos-Curry Electric Cooperative (Fairview-Bandon 230-kV Transmission Project); Finding of No Significant Impact

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of a finding of no significant impact (FONSI) for BPA's proposed Fairview-Bandon 230-kV transmission project providing service to Coos-Curry Electric Cooperative.

SUMMARY: BPA has prepared an environmental assessment (EA) evaluating its proposal to construct electrical transmission facilities improving service to the Coos-Curry Electric Cooperative in southwest Oregon. The proposed action is to rebuild 19.3 miles of 115-kV transmission line to double-circuit 230-kV and to construct a new 230/115-kV substation. The transmission line crosses the Coquille River and Bear Creek, requiring construction within their 100-year floodplains. Based on the EA, the Department of Energy (DOE) has determined that BPA's proposed action will not have a significant effect on the human environment and an environmental impact statement, therefore, will not be prepared. DOE also finds that there is no practicable alternative to siting the action within the floodplains.

SUPPLEMENTARY INFORMATION: The need for action is based on load growth forecasts for southwest Oregon and increasing electrical losses on the existing transmission lines.

The proposed project involves rebuilding 19.3 miles of two 115-kV transmission lines (known as Fairview-Bandon No. 1 and No. 2) from Fairview Substation to Bandon Substation and constructing the new Rogue Substation. BPA will rebuild the existing Fairview-Bandon No. 2 line to 230-kV, double-circuit from Fairview Substation to its junction with the Fairview-Bandon No. 1 line 7 miles east of Bandon Substation. BPA will rebuild the existing Fairview-Bandon No. 1 line to 230-kV, double-circuit from this point to within ½ mile of Bandon Substation, where it will be connected to an existing 230-kV double-circuit line, thus completing a 230-kV double-circuit transmission line between Fairview and the proposed new Rogue Substation. The substation will be constructed on 8 acres of land 6 miles north of Gold Beach. As discussed in the EA, the environmental impacts of the proposed action are:

(1) Increased visibility of larger, more complex towers. However, the line is farily remote and screened from most viewers by topography and vegetation.

(2) To accommodate the larger structures the present right-of-way must be widened by 10 feet. For the length of the line this is an additional 15–20 acres of new right-of-way with little commercial timber value.

(3) The number of towers along the line will be reduced because longer spans are possible with the larger towers.

(4) The Rogue Substation site is nearly level and contains little tall vegetation, so only minor clearing and grading will be required.

(5) There are no residences near the substation site to be disturbed by the noise of substation operations.

(6) Less than 2 miles of new access roads would be required. Some erosion may occur, to be minimized by the use of water bars, culverts, and rocking where necessary.

(7) The proposed action is consistent with coastal zone management plans.

(8) No threatened or endangered species or their critical habitat will be affected.

(9) The proposed action is not expected to affect properties listed on or eligible for listing on the National Register of Historic Places. If any historic or archeologic resource is encountered during construction, BPA will halt construction and notify appropriate authorities.

(10) No farmland classified as prime will be affected. Soils classified as unique farmland will be crossed, but not taken out of production.

(11) The transmission line will be constructed in Coos County, where utility lines are listed as a conditional use in the land use plan. This plan has not been acknowledged by the State. Because the transmission line is to be constructed on an existing transmission line corridor, it is compatible with existing land uses in the area. In the absence of a plan approved by the State, the only applicable landuse plan is Oregon's Statewide Planning Goals and Guidelines. The proposed transmission line is consistent with the State planning goals "to plan and develop a timely, orderly, and efficient arrangement of public facilities" and "to conserve energy."

(12) The Rogue Substation will be constructed in Curry County on land currently zoned for grazing and forestry. Although utility facilities are a conditional use in Curry County's land use plan, the State has not approved the plan and is prohibiting Curry County from changing existing land uses. The substation is consistent with the same State planning goals as the transmission line; it is inconsistent with the goals "to preserve and maintain agricultrual lands" and "to conserve forest lands for forest uses." However, the statewide plans provide for exceptions to goals when it appears that it is not possible to apply the appropriate goal to specific properties. The substation would be compatible with an adjacent land use, a landfill operated by Curry County.

BPA also considered two alternative plans of service and the alternative of no action. If no action is taken to increase transmission capacity, loss of either the Fairview-Bandon No. 1 or No. 2 line after 1986 will overload the other and customers will experience power outages. The probability of these outages will increase with load growth. After 1981, electrical losses begin to increase because the optimum power-carrying capacity of the conductor is exceeded. This loss of electricity will result in high operating costs. Furthermore, BPA's goal of energy conservation by loss reduction will not be advanced.

One alternative plan of service would rebuild the Fairview-Bandon line No. 2 and the Rogue Substation as with the proposal. In addition, a 3-mile long 115-kV line would be built between the Fairview-Bandon No. 2 line and Norway Substation. When this line is in service, line No. 1 between Fairview and Norway would be torn down. Loss savings on this plan are less than the proposal because of the increased electrical losses that occur by tapping a line. Reliability would also be reduced by this option because there would be only one complete circuit instead of two between Fairview and Bandon.

The other alternative plan of service would rebuild the existing Fairview-Bandon No. 2 to double-circuit 230-kV, but operate both sides at 115-kV. The Rouge Substation would not be constructed for this option; however,

modifications necessary at Fairview and Bandon Substations would be more extensive than Plans 1 or 2, requiring additional transformers and power circuit breakers. The electrical carrying capacity of the line for this option would not be increased enough to reduce electrical losses.

Because the Fairview Substation and the service area are on opposite sides of the Coquille river and Bear Creek, and because the 100-year floodplains are too wide to span, no action is the only possible alternative that could avoid locating new transmission line towers within the floodplains. However, no action is not practicable because it would not serve increasing electrical loads and would decrease the reliability and efficiency of service to the Coos-Curry Electric Cooperative. Therefore, there is no practicable alternative to locating part of the proposed action in the floodplains. To minimize potential harm to or within the floodplains, BPA would: (1) locate the new transmission line within an existing right-of-way rather than establish a new right-of-way; (2) minimize erosion by designing access roads with water bars and culverts; (3) where possible, locate towers out of cultivated fields or along their edges; (4) design tower footings to withstand floods; (5) locate towers away from the rivers' edges; (6) leave vegetative buffer zones along the stream banks; and (7) revegetate all areas disturbed by construction activity. The proposed action conforms to applicable State and local floodplain protection standards.

FOR FURTHER INFORMATION CONTACT:

Anthony R. Morrell, Acting Environmental Manager, Bonneville Power Administration, P.O. Box 3621-SJ, Portland, Oregon 97208; phone (503) 234-3361, extension 5136.

BPA may implement the proposed action December 28, 1981.

Dated: November 2, 1981.

William A. Vaughan,

Assistant Secretary, Environmental Protection, Safety, and Emergency Preparedness.

[FR Doc. 81-35500 Filed 12-10-81; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2006-7]

Availability of Environmental Impact Statements Filed Pursuant to 40 CFR Part 1506.9

Responsible Agency: USEPA, Office of Federal Activities.

Information Contact: Ms. Kathi Wilson (202) 245-3006.

EISs Filed: November 30-December 4, 1981.

Comment Due Dates: Drafts—January 25, 1982. Finals—January 11, 1982.

Corps of Engineers (COE): Draft—Wynoochee Hydropower/Fish Hatchery Development, Grays Harbor County, Washington; Extended review 1/31/82 (EPA EIS #810983)

COE: Draft—Chicago Area Confined Disposal Facility and Maintenance Dredging, Cook County, Illinois (EPA EIS #810984)

COE: Final—Riverport Port Facilities Construction, Permit, Jefferson County, Kentucky (EPA EIS #810968)

COE: Final Supplement—Richard B. Russell Dam and Lake, Fish and Wildlife Mitigation Plan, Georgia and South Carolina (EPA EIS #810974)

Department of Energy (DOE: Draft—Shippingport Atomic Power Station Decommissioning, Beaver County, Pennsylvania; Extended review 1/31/82 (EPA EIS #810975)

DOI: Bureau of Reclamation: Draft—Central Arizona Project, Water Allocation and Water Service Contracting, Arizona; Extended review 1/29/82 (EPA EIS #810967)

DOI: National Park Service: Final—Lincoln Boyhood National Memorial, General Management Plan, Spencer County, Indiana (EPA EIS #810981)

DOT: Federal Highway Administration (FHWA): Draft—Appalachian Corridor X, AL-19 to County Road 45, Marion County, Alabama (EPA EIS #810976)

DOT: FHWA: Final—72nd Street Reconstruction, NB-370 to L Street, Douglas and Sarpy Counties, Nebraska (EPA EIS #810966)

DOT: FHWA: Final—Tri-County Expressway, Winnebago, Calumet and Outagamie Counties, Wisconsin (EPA EIS #810972)

DOT: FHWA: Final—WA-290 Spur Improvement, Hamilton Street to WA-90, Spokane County, Washington (EPA EIS #810982)

DOT: Urban Mass Transportation Administration: Draft—San Jose Transit Mall, Santa Clara County, California (EPA EIS #810965)

Department of Housing and Urban Development (HUD): Draft—Franklin Farm Residential Community, Mortgage Insurance, Fairfax County, Virginia (EPA EIS #810979)

HUD: Draft Supplement—Soul City New Community, Title VII Termination, Warren County, North Carolina (EPA EIS #810977)

HUD: Final—Countryside Housing Development, Mortgage Insurance, Pennington County, South Dakota (EPA EIS #810969)

HUD: Final—Colorado Springs Metropolitan Areawide Study, Mortgage Insurance, EL Paso County, Colorado (EPA EIS #810980)

USDA: Forest Service (FS): Draft—Targhee National Forest Land Management Plan, Idaho and Wyoming; Extented review 3/15/82 (EPA EIS #810973)

USDA: FS: Draft—Quartz Hill Molybdenum Claims Road Access and Bulk Sampling, Tongass National Forest, Alaska; Extended review 1/29/82 (EPA EIS #810978)

USDA: FS: Final—Northern Regional Plan, Standards and Guidelines, Idaho, Montana, North Dakota, South Dakota and Washington (EPA EIS #810986)

Department of State: Final—Federal International Center Modification, Washington, DC (EPA EIS #810987)

Department of the Navy: Final—China Lake NWC, Feral Burro Management Program, Inyo, Kern and San Bernardino Counties, California (EPA EIS #810970)

Department of the Army: Final—Binary Chemical Munitions Program, Pine Bluff Arsenal, Jefferson County, Arkansas (EPA EIS #810985)

Dated: December 8, 1981.

Paul C. Cahill,

Director, Office of Federal Activities.

[FR Doc. 81-35490 Filed 12-10-81; 8:45 am]

BILLING CODE 6560-37-M

[A-3-FRL-2003-3]

Determinations—Region III; Prevention of Significant Air Quality

Notice is hereby given that between the period of April 10, 1981 to October 21, 1981 the Environmental Protection Agency (EPA) Region III issued the following final determinations relating to EPA's Prevention of Significant Air Quality Deterioration (PSD) regulations (40 CFR 52.21) as amended in the Federal Register on August 7, 1980 [45 FR 52735]:

I. PSD Permits Issued

Applicant	Source	Location	Date of final action
Borg-Warner Corporation	Fluidized Bed Boiler	Morgantown, WV	4/16/81
Philip Morris, USA	Coal/Oil Fired Boiler & Related Coal & Fly Ash Handling Systems.	Chester, VA	5/20/81
Airco Speer Carbon-Graphite	Six Carbottom Kilns & Increased Production of Graphitizing Plant.	St. Mary's, PA	5/20/81
GPU Service Corp	Coal Fired Electric Utility Steam Generating Unit	Springfield & Girard Townships, Erie County, PA.	8/18/81
Domtar Chemical Group	No. 1 Rotary Kiln	Bellefonte, PA	9/10/81
Northeast Maryland Waste Disposal Authority	Southwest Resource Recovery Facility	Baltimore, MD	9/10/81
Consolidated Gas Supply Corp	Natural Gas Fired Internal Combustion Engines (2)	Hastings, WV	9/14/81
Delmarva Power & Light Co	Coal Fired Electric Utility Steam Generating Unit	Vienna, MD	9/30/81
Pennsylvania Coke Technology, Inc	Coke Plant	Lester, WV	9/30/81

These permits were issued in accordance with specific conditions (emission limitations, monitoring and testing requirements) and general provisions set forth by the PSD requirements.

II. PSD Nonapplicability Determinations

The following sources were reviewed by this agency and were determined not to be subject to the PSD permit requirements:

Applicant	Source	Location	Date of final action
Texas Eastern Transmission Corp	Gas Turbine	Delmont, PA	4/10/81
Multitrade Group	Wood/Coal Fired Boiler	Martinsville, VA	4/22/81
Marley Neck Coal Terminal	Coal Terminal	Marley Neck, MD	5/14/81
Louie Glass Co.	Glass Melting Unit	Weston, WV	5/22/81
Meenan Corp	Boiler Testing	Indian Head, MD	6/22/81
Columbia Gas Transmission Corp	Additional Horsepower to Compressor Station	Chester County, PA	6/30/81
Union Carbide Institute Plant	Pesticide Production Unit	Charleston, WV	6/30/81
Ashland Chemical Co	Maleic Anhydride Plant (Change in Feedstock)	Neal, WV	7/31/81
Consolidation Coal Co.[1]	Coal Preparation Plant (Dents Run Mine)	Mannington, WV	8/18/81
Armco, Inc	Coal Preparation Plant	Prenter, WV	8/21/81
Consolidation Coal Co.[1]	Coal Preparation Plant (Buchanan No. 1 Mine)	Buchanan County, VA	8/27/81
Consolidation Coal Co.[1]	Coal Preparation Plant (Manor Mine)	Greene County, PA	8/27/81
Appleton Papers, Inc.[1]	No. 3 Recovery Boiler	Roaring Springs, PA	9/3/81
Consolidation Coal Co.[1]	Coal Preparation Plant (Westland II Mine)	Washington County, PA	9/8/81
Halltown Paperboard Co.[1]	Coal Fired Boiler	Halltown, WV	9/30/81

[1] Reevaluations of the applicability of PSD permit requirements were made on these nonapplicability determinations under the Administrator's July 7, 1981 temporary partial stay of PSD regulations (46 FR 36695, July 15, 1981).

These nonapplicability determinations do not relieve the reviewed sources of the responsibility for complying with all local, State, and Federal regulations which are part of the State Implementation Plan. A determination will be void if the information submitted and used as a basis for the PSD nonapplicability decision proves to be incorrect or is modified.

III. Permit Extension

Hampton Roads Energy Company (HREC), Norfolk, VA. An 18-month extension of the original PSD permit approved on January 25, 1980 was granted to HREC on June 30, 1981. This action was based upon the company's showing that they were unable to commence construction within the original 18-month period required by the PSD regulations.

IV. Permit Modifications

a. Clinchfield Coal Company, McClure River Plant, Dante, VA. Modifications to the conditions of the PSD permit issued on July 7, 1979 for the McClure River Plant were granted on July 1, 1981. This action reflected a change in hours of operation and emission rate limitations. All other permit conditions remain in effect.

b. Celanese Fibers Company, Cumberland, MD. Approval was granted on August 18, 1981 for an innovative technology waiver for the company's coal boiler at the Amcelle Plant. EPA's review indicated that the dry scrubbing system for removal of sulfur dioxide emissions from the flue gas, represents innovative technology. All other conditions of the original permit remain unchanged.

V. Permit Rescissions

a. Bethlehem Steel Corporation, Johnstown, PA. On July 24, 1981 the PSD permit issued on July 3, 1979 for the construction and operation of the company's electric furnace melt shop was rescinded. The closure of older integrated steelmaking facilities at the plant resulted in a net decrease in emissions. In addition, Johnstown is designated as a nonattainment area, and under the PSD regulations as amended, PSD permits are not required for new or modified sources in nonattainment areas.

b. Marvin V. Templeton & Sons, Inc., Piney River, VA. On September 4, 1981 the PSD permit issued on May 7, 1979 for relocation of an asphalt plant from Tennessee to the company's plant site in Piney River, VA was rescinded. Under

the PSD regulations as amended, this facility falls below the 250 ton per year emission rate used to define an asphalt plant as a major source.

c. Pendleton Construction Corporation, Wytheville, VA. On October 21, 1981 the PSD permit issued on January 2, 1980 for relocation of an asphalt plant from Carroll County, VA to Lynchburg, VA was rescinded. Under the PSD regulations as amended, this facility falls below the 250 ton per year emission rate used to define an asphalt plant as a major source.

Under Section 307(b)(1) of the Clean Air Act, judicial review of these actions is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit on or before February 9, 1982.

Copies of these determinations are available for public inspection upon request at the following location: Air Media and Energy Branch (3AH10), Environmental Protection Agency, Region III, 6th and Walnut Streets, Philadelphia, PA 19106, Attention: Mr. Robert J. Blaszczak (215–597–8186).

Dated: November 30, 1981.

Peter N. Bibko,

Regional Administrator, EPA—Region III.

[FR Doc. 81-35490 Filed 12-10-81; 8:45 am]

BILLING CODE 6560-38-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Request for Public Comment

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Request for public comment on draft fiscal year 1982 program announcement.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing this draft program announcement/application solicitation for the FY 1982 Labor-Management Cooperation Program to inform the public and obtain public comments. This program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations.

DATE: Comments are due on or before January 11, 1982.

ADDRESS: Send comments to: Peter L. Regner, Director, Labor-Management Grant Programs, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, D.C. 20427.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, 202–653–5320.

SUPPLEMENTARY INFORMATION:

A. Introduction

The following is the draft announcement for the Fiscal year 1982 cycle of the Labor-Management Cooperation Program. These guidelines represent the second year of efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was approved in October 1978.

The Act generally authorized FMCS to: Provide assistance in the establishment and operation of plant, area, and industrywide labor and management committees which—

(A) Have been organized jointly by employers and labor organizations representing employees in that plant, area, or industry; and

(B) Are established for the purpose of improving labor management relationships, job security, organizational effectiveness, enhancing economic development or involving workers in decisions affecting their jobs including improving communication with respect to subjects of mutual interest and concern.

The Act also prohibited FMCS from awarding any grants or contracts under the following three circumstances:

(1) No assistance can be given for plant labor-management committees unless the employees in that plant are represented by a labor organization and there is in effect at that plant a collective bargaining agreement;

(2) No assistance can be given for an area or industrywide labor-management committee unless its participants include any labor organizations certified or recognized as the representative of the employees of an employer participating in such a committee. However, employers whose employees are not represented by a labor organization may participate on such areas or industrywide committees; and

(3) No assistance can be given to any committee which FMCS finds to have as one of its purposes the discouragement of the exercise of rights contained in section 7 of the National Labor Relations Act (29 U.S.C. 157) or the interference with collective bargaining in any plant or industry.

With respect to item (2) above, applicants for area or industrywide grants should offer committee memberships to every labor organization having a collective bargaining contract with any employer participating on the committee. Any labor organization so desiring may voluntarily elect not to participate on the Committee. Documentation of all this (i.e., the listing of each participating employer and corresponding labor organizations and written declinations by those labor organizations not electing to participate on the committee) should be included as part of the application.

The Program Description and other sections that follow as well as a separately published FMCS Financial and Administrative Grants Manual make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a plant, areawide, or industrywide labor-management committee. Directions for obtaining an application kit may be found in Section F.

B. Program Description

Objectives

The Labor Management Cooperation Act of 1978 identified the following seven general areas for which financial assistance would be appropriate:

(1) To improve communications between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by stablishing continuing mechanisms for communication between employers and their employees through Federal assistance to the formation and operation of labor-management committees.

The primary objective of this program is to provide financial assistance for the establishment and operation of joint labor-management committees to carry out specific objectives that meet the aforementioned general criteria and conform to the restrictions mentioned in Section A (Introduction). As discussed in the legislation, these committees may be found at either the plant, area, or industry levels. A plant committee is generally characterized as restricted to

one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple and diverse employers as well as multiple labor unions operating within city, county, contiguous multi-county or statewide jurisdictions. An industry committee generally consists of a collection of productive enterprises and related labor unions producing a common product or service either on a local, state, regional, or nationwide level. In FY82, the industry committee competition will be divided into two separate categories—private industry and public sector committee. Public sector committees are those composed of public managers and public service employee unions and focus on government services. The employees represented in such public sector committees must be covered by a formal collective bargaining agreement.

In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

Required Program Elements

1. *Problem Statement*—The application, which should have numbered pages, must discuss in detail what specific problem(s) face the plant, area, or industry and workforce that will be addressed by the committee. Applicants must document the problems using as much relevant data as possible and discuss the full range of impacts these problems could have or are having on the plant, area, industry, or community. An industrial or economic profile of the plant/area/industry and workforce might prove useful in explaining the problems. This section basically discusses WHY the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail WHAT the labor-management committee will accomplish during the life of the grant. While a goal of "improving communication between employers and employees" may suffice as one overall goal of a project, the objectives must, whenever possible, be expressed in measurable terms. Applicants should focus on the impacts or changes that the committee's efforts will have on the plant, area, or industry. Existing committees should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts.

3. *Approach*—this section of the application specified HOW the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all proposed members of the labor-management committee. Be sure to identify the chairperson(s) and the role he/she will play. The application should also offer a rationale for the selection of the committee members (e.g. members represent 70% of the area workforce);

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet as well as any plans to form subordinate committees for particular purposes;

(f) For applications from existing committees (i.e., in existence at least 6 months prior to the submission deadline), a discussion of the past efforts and accomplishments and how they would integrate with the proposed future expanded effort; and

(g) For plant committees, a justification for why their proposed efforts should be considered innovative and replicable in other plants across the country.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for WHEN they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progresss reports to FMCS.

5. *Evaluation*—Applicants are allowed the options of contracting for external evaluations or conducting their own evaluation. Applicants may expend up to $7,000 for an outside evaluation. In either case, an evaluation plan must be discussed in this section.

The evaluation plan should discuss what basic questions or issues the proposed evaluator would examine and what baseline data the committee staff would already have or will gather for the evaluator. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include letters of commitment from all proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and are willing to personally attend scheduled committee meetings.

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels and breakout of annual operating costs;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address;

(2) The degree to which appropriate and measurable goals and objectives have been developed to address the problems/needs of the plant, area, or industry. For existing committees, the extent to which the committee will focus on expanded efforts.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. For plant committees, the degree of innovation will receive special consideration;

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application;

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates;

(6) The feasibility and thoroughness of planning on how to best evaluate the project's impacts, including major

evaluation topics and necessary data elements; and

(7) The cost effectiveness and fiscal soundness of the application's budget request as well as the application's fiscal feasibility vs. its goals and approach.

(8) The cost value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978.

E. Eligibility

Eligible grantees include State and local units of government, private non-profit labor-management committees, and a labor organization/private company or public agency applying jointly to create a labor-managment committee. In the latter situation, the application must be signed by a leading labor and company/industry or public official and indicate which entity will assume fiscal responsibility for the grant. If a private for-profit industry assumes such responsibility, no request for payment of fee or profit will be accepted.

Third party private non-profit entities who can document that a major purpose or function of their organization has been the improvement of labor relations are also eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document strong support and participation from all labor and management parties with whom the applicant will be working.

In addition to the eligibility restrictions mentioned above and in Section A (Introduction), the following restrictions are also placed on applicants for a plant or industry labor-management committee:

(1) Where an area labor-management committee is already in existence or in the final stages of development, applicants for either plant or industry committees in that same area must document that their proposed efforts would not duplicate or otherwise conflict with the area committee, particularly in a jurisdiction where a currently FMCS-funded area labor-management committee exists.

(2) Applicants for plant committees must document that their objectives are innovative and replicable in other situations and geographic areas.

In the event two or more applications are received which compete under the same category from the same jurisdiction (e.g., two plant committee applications from the same city or two areawide applications from the same county), only the higher scoring application will be awarded (if both are ranked acceptable for funding and the funds are available).

C. Allocations

For Fiscal Year 1982, an appropriation of $1 million has been approved by the House of Representatives for this program. If this allocation is approved by the Senate and the President, the funds, will be divided into four funding pools; up to $100,000 will be available for committees at the plant level; up to $500,000 will be for committees at the area level; up to $200,000 will be for private sector committees at the industrywide level, and up to $200,000 will be for all public sector committees.

In the event that the amount requested by acceptable applications for one or more of the above four categories falls short of the amount of funds available, those excess funds will be reprogrammed to the category(ies) where demand exceeds available funds. FMCS also reserves the right to reprogram up to 15 percent of funds from any category into one or more other categories without prior notice, as well as set aside up to $50,000 of the appropriation for one or more conferences on labor-management cooperation to be sponsored in conjunction with the National Association of Area Labor-Management Committees.

D. Dollar Range and Length of Grants and Continuation Policy

Awards to continue or expand existing labor-management committees (i.e., in existence at least 6 months prior to the submission deadline) shall be for a period of 12 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 12 months. The total project period will thus normally be no more than 24 months.

Initial awards to establish new labor-management committees (i.e., not yet established or in existence less than 6 months prior to the submission deadline), shall be for a period of 18 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 18 months. The total project period will thus normally be no more than 36 months.

The dollar range of awards are as follows:

(1) Plant—up to $20,000 per annum or $30,000 per 18-month period.

(2) Area—up to $75,000 per annum or $100,000 per 18-month period.

(3) Industry—up to $75,000 per annum or $100,000 per 18-month period.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and grantee match, applicants may supplement these funds through voluntary contributions from other sources.

E. Match Requirements and Cost Allowability

In FY82, applicants must provide at least 10 percent of the total allowable project costs. This 10 percent match must be in cash rather than in-kind goods or services. Matching funds may come from state or local government sources or private sector sources, but may generally not include other Federal funds.

It shall also be the policy of this program to reject all requests for indirect or overhead costs. In addition, grant funds must not be used to supplant private or local/state government funds previously made available for these purposes. Also, under no circumstances will management staff or employees participating on a labor-management committee be paid or otherwise compensated out of grant funds for time spent at committee meetings or training sessions.

For a more complete discussion of cost allowability, applicants are encouraged to consult the FMCS Financial and Administrative Grants Manual which will be included in the application kit.

F. Application Submission and Review Process

Applicants wishing to submit a draft or pre-application for informal review and comment by the grants program staff may submit pre-applications anytime up to February 28, 1982. FMCS staff will provide brief and general comments as to possible application deficiencies. The pages of pre- and final applications should be numbered.

Final applications must be postmarked no later than April 30, 1982 and should indicate under which category (Area, Plant, Private or Public Industry) they are to be considered. No applications or supplementary materials can be accepted after the deadline. An original application plus three copies should be addressed to the Federal Mediation and Conciliation Service, Division of Labor-Management Grant

Programs, 2100 K Street, N.W., Washington, D.C. 20427.

After the deadline has passed, all eligible applications will be reviewed and scored by an FMCS Grant Review Board. The Assistant Director of the Office of Policy and Resource Management, Labor-Management Grant Programs, will finalize the scoring and recommend which applications will be placed in which one of the following three categories: (a) unacceptable for funding, (b) potentially acceptable for funding but funds are unavailable, and (c) recommended for funding. The final decision on funding and responsibility for award will rest with the Director of the Office of Policy and Resource Management.

All FY 82 grant awards are expected to be made within 90 days of the application submission deadline. Applications submitted after the deadline dates or that fail to adhere to eligibility or other major requirements will be administratively rejected prior to the convening of the Grant Review Board.

G. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits, as well as additional information or clarification, can be obtained by contacting Peter L. Regner, Federal Mediation and Conciliation Service, Division of Labor-Management Grant Programs, 2100 K Street, N.W., Washington, D.C. 20427, or calling 202/653-5320.

Kenneth E. Moffett,

Deputy Director, Federal Mediation and Conciliation Service.

[FR Doc. 81-35503 Filed 12-10-81; 8:45 am]

BILLING CODE 6732-01-M

FEDERAL RESERVE SYSTEM

C.S.B. Corp.; Formation of Bank Holding Company

C.S.B. Corporation, Marianna, Florida, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank, Marianna, Florida. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 3, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice 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, December 3, 1981.

James McAfee,

Assistant Secretary of the Board.

[FR Doc. 81-35429 Filed 12-10-81; 8:45 am]

BILLING CODE 6210-01-M

D.C. National Bancorp, Inc.; Formation of Bank Holding Company

D.C. National Bancorp, Inc., Washington, D.C., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares of the successor by merger to District of Columbia National Bank, Washington, D.C. 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 Richmond. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 3, 1982. 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, December 3, 1981.

James McAfee,

Assistant Secretary of the Board.

[FR Doc. 81-35430 Filed 12-10-81; 8:45 am]

BILLING CODE 6210-01-M

First Moore Bancshares, Inc.; Proposed Acquisition of First Moore Insurance Agency, Inc.

First Moore Bancshares, Inc., Moore, Oklahoma, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of First Moore Insurance Agency, Moore, Oklahoma.

Applicant states that the proposed subsidiary would engage in the sale of credit life, accident and health insurance. These activities would be performed from offices of Applicant's subsidiary in Moore, Oklahoma, and the geographic area to be served is that which is served by Applicant's banking subsidiary. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received no later than January 3, 1981.

Board of Governors of the Federal Reserve System, December 4, 1981.

James McAfee,

Assistant Secretary of the Board.

[FR Doc. 81-35431 Filed 12-10-81; 8:45 am]

BILLING CODE 6210-01-M

Highland Park Bancorporation, Inc.; Formation of Bank Holding Company

Highland Park Bancorporation, Inc., St. Paul, Minnesota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares, less directors' qualifying shares of Mid-America State Bank of Highland Park, St. Paul, Minnesota. The factors that are considered in acting on the application

are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than January 3, 1982. 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, December 4, 1981.

James McAfee,

Assistant Secretary of the Board.

[FR Doc. 81-35432 Filed 12-10-81; 8:45 am]

BILLING CODE 6210-01-M

Kansas Unlimited Investments, Inc.; Formation of Bank Holding Company

Kansas Unlimited Investments, Inc., Pleasanton, 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 at least 80 per cent of the voting shares of Bank of Pleasanton, Pleasanton, 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 Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than January 3, 1982. 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 at a hearing.

Board of Governors of the Federal Reserve System, December 4, 1981.

James McAfee,

Assistant Secretary of the Board.

[FR Doc. 81-35433 Filed 12-10-81; 8:45 am]

BILLING CODE 6210-01-M

Lake Shore Bancorp, Inc.; Formation of Bank Holding Company

Lake Shore Bancorp, Inc., Chicago, 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 100 per cent of the voting shares of Lake Shore National Bank, Chicago, 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 January 3, 1982. 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, December 4, 1981.

James McAfee,

Assistant Secretary of the Board.

[FR Doc. 81-35434 Filed 12-10-81; 8:45 am]

BILLING CODE 6210-01-M

Larch Bancorporation, Inc.; Formation of Bank Holding Company

Larch Bancorporation, Inc., Larchwood, 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 82 per cent or more of the voting shares of Security Savings Bank, Larchwood, 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 January 3, 1982. 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, December 4, 1981.

James McAfee,

Assistant Secretary of the Board.

[FR Doc. 81-35435 Filed 12-10-81; 8:45 am]

BILLING CODE 6210-01-M

Manhattan Bancshares, Inc.; Formation of Bank Holding Company

Manhattan Bancshares, Inc., Manhattan, 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 per cent of the voting shares of The First National Bank of Manhattan, Manhattan, 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 January 2, 1982. 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, December 4, 1981.

James McAfee,

Assistant Secretary of the Board.

[FR Doc. 81-35436 Filed 12-10-81; 8:45 am]

BILLING CODE 6210-01-M

Tri-State Financial Bancorp.; Formation of Bank Holding Company

Tri-State Financial Bancorp., Bryan, Ohio, has applied for the Board's approval under section 3 (a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares of the successor by merger to First National Bank Northwest Ohio, Bryan, Ohio. 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 Cleveland. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 24, 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, December 4, 1981.

James McAfee,

Assistant Secretary of the Board.

[FR Doc. 81-35437 Filed 12-10-81; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Advisory Committee on Preservation; Renewal

Renewal of Advisory Committee. This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), and advises of the renewal of the Advisory Committee on Preservation. The Administrator of General Services has determined that renewal of this advisory committee is in the public interest to ensure that the National Archives and Records Service obtains necessary advice relating to the preservation of the permanently valuable records in the National Archives of the United States.

Designation. Advisory Committee on Preservation.

Purpose. The committee advises the Archivist of the United States on the state of current preservation technology and research, preservation problems arising from the use of past technologies, potential preservation problems that may arise when records on new media are accessioned, and related matters of concern to the continued preservation of the records in the National Archives of the United States.

Dated: December 2, 1981.

Gerald P. Carmen,

Administrator of General Services.

[FR Doc. 81-35438 Filed 12-10-81; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Mine Health Research Advisory Committee, Pulmonary Function Testing Subcommittee; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control announces the following National Institute for Occupational Safety and Health (NIOSH) Committee meeting:

Name: Pulmonary Function Testing Subcommittee of the Mine Health Research Advisory Committee

Date—Time: December 21-22, 1981—8:30 a.m. to 4:30 p.m.

Note.—The 15-day requirement for advance meeting notice has not been met due to unforeseen difficulties with the availability of committee members.

Place: Appalachian Laboratory for Occupational Safety and Health, 944 Chestnut Ridge Road, Room 203, Morgantown, WV 26505

Type of Meeting: Open

Contact Person: John L. Hankinson, Ph. D., Chief, Clinical Investigations Branch, Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, Centers for Disease Control, 944 Chestnut Ridge Road, Room 254, Morgantown, WV 26505, Telephone: (304) 599-7755

Purpose: To discuss criteria for evaluating pulmonary function tests and options for possibly incorporating such tests in the medical surveillance program for coal miners.

The Mine Health Research Advisory Committee (MHRAC) was established by the Federal Mine Safety and Health Act of 1977. This legislation also provides the basis for periodic chest roentgenograms for underground coal miners. Examinations are made available by mine operators, and NIOSH administers the program using the procedures under 42 CFR Part 37. Consideration is being given to expanding the medical examinations to include pulmonary function or other tests.

Interested parties wishing to participate in the meeting are requested to contact Dr. John Hankinson at the address above in order to be assured appropriate time for presentation. Four copies of the text of the presentation must be provided to the subcommittee chairperson, Dr. Donald L. Rasmussen, 306½ Stanaford Road, Beckley, WV 25801, prior to or at the subcommittee meeting.

The subcommittee will present its report on this subject to the MHRAC at their next meeting currently scheduled for February 1-2, 1982. The final subcommittee report, as approved by the MHRAC, will be available subsequent to the February meeting.

Dated: December 4, 1981.

William C. Watson, Jr.,

Acting Director, Centers for Disease Control.

[FR Doc. 81-35442 Filed 12-10-81; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 81-M-0385]

Coburn Optical Industries, Inc.; Premarket Approval of Choyce Mark VIII and Choyce Mark IX Anterior Chamber Intraocular Lenses

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Choyce Mark VIII and Choyce Mark IX anterior chamber intraocular lenses sponsored by Coburn Optical Industries, Inc., Clearwater, FL. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by January 11, 1982.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles Kyper, Bureau of Medical Devices (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On April 16, 1980, Coburn Optical Industries, Inc., Clearwater, FL, submitted to FDA an application for premarket approval of Choyce Mark VIII and Choyce Mark IX anterior chamber intraocular lenses. The application was reviewed by the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. On December 1, 1981, FDA approved the application by a letter to the sponsor from the Acting Director of the Bureau of Medical Devices.

Under the Medical Device Amendments of 1976 (Pub. L. 94-295, 90 Stat. 539-583), intraocular lenses are regulated as class III devices (premarket approval).

A summary of the safety and effectiveness data on which FDA's

approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Bureau of Medical Devices. Contract Charles Kyper (HFK–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515 (d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e (d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 11, 1982, file with the Dockets Management Branch (address above), four copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 3, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-35143 Filed 12-4-81; 2:14 pm]

BILLING CODE 4160-01-M

[Docket No. 81D-0262]

Confirmation of Aflatoxin B_1 in Pumpkin Seed; Availability of Guide

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of revised FDA Compliance Policy Guide 7120.26 pertaining to the analytical methods used to confirm the identity of aflatoxin B_1 in foods. FDA has included pumpkin seeds among the commodities for which it is not necessary to confirm the identity of aflatoxin B_1 by means of a Chicken Embryo Bioassay for Aflatoxin B_1 Toxicity. The agency decided to except pumpkin seeds from this requirement on the basis of analytical data on pumpkin seeds that showed, without exception, that confirmation of aflatoxin B_1 has been corroborated by chemical derivatization. This method reliably confirms the identity of aflatoxin B_1 in pumpkin seeds, yet requires considerably less time than the chicken embroy bioassay procedure.

ADDRESS: Written comments on these criteria and requests for single copies of FDA Compliance Policy Guide 7120.26 should be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Howard N. Pippin, Bureau of Foods (HFF–312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–3092.

SUPPLEMENTARY INFORMATION: The guideline for adulteration with aflatoxin in foods has existed for several years. As required by the guideline, analyses for confirmation of identity of aflatoxin have been performed using two procedures, one consisting of a chemical derivatization of aflatoxin and the other of a lengthy chicken embryo bioassay for aflatoxin B_1 toxicity.

The agency has reviewed data developed since 1964 on the identity of aflatoxin in foods. These data show that the confirmation of aflatoxin B_1 in pumpkin seeds by the chemical derivatization procedure has, without exception, been corroborated by the chicken embryo bioassay. Since 1979, the results of confirmatory tests on samples of pumpkin seeds have been compiled by FDA. The tests show in all cases that the results of the chemical assay have been confirmed by the bioassay, thereby establishing that the chemical derivative procedure provides adequate means to confirm the identity of aflatoxin in pumpkin seeds. Thus, the chemical test can stand alone as the confirmatory test for the identity of aflatoxin B_1 in pumpkin seeds, as well as the other commodities that are excepted in the FDA guideline (corn and corn meal, cottonseed and cottonseed meal, coconut meal, and copra). The chicken embryo bioassay confirmation takes a little more than 3 weeks to perform, and regulatory action must await the bioassay results. Accordingly, FDA Compliance Policy Guide 7120.26 has been revised to require no longer the chicken embryo bioassay for pumpkin seeds before regulatory action can be taken on the basis of samples found to be violative. The level of aflatoxin permitted in pumpkin seeds and other foods covered by this guide has not changed.

Background data supporting revised FDA Compliance Policy Guide 7120.26 are on file in the Dockets Management Branch under the docket number found in brackets in the heading of this document. Requests for single copies of FDA Compliance Policy Guide 7120.26 should reference the docket number found in brackets in the heading of this document and should be submitted in writing to the Dockets Management Branch, (address above).

Interested persons may submit to the Dockets Management Branch, address above, written comments on the guide. Two 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. Received comments are available for examination in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 3, 1981.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-35144 Filed 12-10-81; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81F-0360]

Heinrich Fischer & Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Heinrich Fischer & Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of disodium EDTA (ethylenediaminetetraacetic acid,

disodium salt) component of lubricants with incidental food contact.

FOR FURTHER INFORMATION CONTACT: Julia L. Ho, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B3588) has been filed by Heinrich Fischer & Co., 8180 Corporate Park Drive, Cincinnati, OH 45242, proposing that § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) be amended to provide for the safe use of disodium EDTA as a component of lubricants with incidental food contact.

The potential environmental impact statement of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: November 30, 1981.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 81-35146 Filed 12-10-81; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81M-0363]

Novametrix Medical Systems, Inc.; Premarket Approval of TCO_2M Model 818 Transcutaneous O_2/CO_2 Monitor

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the TCO_2M Model 818 Transcutaneous O_2/CO_2 Monitor sponsored by Novametrix Medical Systems, Inc., Wallingford, CT. After reviewing the recommendation of the Anesthesiology Device Section of the Respiratory and Nervous System Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by January 11, 1982.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles Kyper, Bureau of Medical Devices (HFK–402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7445.

SUPPLEMENTARY INFORMATION: On May 15, 1981, Novametrix Medical Systems, Inc., Wallingford, CT, submitted to FDA an application for premarket approval of the carbon dioxide systems of the TCO_2M Model 818 Transcutaneous O_2/CO_2 Monitor, a trend monitor for oxygen/carbon dioxide tension at the skin surface. (The oxygen system is substantially equivalent to other preamendments devices and consequently does not require premarket approval). The application was reviewed by the Anesthesiology Device Section of the Respiratory and Nervous System Devices Panel, an FDA advisory committee, which recommended approval of the application for the use of this device on neonates and adults. On November 9, 1981, FDA approved the application by a letter to the sponsor from the Acting Director of the Bureau of Medical Devices.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Bureau of Medical Devices. Contact Charles Kyper (HFK–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition under section 515(g) of the act (21 U.S.C. 360e(g)) for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 11, 1982, file with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, four copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 3, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-35145 Filed 12-10-81; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81N-0346; DESI Nos. 6327 etc.]

Revised Marketing Requirements for Certain Drug Products; Drugs for Human Use; Drug Efficacy Study Implementation; Followup Notice

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: This notice states the revised marketing requirements for persons who do not now hold an approved new drug application (NDA) for the drug products listed below. Abbreviated new drug applications (ANDA's) will now be accepted for these drug products. (Docket No. 81N–0346; DESI Nos. 6327, 6460, 8085, 8461, 9048, 9149, 9238, 9675, 10690, 11020, 11127, 12097, 12122, 12285, 12665, and 13413).

EFFECTIVE DATE: December 11, 1981.

ADDRESSES: Communications in response to this notice should be identified with the pertinent DESI reference number, which appears in the list of products below, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Original ANDA's (identify as such): Division of Generic Drug Monographs (HFD–530), Bureau of Drugs.

Requests for information on conducting bioavailability tests: Division of Biopharmaceutics (HFD–520), Bureau of Drugs.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD–310), Bureau of Drugs.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD–501), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT: Herbert Gerstenzang, Bureau of Drugs (HFD–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

FOR FURTHER INFORMATION ON BIOAVAILABILITY REQUIREMENTS CONTACT: Shrikant V. Dighe, Bureau of Drugs (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1640.

SUPPLEMENTARY INFORMATION: The 16 notices listed below classified a number of drug products in the Drug Efficacy Study Implementation (DESI) program as effective for certain indications. These notices also required, or have been interpreted as requiring, a full NDA containing the information specified in the NDA form FD–356H (21 CFR 314.1(c)) from any person who wishes to market a duplicate of one of these products and does not already hold an approved NDA. Upon reevaluation of this requirment, the agency has determined that ANDA's are sufficient for duplicates of these drug products. 21 CFR 314.1(a). Based on this finding of ANDA acceptability, any manufacturer who seeks approval to market one of these products may submit an ANDA (21 CFR 314.1(f)) instead of a full new drug application.

This notice applies to any drug product that is not the subject of an approved NDA and is identical in active ingredient, dosage form and strength, and route of administration to one of the products named below and is recommended for use for the indications classified as effective in the DESI notice cited below. For any drug product that is similar but not identical in one or more of these characteristics, either a full new drug application or an ANDA is required. An ANDA will not be acceptable unless FDA has made a separate finding that an ANDA is sufficient for that product. It is the responsibility of every drug manufacturer to determine whether this notice covers any drug product that the person manufactures or distributes. Such person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

The bioavailability regulations (21 CFR 320.21) require any person submitting an ANDA after July 7, 1977, to include either evidence demonstrating the in vivo bioavailability of the durg or information to permit waiver of the requirement, unless this requirement is already waived, under 21 CFR 320.22(c) (1) or (2), based on a finding that the drug product does not have a known or suspected bioavailability problem. Because DESI drug products subject to full NDA requirements were not reviewed for bioavailability problems when these regulations were promulgated, the drug products listed below have now undergone this review. For some of these products, in vivo bioavailability data will not be waived. This is noted below so that applicants will be aware of the requirement. These drugs will be added to the list of drugs with known or potential bioavailability problems at the next updating of that list (21 CFR 320.22(c) (1) and (2)).

This notice amends the DESI notices cited below to permit ANDA's and to identify the drug products for which bioavailability data will not be waived. Marketing before ANDA approval of any of these products which are not already the subject of an approved NDA will subject the products, and those persons who caused the proudcts to be marketed, to regulatory action.

NDA	DESI No. FR citation	Product name (nonproprietary name) and bioavailability requirement if applicable	Dosage form	Potency
6-905	DESI 6327, 36 FR 16126, Aug. 19, 1971	Norisodrine Sulfate (isoproterenol sulfate). Bioavailability requirement will not be waived if particle size distribution and delivery system are not similar.	Powder for inhalation	10% or 25%.
10-375	do	Medihaler-Iso (isoproterenol sulfate)	Aerosol for inhalation	2 mg/mL.
11-469	do	Caytine (protokylol hydrochloride)	Solution for inhalation	10 mg/mL.
6-460	DESI 6460, 33 FR 7774, May 28, 1968	Protamine Sulfate (protamine sulfate)	Injection	10 mg/mL.
7-413	do	Protamine Sulfate (protamine sulfate)	Injection	50 mg/vial.
9-053	DESI 8085, 35 FR 16429, Oct. 21, 1970	Purinethol (mercaptopurine). Bioavailability requirement will not be waived.	Tablet	50 mg.
12-209	do	Fluorouracil (fluorouracil)	Injection	50 mg/mL.
8-461	DESI 8461, 35 FR 14578, Sept. 17, 1970	Triethylenemelamine (triethylenemelamine). Bioavailability requirement will not be waived.	Tablet	5 mg.
10-669	do	Leukeran (chlorambucil). Bioavailability requirement will not be waived.	Tablet	2 mg.
1-892	do	Uracil Mustard (uracil mustard). Bioavailability requirement will not be waived.	Capsule	1 mg.
12-936	do	Drolban (dromostanolone propionate)	Injection	50 mg/mL.
9-048	DESI 9048, 38 FR 30573, Nov. 6, 1973	Oxsoralen (methoxsalen)	Lotion	1%.
11-361	DESI 9149, 41 FR 37835, Sept. 8, 1976	Trilafon (perphenazine). Bioavailability requirement will not be waived.	Controlled-release tablet	8 mg.
11-495	do	Trilafon (perphenazine). Bioavailability requirement will not be waived.	Rectal suppository	2, 4, or 8 mg.
9-238	DESI 9238, 36 FR 18115, Sept. 9, 1971	Progesterone (progesterone)	Injection	25 or 50 mg/mL.
10-347	do	Delalutin (hydroxyprogesterone caproate)	Injection	125 or 250 mg/mL.
10-895	do	Norlutin (norethindrone). Bioavailability requirement will not be waived.	Tablet	5 mg.
12-184	do	Norlutate (norethindrone acetate). Bioavailability requirement will not be waived.	Tablet	5 mg.
12-985	do	Duphaston (dydrogesterone). Bioavailability requirement will not be waived.	Tablet	5 or 10 mg.
9-675	DESI 9675, 33 FR 9351, June 26, 1968	Astrafer (dextriferron)	Injection	Eq 20 mg trivalent iron/mL.
10-787	do	Imferon (iron dextran complex)	Injection	Eq 50 mg iron/mL.
13-056	DESI 10690, 35 FR 21613, Nov. 11, 1971	Penthrane (methoxyflurane)	Solution for inhalation	99.9%.
11-020	DESI 11020, 35 FR 18213, Nov. 28, 1970	Dartal (thiopropazate hydrochloride). Bioavailability requirement will not be waived.	Tablet	5 mg.
11-751	do	Prolixin (fluphenazine hydrochloride). Bioavailability requirement will not be waived.	Tablet	2.5 mg.
12-034	do	Permitil (fluphenazine hydrochloride). Bioavailability requirement will not be waived.	Injection	2.5 mg/mL.
12-145	do	Prolixin (fluphenazine hydrochloride)	Tablet	0.25, 1, 2.5, 5, or 10 mg.
12-254	do	Tindal (acetophenazine maleate). Bioavailability requirement will not be waived.	Elixir	0.5 mg/mL.
			Tablet	20 mg.

NDA	DESI No. FR citation	Product name (nonproprietary name) and bioavailability requirement if applicable	Dosage form	Potency
12-419	...do	Permitil (fluphenazine hydrochloride). Bioavailability requirement will not be waived.	Controlled-release tablet	1 mg.
11-127	DESI 11127, 43 FR 14742, Apr. 7, 1978	Compazine (prochlorperazine). Bioavailability requirement will not be waived.	Rectal suppository	2.5, 5, or 25 mg.
12-097	DESI 12097, 33 FR 9351, June 26, 1968	Kenalog in Orabase (triamcinolone acetonide)	Dental paste	0.1%.
12-122	DESI 12122, 33 FR 14552, Sept. 27, 1968	Glucagon (glucagon hydrochloride)	Injection	Eq 1 or 10 mg base/amp.
12-285	DESI 12285, 33 FR 9037, June 19, 1968	Syntocinon (oxytocin)	Nasal solution	40 units/mL.
12-665	DESI 12665, 35 FR 14581, Sept. 17, 1970	Velban (vinblastine sulfate)	Injection	10 mg/amp.
13-413	DESI 13413, 35 FR 18214, Nov. 28, 1970	Decadron Phosphate (dexamethasone sodium phosphate). Bioavailability requirement will not be waived if delivery system is not similar.	Aerosol for inhalation	Eq 15 mg base/12.6 g.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053 as amended (21 U.S.C. 352, 355)), and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70).

Dated: November 27, 1981.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 81-35366 Filed 12-10-81; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Reevaluation by the National Toxicology Program of Technical Report NCI-CG-TR-121 Entitled Bioassay of Dimethylterephthalate for Possible Carcinogenicity

Two versions of the Technical Report NCI–CG–TR–121, entitled Bioassay of Dimethlterphthalate for Possible Carcinogenicity, were issued by the National Cancer Institute in 1979. The two reports contained an identical data base but variance in the statistical analysis of the data, and differing conclusions concerning the carcinogenicity of dimethlterphthalate. Since the carcinogenesis testing program is now part of the National Toxicology Program (NTP), the NTP sought to resolve the discrepancy between the two versions.

The background, course of action by the NTP, and the final conclusions, approved after peer review by the Technical Reports Review Subcommittee of the NTP Board of Scientific Counselors on June 23, 1981, are described in the following supplement:

Supplement to Technical Report No. 121, Bioassay of Dimethlterephthalate for Possible Carcinogencity

Two differing versions of the Technical Report NCI–CG–TR–121, entitled Bioassay of Dimethlterephthalate for Possible Carcinogenicity (CAS No. 121–61–6), were issued by the National Cancer Institute (NCI) in 1979. Each report contains the identical data base derived from the chronic phase of the two-year dose-feed study of dimethlterephthalate (DMT) conducted between April, 1975 and April, 1977 at Hazleton Laboratories. The two Technical Reports are at variance regarding the statistical analysis of the data on the incidence of alveolar/bronchiolar adenomas and alveolar/bronchiolar carcinomas in $B6C3F_1$ male mice and the final conclusion concerning the carcinogenicity of DMT in these animals.

The first report concludes that DMT was carcinogenic in male mice causing a significant increase in adenomas and carcinomas of the lung. No evidence of a carcinogenic effect was found in treated male and female rats or treated female mice. A significant ($P<0.001$) dose-related increase in lung tumors was reported in the DMT male mice groups (controls, 1/49, 2%; low-dose, 8/49, 16% high-dose, 13/49, 27%). The historical control rate of these tumors was listed as 4% (18/482), an incidence consistent with the matched control rate. This report was considered for peer review by the Data Evaluation/Risk Assessment Subgroup of the Clearinghouse on Environmental Carcinogens on December 13, 1978. The Subgroup approved the report as written.

Due to a high level of interest in the phthalate class of chemical compounds by the public and scientific communities and concerns regarding the low incidence of lung tumors observed in control male mice in the DMT study, the results were re-examined by the staff of the Carcinogenesis Testing Program of the NCI in early 1979. The staff at that time determined the historical control data reported in the Technical Report came from studies of less than two years duration. Since lung tumors are late appearing lesions (all 13 lung tumors observed in the high-dose DMT male mice were observed in animals killed at 104 weeks), the reported historical incidence, 18/482(4%), was not appropriate for comparative purposes in the report of the two-year bioassay of DMT.

Hazleton Laboratories carried out three other NCI *two-year* bioassays using untreated male mice as controls. Animals in these studies were housed in the same room as the "matched" DMT controls for most of their lifespan. The incidences of lung tumors in the control male mice from these studies are:

Control lung tumor incidence (male $B6C3F_1$ mice)	Compound under study	Results
5/49 (10%)	Benzoin	(–)
6/46 (13%)	d,l-Menthol; Titanium Dioxide	(–,–)
9/49 (18%)	Sulfisoxazole	(–)

Since the incidence of lung tumors in the matched DMT controls was less than that observed in the three control groups cited above (4% versus 10-to 18%), a decision was made to re-analyze the data utilizing these additional controls.

Each control incidence was substituted for the matched control incidence in statistical comparisons with the DMT-treated groups. An updated Technical Report was prepared using these analyses of the male mice data on lung tumors.

The revised statistical analyses are reported on pages 37 and 38 of this updated Technical Report. The Report states that "from these results one may infer that the incidences of these tumors in the dimethyl terephthalate control group were inordinately low." The second paragraph on page 38 continues with: "If the incidence of 5/49 * * * is substituted for that of the matched controls * * *, the Fisher exact test comparing this control group with the high dose (13/49, 27%) results in a probability level of $P=0.033$. Using 6/46

as the incidence of the control group, the result is P=0.082; and using 9/49 as the control incidence, the result is P=0.234. None of these results are statistically significant.

The Report concludes on page 38 that "The variability evidenced by these control groups prevents an outright conclusion that the 13/49 (27%) incidence of lung tumors observed in the high dose male group in the (DMT) study is associated with the administration of the chemical."

The Technical Report Summary states that DMT was not carcinogenic for F344 rats or $B6C3F_1$ mice of either sex under the conditions of the bioassay. Appended to this second Report are the same peer review comments made by the Clearinghouse Subgroup for the first report.

In light of this background and the fact that the reanalyzed data in the second report were not evaluated by an independent scientific review panel, the NTP in June 1981 took the following course of action.

1. Validated the original diagnoses of tumors in the lungs of the male mice.

2. Analyzed these data using the diagnosis of the re-examining pathologist.

3. Presented the findings to the NTP Technical Reports Peer Review Subcommittee, an *ad hoc* group of expert scientists.

All slides of lung tissue from the control, low dose, and high dose groups of male mice were examined by an independent board-certified pathologist with extensive experience in rodent tumor pathology. The reviewing pathologist had no knowledge of the experimental conditions (chemical, groups of animals) or the reason why this review was being requested.

Table 1 compares the original diagnoses and the diagnoses of the re-examining pathologist. Both histopathology examinations were in general agreement regarding those animals bearing lung tumors. With the exception of control animal 46, the re-examining pathologist diagnosed no additional tumors. This pathologist described animals 1 and 18 in the low dose group as bearing no lung tumors, whereas the original pathologist reported these two animals as having adenomas.

The NTP Peer Review Subcommittee of the Board of Scientific Counselors met on June 23, 1981. Following consideration of the original and reexamined data from the DMT study, the following conclusions were made:

1. Reexamination of slides in June, 1981 essentially confirmed the original diagnoses of total lung tumors in male mice. However, disagreement was apparent between the two diagnoses regarding the stage of tumor development (adenoma, carcinoma). Thus, proper and reliable interpretation of the study should be based primarily on evaluation of data using total lung tumors rather than on adenomas or carcinomas considered separately.

2. Statistical analyses should be carried out using the diagnoses of the reexamining pathologist, and these analyses should be made by the statistical methods currently employed by the NTP, as recommended by the International Agency for Research on Cancer.

3. Further statistical analyses should include comparisons of the incidence of lung tumors in DMT-treated male mice with incidences in matched control animals and incidences in pooled control male mice. In this study concurrently run control values serve to solidify the baseline incidence of lung tumors over an overlapping time span in the bioassay laboratory. Morever, the pooled control data should include the control lung tumor incidence from the DMT study as well as the three concurrent control groups (same room).

The reevaluated and reanalyzed data on total lung tumors are presented in Table 2. The results show significant dose-related trends ($P<0.003$) and an incidence at the high dose (13/49, 27%) that is statistically significant ($P<0.007$) relative to matched controls (2/49, 4%). Pair-wise comparison between the pooled control incidence of lung tumors (22/193, 11%) and that in the high dose group (13/49, 27%) also shows a statistically significant difference ($P<0.017$). There are significantly ($P<0.023$) positive dose-related trends using the pooled control values with the treatment groups. No statistically significant effect was found at the low dose treatment level compared with either the matched or pooled control group.

When alveolar/bronchiolar carcinomas are considered separately, there is a statistically significant dose-response trend ($P<0.022$ *vs* matched controls; $P<0.001$ *vs* pooled controls). The incidence in the high dose group (7/49, 15%) is also elevated relative to matched controls (1/49, 2%; $P<0.057$) and relative to pooled controls (4/193, 2%; $P<0.002$).

No significant differences are seen in alveolar/bronchiolar adenomas alone. The increases in total lung tumors observed as a result of treatment of male mice with DMT are due to increased incidences of carcinoma alone. As a hypothesis, DMT treatment decreases the transition time from one stage, lung adenomas, to the next stage, carcinomas, in tumor development.

Conclusion

1. A statistically significant increase in total lung tumors was found when comparing the high dose group to either matched control incidences or pooled control incidences.

2. This positive statistical finding is biologically equivocal. The following factors temper judgment on the biological findings:

a. Total lung tumors are a relatively common lesion in B6C3F1 mice. In control male mice historical incidences of total lung tumors in recent studies at other laboratories in the Bioassay Program range from 2 to 34 percent. The 27 percent incidence in the high dose group of male mice in this study falls within the high limit of this range.

b. Total lung tumors are not sex independent in B6C3F1 mice. Since no effect was observed on the incidence of total lung tumors in female mice following treatment with DMT, the increase in lung tumors in male mice are rendered less meaningful.

TABLE 1.—COMPARISON OF ORIGINAL DIAGNOSIS AND RE-EXAMINATION OF LUNG TUMOR INCIDENCE IN MALE MICE ADMINISTERED DMT

Matched control			Low dose			High dose		
Animal No.	Original diagnosis	Re-exam	Animal No.	Original diagnosis	Re-exam	Animal No.	Original diagnosis	Re-exam
13	AC	AC	1	A	-	4	C	C
46	-	A	4	A	A	5	A	A
			9	A	C	6	C	A
			18	A	-	7	A	A
			24	A	A	10	A	C
			32	A	A	12	A	C
			37	C	C	17	A	C
			46	A	A	23	A	A

TABLE 1.—COMPARISON OF ORIGINAL DIAGNOSIS AND RE-EXAMINATION OF LUNG TUMOR INCIDENCE IN MALE MICE ADMINISTERED DMT—Continued

Matched control			Low dose			High dose		
Animal No.	Original diagnosis	Re-exam	Animal No.	Original diagnosis	Re-exam	Animal No.	Original diagnosis	Re-exam
						26	A	A
						37	C	C
						40	C	C
						42	C	A
						45	AC	C

- No lung tumor.
A Lung adenoma.
C Lung carcinoma.

TABLE 2.—LUNG: ALVEOLAR/BRONCHIOLAR ADENOMA OR CARCINOMA [a]

	Matched control	Low dose	High dose
Tumor rates:			
Overall [b]	2/49(4)	6/49 (12)	13/49(27)
Adjusted [c] (percent)	6.1	14.1	32.5
Terminal [d]	2/33(6)	5/41(12)	13/40(32)
Statistical tests [e]:			
Life table	P=0.003	P=0.204	P=0.007
Incidental tumor test	P=0.002	P=0.204	P=0.007
Cochran-Armitage trend Fisher exact test	P=0.001	P=0.134	P=0.002

	Pooled control	Low dose	High dose
Tumor rates:			
Overall [b]	22/193(11)	6/49(12)	13/49(27)
Adjusted [c] (percent)	15.4	14.1	32.5
Terminal [d]	20/140(14)	5/41(12)	13/40(32)
Statistical tests [e]:			
Life table	P=0.023	P=0.537(N)	P=0.017
Incidental tumor test	P=0.015	P=0.576(N)	P=0.013
Cochran-Armitage trend Fisher exact test	P=0.009	P=0.518	P=0.009

[a] Dosed groups received doses of 2,500 or 5,000 ppm of DMT in the diet.
[b] Number of tumor bearing animals/number of animals examined at the site.
[c] Kaplan-Meier estimated lifetime tumor incidence after adjusting for intercurrent mortality.
[d] Observed tumor incidence at terminal kill.
[e] Beneath the control incidence are the P-values associated with the trend test. Beneath the dosed group incidence are the P-values corresponding to pairwise comparisons between that dosed group and the controls. The life table analysis regards tumors in animals dying prior to terminal kill as being (directly or indirectly) the cause of death. The incidental tumor test regards these lesions as nonfatal. The Cochran-Armitage and Fisher's exact tests compare directly the overall incidence rates. A negative trend is indicated by (N).

ANALYSIS OF PRIMARY LUNG TUMORS IN MALE MICE

TABLE 3—LUNG: ALVEOLAR/BRONCHIOLAR CARCINOMA [a]

	Matched control	Low dose	High dose
Tumor rates:			
Overall [b]	1/49(2)	2/49(4)	7/49(14)
Adjusted [c] (percent)	3.0	4.9	17.5
Terminal [d]	1/33(3)	2/41(5)	7/40(18)
Statistical tests [e]:			
Life table	P=0.022	P=0.576	P=0.057
Incidental tumor test	P=0.022	P=0.576	P=0.057
Cochran-Armitage test Fisher exact test	P=0.014	P=0.500	P=0.030

	Pooled control	Low dose	High dose
Tumor rates:			
Overall [b]	4/193(2)	2/49(4)	7/49(14)
Adjusted [c] (percent)	2.9	4.9	17.5
Terminal [d]	4/140(3)	2/41(5)	7/40(18)
Statistical tests [e]:			
Life table	P=0.001	P=0.445	P=0.001
Incidental tumor test	P=0.001	P=0.445	P=0.001
Cochran-Armitage test Fisher exact test	P<0.001	P=0.351	P=0.002

[a] Dosed groups received doses of 2,500 or 5,000 ppm of DMT in the diet.
[b] Number of tumor bearing animals/number of animals examined at the site.
[c] Kaplan-Meier estimated lifetime tumor incidence after adusting for intercurrent mortality.
[d] Observed tumor incidence at terminal kill.
[e] Beneath the control incidence are the P-values associated with the trend test. Beneath the dosed group incidence are the P-values corresponding to pairwise comparisons between that dosed group and the controls. The life table analysis regards tumors in animals dying prior to terminal kill as being (directly or indirectly) the cause of death. The incidental tumor test regards these lesions as nonfatal. The Cochran-Armitage and Fisher's exact tests compare directly the overall incidence rates. A negative trend is indicated by (N).

ANALYSIS OF PRIMARY LUNG TUMORS IN MALE MICE

TABLE 4.—LUNG: ALVEOLAR/BRONCHIOLAR ADENOMA [a]

	Matched control	Low dose	High dose
Tumor rates:			
Overall [b]	2/49(4)	4/49(8)	6/49(12)
Adjusted [c] (percent)	6.1	9.3	15.0
Terminal [d]	2/33(6)	3/41(7)	6/40(15)
Statistical tests [e]			
Life table	P=0.141	P=0.424	P=0.202
Incidental tumor test	P=0.113	P=0.424	P=0.202
Cochran-Armitage test Fisher exact test	P=0.098	P=0.339	P=0.134

	Pooled control	Low dose	High dose
Tumor rates:			
Overall [b]	19/193(10)	4/49(8)	6/49(12)
Adjusted [c] (percent)	13.2	9.3	15.0
Terminal	17/140(12)	3/41(7)	6/40(15)
Statistical tests [e]			
Life table	P=0.529	P=0.362(N)	P=0.508
Incidental tumor test	P=0.464	P=0.400(N)	P=0.465
Cochran-Armitage test Fisher exact test	P=0.414	P=0.484(N)	P=0.394

[a] Dosed groups received doses of 2,5000 or 5,000 ppm of DMT in the diet.
[b] Number of tumor bearing animals/number of animals examined at the site.
[c] Kaplan-Meier estimated lifetime tumor incidence after adjusting for intercurrent mortality.
[d] Observed tumor incidence at terminal kill.
[e] Beneath the control incidence are the P-values associated with the trend test. Beneath the dosed group incidence are the P-values corresponding to pairwise comparisons between that dosed group and the controls. The life table analysis regards tumors in animals dying prior to terminal kill as being (directly or indirectly) the cause of death. The incidental tumor test regards these lesions as nonfatal. The Cochran-Armitage and Fisher's exact tests compare directly the overall incidence rates. A negative trend is indicated by (N).

Questions or requests for further information about this Supplement should be addressed to Dr. Charles K. Grieshaber, National Toxicology Program, Landow Building, 7910 Woodmont Avenue, Bethesda, MD 20205; telephone (301) 496–5591. FTS: 496–5591.

Dated: November 25, 1981.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 81–35498 Filed 12–10–81; 8:45 am]

BILLING CODE 4110–08–M

NTP Announces Availability of Bioassay of F.D.&C. Yellow 6 and Monitoring Guidelines for Carcinogen Bioassays

The Department of Health and Human Service's National Toxicology Program (NTP) today announced the availability of the results of a cancer bioassay of F.D.&C. Yellow No. 6 and "Monitoring Guidelines for the Conduct of Carcinogen Bioassays."

F.D.&C. Yellow No. 6, used since 1929 to color foods such as gelatin desserts, sherbets, sodas, candles, and cereals; drug solutions and capsules; toothpastes and hair rinses did not produce cancer in a 103 week feeding study involving rats and mice. Figures for 1978 indicate that 221,000 pounds were produced in the United States.

This carcinogenesis bioassay was conducted by the National Cancer Institute component of the NTP. This test screens chemicals for cancer-causing activity in animals.

The NTP has about 250 chemicals in on-going bioassays. "Monitoring Guidelines" sets standards for studies performed both in NTP and contract laboratories.

Copies of these reports—*Bioassay of F.D. and C. Yellow No. 6 for Possible Carcinogenicity* (T.R. 208), and *Monitoring Guidelines for the Conduct of Carcinogen Bioassays* (T.R. 218) are available by writing to the Public Information Office, National Toxicology Program, MD B2–04, Box 12233, Research Triangle Park, North Carolina 27709. Telephone: (919) 541–3991, FTS 629–3991.

Dated: November 27, 1981.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 81–35497 Filed 12–10–81; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability of Public Lands for Access to Asbestos Deposits in the North Fork Fortymile Drainage; Realty Action

The following described lands are available for non-federal uses authorized by section 605(b) of ANILCA (94 Stat 2415–16):

1. A cleared area in T.26N., R.19E., CRM, Section SW¼.

2. Those portions of the following listed townships which include segments of the North or South Fork of the Fortymile River or Slate Creek:

T.3S., R.26 thru 28 E., FM; T.4S., R.26 thru 28E., FM;

T.5S., R.28 thru 29E., FM; T.6S., R.29E., FM;

T.7S., R.29 thru 30 E., FM; T.8S., R.30E., FM;

T.27N., R.18 thru 19E., CRM;

T.26N., R.19E., CRM; T.28N., R.19E., CRM.

BLM has received a use proposal from WGM, Inc., mining and geologic consultants for overland transportation of freight, fuel, equipment and rock samples between the Taylor Highway and the Alaska Asbestos Joint Venture Project on Doyon Ltd. lands near Slate Creek during the period between January 1, 1982 and April 1, 1982.

All applications for land use will be subject to environmental analysis pursuant to National Environmental Protection Act. Non-competitive permits issued under 43 CFR Part 2920 will be subject to terms and conditions the Authorized Officer considers necessary.

For a period of 15 days from the date of last publication of this notice, interested parties may submit comments to Area Manager, Fortymile Resource Area, Bureau of Land Management, P.O. Box 307, Tok, Alaska 99780. Any adverse comments will be evaluated by the Area Manager, who may vacate or

modify this Realty Action and issue a final determination. In absence of any action by the Area Manager, this Realty Action will become the final decision of the Bureau.

Donald E. Runberg,

Acting District Manager.

[FR Doc. 81-35441 Filed 12-10-81; 8:45 am]

BILLING CODE 4310-84-M

Chief, Branch of Lands and Minerals Operations, Oregon; Redelegation of Authority

Pursuant to the authority contained in Section 1.1 of *Bureau Order No. 701*, as amended, authority is hereby redelegated to the Chief, Branch of Lands and Minerals Operations to take on all matters pertaining to (1) copies of records under section 2.2(c); (2) notices of the official filing of accepted plats of survey, resurvey and approved protracted survey diagrams under section 2.4(a)(4); and (3) mining claims section 2.6(k).

This notice cancels the redelegations of authority to the Chief, Branch of Records and Data Management effective August 2, 1971 (36 FR 12046, June 24, 1971) and May 2, 1977 (42 FR 23885, May 11, 1977).

EFFECTIVE DATE: This redelegation is effective on January 1, 1982.

FOR FURTHER INFORMATION CONTACT: Harold A. Berends, 943 (503–231–6255) Oregon State Office, BLM, P.O. Box 2965, Portland, Oregon 97208.

William G. Leavell,

State Director.

December 3, 1981.

[FR Doc. 81-38439 Filed 12-10-81; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

Washington Water Power Company, Inc.; Intent To Begin Contract Negotiations for Industrial Water Service Contract

The Department of the Interior, through the Bureau of Reclamation, intends to enter into contract negotiations with the Washington Water Power Company, Inc. (WWP), Spokane, Washington, leading to a 40-year industrial water service contract pursuant to section 9(c)(2) of the Reclamation Project Act of 1939 (53 Stat. 1187).

WWP expects to need about 24,000 acre-feet of water per year from Franklin D. Roosevelt (FDR) Lake to operate a proposed 2,032 megawatt coal-fired powerplant to be located 60 miles west of Spokane, Washington, near the town of Creston. FDR Lake, which has an active capacity of about 5.2 million acre-feet of water, is formed by Grand Coulee Dam on the Columbia River in eastern Washington. The proposed Creston Powerplant will consist of four individual units, each with a capacity of 508 megawatts. Initial production of energy at the plant is scheduled to occur in 1987, with all four units in operation by 1993.

The terms and conditions of the proposed contract are ultimately dependent upon the Secretary of the Interior's approval of the form of the proposed contract. The public may observe negotiating sessions between the Bureau of Reclamation and WWP regarding the proposed contract. Advance notice of such meetings will be furnished upon written request received at least 1 week in advance of the meetings from interested parties specifying their interest in the proposed water service contract with WWP for the Creston Powerplant water supply. Inquiries should be addressed to the Regional Director, Bureau of Reclamation, Attention: Code 440, Box 043, 550 West Fort Street, Boise, Idaho 83724.

The public is invited to submit written comments on the proposed contract for a 30-day period after the completed contract draft is available to the public. Unless significant public interest is demonstrated in response to this notice, announcement of the availability of the proposed contract will be limited to those parties who have expressed an interest.

All written correspondence concerning the proposed contract will be made available for review and inspection upon receipt of written request pursuant to terms and procedures of the Freedom on Information Act (80 Stat. 383), as amended.

For further information on scheduled negotiating sessions or copies of the proposed contract form, please contact Ms. Cathy Kent, Contract and Repayment Specialist, at the address above, or telephone (208) 334–9011.

Dated: December 7, 1981.

Eugene Hinds,

Assistant Commissioner of Reclamation.

[FR Doc. 81-35462 Filed 12-10-81; 8:45 am]

BILLING CODE 4310-09-M

Water Allocations and Water Service Contracting, Central Arizona Project; Public Hearing on Draft Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a Draft Environmental Impact Statement (EIS) on the Water Allocations and Water Service Contracting, Central Arizona Project. This statement (INT DES 81–50 dated December 1, 1981), filed with the Environmental Protection Agency, is available to the public as specified in the Notice of Availability.

The Secretary of the Interior, who has sole and legal responsibility for allocating CAP waters, announced on November 12, 1981, his "proposed action" on the CAP dealing with water allocations. This proposed allocations for CAP water is consistent with the intent of this EIS, which was to consider a range of alternatives and the resulting environmental impacts that would encompass the overall allocation ultimately made by the Secretary.

A final allocation of CAP water is required so that identified CAP users (Indian tribes, non-Indian agriculture, and municipal-and-industrial water users) may design and construct the facilities required to treat and deliver the CAP water to the point of use. The main CAP aqueduct system is scheduled to make water delivers to the Phoenix and Pinal County areas in 1985, and to the Tucson area in 1988 or 1989. Considerable lead time, therefore, is required for the construction of delivery systems if water users are to be ready to receive CAP water when its comes on line.

Public hearing to receive comments on the draft statement will be in Phoenix, Arizona, at 1 p.m. and 7 p.m. on January 12, 1982, at the County Supervisor's Auditorium located at 205 W. Jefferson; and in Tucson, Arizona, at 1 p.m. and 7 p.m. on January 13, 1982, at the Tucson Community Center located at 350 Church Street.

Oral presentations at the hearings will be limited to a period of ten (10) minutes. Speakers will not trade their time to obtain a longer oral statement; however, the Hearing Officer may allow any speaker to provide additional oral comment after all persons wishing to make comments have been heard. Additional comments will be limited to 10 minutes. Speakers will be scheduled according to the time preference mentioned in their letter or telephone request, whenever possible. Any scheduled speaker not present when called will lose his or her privilege in the schedule. Requests for scheduled presentations will be accepted up to 4 p.m., January 8, 1982, and any subsequent requests will be handled on a first come, first serve basis following the scheduled presentations.

Organizations or individuals desiring to present their statements at the hearings should contract the Environmental Division, Bureau of Reclamation, Arizona Projects Office, Suite 2200—Valley Center, 201 North Central Avenue, Phoenix, Arizona 85073, telephone (602) 261–3577, and announce their intention to participate. Written comments from those unable to attend and from those wishing to supplement their oral presentations will be accepted for the record until 4 p.m., January 8, 1982. Written comments should be addressed to the Environmental Division at the address listed above and should specify that they are to be included in the hearing record.

Dated: December 8, 1981.

R. N. Broadbent,

Commissioner.

[FR Doc. 81-35532 Filed 12-10-81; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-43 (Sub-No. 80F)]

Illinois Central Gulf Railroad Co.; Abandonment in Holmes County, MS; Findings

The Commission has found that the public convenience and necessity permit Illinois Central Gulf Railroad Company to abandon its 12.7 mile rail line between Durant (excluding Durant) (milepost 0) and Lexington (milepost 12.7), in Holmes, County, MS. A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1121.38.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-35475 Filed 12-10-81; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Advanced Marketing Systems Corporation, 3745 Farnsworth Street, Indianapolis, IN 46241.

2. Wholly-owned subsidiaries which will participate in the operations, and addresses of their respective principal offices:

A. Maplehurst Deli-Bake, Inc., (an Indiana corporation), 8929 West Washington Street, Indianapolis, IN 46231.

B. Maplehurst Deli-Bake South, Inc. (an Indiana corporation), P.O. Box 439H, Rte. #5, Carrolton, GA 30117.

3. Sister corporation which has identical shareholders as Advanced Marketing Systems Corporation in identical percentages of ownership.

A. Maplehurst Farms, Inc. (an Indiana corporation), 3745 Farnsworth Street, Indianapolis, IN 46241.

4. Wholly-owned subsidiary of Maplehurst Farms, Inc.:

A. Maplehurst Dairy, Inc., 3745 Farnsworth Street, Indianapolis, IN 46241.

I. Parent Corporation and Address of Principal Office

Bayly Corp., Denver Tech Center, Bldg. 22, P.O. Box 5148, Denver, CO 80217.

II. Wholly-Owned Subsidiaries Which will Participate in the Operations, and States of Incorporation

A. Aspen Leaf, Inc., Denver, CO, Colorado corporation.

B. Waco Apparel, Inc., Waco, TX, Texas corporation.

C. Fly Manufacturing Company, Shelbyville, TN, Tennessee corporation.

D. Bayly Mexicana, S.A. de. C.V., Allende, Coahuila, Mexico, Mexican corporation.

E. Bayly de. Nicaragua, S.A., Managua, Nicaragua, C.A., Nicaragua corporation.

F. Baywood Transport, Inc., Waco, TX, Delaware corporation.

G. Bayly International Corp., Denver, CO, Colorado corporation.

1. Parent corporation and address of principal office: The Bendix Corporation, Bendix Center, P.O. Box 5060, Southfield, Michigan 48037.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

(a) Bendix Autolite Corporation (Deleware).

(b) Aviation Electric Limited (Canada).

(c) Bendix Field Engineering Corporation (Delaware).

(d) Bendix Heavy Vehicle Systems, Inc. (Canada).

(e) Bendix Machine Tool Corporation (Michigan).

(i) BMT Engineering Corporation (Delaware).

(ii) Drillunit, Inc. (Michigan).

(f) Bendix Products Corporation (Indiana).

(g) Bendix Space Technology & Navigation, Inc. (Delaware).

(h) Bendix Technology, Inc. (New Jersey).

(i) Bendix Transportation Management Corporation (Delaware).

(j) Bendix Wind Power Products Company (Delaware).

(k) Continental Controls Corporation (Delaware).

(l) Courter, Inc. (Delaware).

(m) Fram Corporation (Delaware).

(i) Fram Canada, Inc. (Canada).

(a) Canadian Fram Limited (Ontario).

(b) Superior Machine & Tool (Chatham) Limited (Ontario).

(n) Texas Pipe Bending Company (Delaware).

(o) Toledo Stamping & Manufacturing Company (Ohio).

(p) The Warner & Swasey Company (Delaware).

(i) Midwest Machine & Tool Co. (Ohio).

(ii) The G. A. Gray Company (Ohio).

1. Parent corporation and address of principal office: Indiana Desk Co., Inc., P.O. Box 270, Jasper, Indiana 47546.

2. Wholly-owned subsidiary which will participate in the operations, and state of incorporation.

(a) Indiana Cabinet Company, Inc., formerly known as Dubois Cabinet Company, Inc.

(b) Incorporated in the State of Indiana.

1. The parent corporation and address of its principal office is: Union Chemicals Division, Union Oil Company of California, 1231 West Fifth Street, Los Angeles, California 90017.

2. The wholly-owned subsidiary, which will participate in the operation, and States in which it is qualified to do business is: PureGro Company (a California corporation), 1111 West Sixth Street, Los Angeles, California 90017.

Arizona	Idaho
California	Illinois
Colorado	Kansas

Montana
Nebraska
Oregon
Washington
Wyoming

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-35473 Filed 12-10-81; 8:45 am]

BILLING CODE 7035-01-M

Long-and-Short-Haul Application for Relief (Formerly Fourth Section Application)

December 7, 1981.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. within 15 days from the date of publication of the notice.

FSA No. 43945, Southwestern Freight Bureau, carload rates on cottonseed hulls, and kindred and related articles, between Stations in Southwestern Territory, including Mississippi River Crossings Memphis, TN, and South, also between points in Southwestern Territory, on the one hand, and stations in Illinois and Western Trunk Line Territory, on the other hand, and only for the account of MP, in Tariff ICC SWFB 4450, to become effective January 2, 1982. Grounds for relief: Origin rate relationship.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-35474 Filed 12-10-81; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-No. 68F)]

Southern Pacific Transportation Co.; Abandonment Between Marlboro and Villa Park, CA; Findings

The Commission has issued a certificate authorizing the Southern Pacific Transportation Company to abondon its 1.76 mile rail line between Marboro (milepost 514.90) and Villa Park (milepost 516.66), in Orange County, CA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen D. Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1121.38.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-35475 Filed 12-10-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Decision-Notice; Finance Applications

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 ICC 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: December 7, 1981.

By the Commission, Review Board Number 3, Members Krock, Joyce, and Dowell.

MC-F-14737, filed November 10, 1981. BURLINGTON STAGE LINES, LTD., d.b.a. BURLINGTON TRAILWAYS (Burlington) (504 Spring Street, West Burlington, IA 52655)—purchase (portion)—American Buslines, Inc., d.b.a. American Trailways (American) (1500 Jackson Street, Dallas, TX 75201). Representative: Lawrence E. Lindeman, 425 13th Street, N.W., Suite 1032, Washington, DC 20004. Burlington seeks authority to purchase a portion of the operating authority of American. Ronald R. Moore and Arnold Coombs, who control Burlington through stock ownership, seek to control the operating rights through the transaction. The operating rights sought to be purchased are contained in Certificate No. MC-2890 (Sub-No. 18), IA Certificate C-12P, and MO Certificate 281, which authorize the transportation of passengers and their baggage, and express and newspapers in the same vehicle with passengers, (1) between St. Louis, MO, and Grandview, IA, via US Hwys 61, 24, 136 and alternate 40, and IL Hwy 96; and (2) between Muscatine, IA, and Cedar Rapids, IA, via US Hwys 6 and 218 and IA Hwy 28. Burlington filed an extension

application, docket No. MC–159197, published December 1, 1981. Application for TA has been filed.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-35477 Filed 12-10-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Decision-Notice; Finance Application

The following proceeding has been remanded to the Commission by the United States Court of Appeals for the District of Columbia Circuit for reconsideration of a substantive issue. The Commission has decided to reopen the proceeding and by this publication provides notice to interested persons of the issues which will be reconsidered in light of the Court's decision and explains how they may participate.

No. MC–F–11787, *O.N.C. Freight Systems-Purchase-William Louis Damon, D/B/A Damon Freight Lines*, [Embraces No. MC–71459 (Sub-No. 490), *O.N.C. Freight Systems, Ext.-Albuquerque.] By decision in O.N.C. Freight Systems* v. *United States and Interstate Commerce Commission*, U.S.C.A. D.C. Cir., No. 77–1834 (1980), the District of Columbia Circuit Court of Appeals remanded this proceeding to the Commission for reconsideration of whether a restriction prohibiting tacking of the subject authority with purchaser's other authority should be removed. Sale of the authority to McLean Trucking Company has been conditionally authorized in No. MC–F–13974, *McLean Trucking Company—Purchase (Portion)—O.N.C. Freight Systems* (not printed), decided April 24, 1980. The operating rights sought to be transferred authorize the transportation, over irregular routes, of general commodities, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between Albuquerque, NM, on the one hand, and, on the other, points in the Navajo Indian Reservation in Arizona, New Mexico, and Utah; the Hopi Indian Reservation in Arizona; the Zuni Indian Reservation in New Mexico, and points in McKinley County, NM (except Gallup and Gamerco), and points in San Juan County, NM (except Farmington). Restriction: The operations authorized herein may not be combined or joined for the purpose of providing a thorough service.

By decision dated November 6, 1981, we directed applicants to submit evidence in support of their request to remove the no-tacking restriction. Persons wishing to oppose removal of the restriction must comply with 49 CFR 1100.247 (See 45 FR 45539, July 3, 1980). Representative: O.N.C.—Joseph Ficurelli, P.O. Box 10290, Palo Alto, CA 24303, McLean—Dave Eschelman, P.O. Box 213, Winston-Salem, NC 27154.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-35478 Filed 12-10-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Decision-Notice; Finance Applications

The following applications, filed on or after July 3, 1980, seeks approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuance) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed by Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: December 1, 1981.

By the Commission, Review Board Number 3, Members Krock, Joyce, and Dowell.

Agatha L. Mergenovich,

Secretary.

No. MC–F–14740, filed November 16, 1981. CARGO EXPRESS CO., INC. (Cargo) (728 Planters Road, Lilburn, GA 30247)—PURCHASE (PORTION)—ARTIM TRANSPORTATION SYSTEM, INC. (Artim) (8400 W. Lake Dr., Merrillville, IN 46410). Representative: E. Stephen Heisley, 805 McLachlen Bldg., 666 Eleventh St. NW., Washington, DC 20001. Cargo seeks authority to purchase a portion of the interstate operating rights of Artim. Kennedy Leasing Co., Inc., a non-carrier and sole stockholder of Cargo, and, in turn, R. Ralph Artim and Ralph D. Artim (Individuals), the persons in control of Kennedy Leasing Co., Inc., seek authority to acquire control of said rights through the transaction. The Individuals are also the controlling stockholders of Artim and therefore seek authority to continue in control of Cargo upon the institution by Cargo of operations, in interstate commerce, as a motor common carrier. The operating authority to be purchased

is contained in No. MC-41406 (Sub-Nos. 26, 54, 58 85, 86, 87, 88, 89, 90, 91, 92, 93, 95, 97, 99, 102, 103, 104, 107, 115, 116, 117, 118, 119, 120, 121, 126, 127, 129, 130, 131, 132, 133, 134, 135, 136, 138, 146, 147, 148, 149, 155, 157, 158, 159, 161, 162, 164, 165, 166, 167*, 168X (paragraphs (1)(c) and (3)), 169X (paragraph (1)(f)), 171X, 172X, 173X, 174X, and 175X (paragraphs (2), (4), (5)). The authority to be purchased by Cargo Express Co., Inc. generally authorizes the transportation of such commodity groupings as: *metal products, building materials*, and those commodities which because of their size or weight require the use of special various specified commodities between points in the eastern United States.

Note.—An application for temporary authority has been filed.

No. MC-F-14744, filed November 30, 1981. S.R.T. MOTOR FREIGHT, INC. (S.R.T.) (1801 South Pennsylvania Avenue, Morrisville, PA 19067)—CONTROL—AMERICAN TRANS-FREIGHT, INC. (American) (P.O. BOX 796, Manville, NJ 08335). Representative: Alan Kahn, 1430 Land Title Building, Philadelphia, PA 19110-1097. S.R.T. seeks authority to acquire control of American through the purchase by S.R.T. of all the issued and outstanding capital stock of American. Stephen R. Tranovich, major stockholder of S.R.T., seeks authority to acquire control of the operating rights and property of American through the transaction. American holds authority under Docket No. MC-140768 to transport specified commodities as a contract carrier, over irregular routes, between points in the United States, for a number of named shippers. American also holds authority under MC-140768 as a common carrier, to transport specified commodities over irregular routes, between points in the United States. S.R.T. holds authority as a common carrier under Docket No. 84450 to transport (a) *machinery and articles* which because of size or weight require special equipment between Philadelphia, PA and points in NJ, DE, and PA within 30 miles of Philadelphia on the one hand, and, on the other, points in NJ, DE, MD, PA, CT, and DC and those in NY within 75 miles of New York, NY, and (b) *metal products*, between points in Philadelphia County, PA, on the one hand, and, on the other, points in the United States, and (c) handling or equipment, between various points and areas throughout the United States. Artim Transportation System, Inc., is retaining generally that authority which authorizes service between points in the Midwest and Middle Atlantic States. Condition: So far as can be ascertained from the evidence of record in this proceeding, Kennedy Leasing Co., Inc., is a non-carrier with its investments and functions primarily related to transportation. Accordingly, concurrently with consummation of the transaction authorized in this proceeding, Kennedy Leasing Co., Inc., will be considered a motor carrier within the meaning of 49 U.S.C. 11348. It will therefore, be subject to the applicable provisions of 49 U.S.C. Subtitle IV, subchapter III of chapter 111 relating to reporting and accounting and of 49 U.S.C. 11302 relating to the issuance of securities.

Note.—TA has been filed.

[FR Doc. 81-35479 Filed 12-10-81; 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** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OPI-315

Decided: December 1, 1981.

By the Commission, Review Board No. 1. Members Parker, Chandler, and Fortier.

MC 159320, filed November 17, 1981. Applicant: INTERSTATE MOVING AND STORAGE, INC., Route 236, P.O. Box 314, Kittery, ME 03904. Representative: H. Alan Bouffard, Old Post Road, Kittery, ME 03904, (207) 439-0344. Transporting *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S.

MC 159321, filed November 17, 1981. Applicant: LOIS C. WELCH, d.b.a. L-C TRUCKING, 1811 Harve St., Missoula, MT 59801. Representative: Lois C. Welch (same address as applicant), (406) 549-8465. 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 159330, filed November 17, 1981. Applicant: FLETCHER TRANSFER AND STORAGE, INC., P.O. Box 5244, Lawton, OK 73504. Representative: Jim Pitzer, 15 S. Grady Way, Suite 321, Renton, WA 98055, (206) 235–1111. Transporting (1) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), and (2) *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S.

Volume No. OP1–317

Decided: December 3, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 134890 (Sub-14), filed November 24, 1981. Applicant: MARION TRANSFER, INC., 3011 North 30th St., Milwaukee, WI 53210. Representative: Richard C. Alexander, 710 North Plankinton Avenue, Milwaukee, WI 53203, (414) 273–7410. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

MC 146041 (Sub-10), filed November 13, 1981. Applicant: CAL-TEX, INC., P.O. Box 1678, Costa Mesa, CA 92626. Representative: Robert G. Egerton (same address as applicant), (714) 549–1982. Transporting *general commodities* (except classes A and B explosives), between Primrose and Luthersville, GA, Cardwell, Arbyard, Hornersville, Edna, Lewistown, Hurdland and Ewing, MO, McHenry, ND, Narcisso, Russellville, Roaring Springs, Crandall, Kaufman, Kemp, Mabank, Reklaw, Mobeetie, Briscoe, and Allison, TX, Raymond, Oakley, Adams, and Myles, MS, Snyder and Hamburg, AR, Holly Springs, Stokedale, Dallas, and High Shoals, NC, Radcliff, Aurora, Ellsworth and Lawn Hill, IA, Henery and Clark, SD, Esmond, Astoria, Teheran, Biggs, Easton, Richmond, Dunkel, Oconee, Hanson, Vera, Shobonier, Vernon, and Pataka, IL, Shell Lake, Cumberland, Gillett, Green Valley, Lake Geneva and Genoa City, WI, Elgin, NE, Benton, Barlow, La Center, Oak Ridge, Philpot, Deanefield, Thompsonville, Masonville, Edgoten, and Lewisburg, KY, Kenwood, Hickory Point, Doddsville, Fox Bluff, Chapmansboro, Ashland City, Scottsboro, Jordonia, and Riverside, TN, Reydon, Cheyenne, Strong City, Hammon, and Butler, OK, McDonald, Painesville, Chardon, Middlefield, and Clarksville, OH, Paris, Paris Crossing, and Malden, IN, South Haven, MI, Filbert, SC, Monticello and Bell, FL, Clyde, WA, Hosston, LA, and Fallbrook, CA, on the one hand, and, on the other, points in the U.S.

MC 159301, filed November 16, 1981. Applicant: EMPLOYEE TRANSFER CORPORATION, 20 North Wacker Drive, Chicago, IL 60606. Representative: Robert J. Gallagher, 1000 Connecticut Ave., NW., Suite 1200, Washington, DC 20036, (202) 785–0024. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 159351, filed November 18, 1981. Applicant: BEST TIME MESSENGER SERVICE, INC., 38 Middleneck Road, Great Neck, NY 11201. Representative: Eugen Natale, 600 Old Country Road, Garden City, NY 11530, (516) 742–1022. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Volume No. OPY–2–233

Decided: December 3, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 159213, filed November 9, 1981. Applicant: DAVID EUGENE JONES, 8930 Hickory Place, Thornton, CO 80229. Representative: Edward C. Hastings, 666 Sherman St., Denver, CO 80229, (303) 837–1204. 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 159332, filed November 17, 1981. Applicant: JAMES D. EDWARDS, d.b.a. ESI, P.O. Box 8, Sandpoint, ID 83864. Representative: James D. Edwards (same address as applicant), (208) 263–6678. 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 159352, filed November 18, 1981. Applicant: MOVER'S INTERNATIONAL, INC., 18800 Highway 99, Lynnwood, WA 98036. Representative: Robert H. Johnson, P.O. Box 1294, Lynnwood, WA 98036, 206–775–3888. (1) Transporting for or on behalf of the United States Government *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S., (2) 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., and (3) Transporting *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S.

Volume No. OPY–3–223

Decided: December 3, 1981.

By The Commission, Review Board No. 2, Members Carleton, Fisher, and Willaims.

MC 102295 (Sub-46), filed November 20, 1981. Applicant: GUY HEAVENER, INC., 480 School Lane, Harleysville, PA 19438. Representative: Maxwell A. Howell, 1100 Investment Bldg., 1511 K St., NW., Washington, DC 20005, (202) 783–7900. Transporting for or on behalf of the United States Government *general commodities* Except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

MC 123254 (Sub-11), filed November 17, 1981. Applicant: PITZER BROTHERS, INC., P.O. Box 633, Jeannette, PA 16544. Representative: Jeremy Kahn, Suite 733, Investment Bldg., 1511 K St., N.W., Washington, D.C. 20005,(202) 783–3525. 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 148775 (Sub-4), filed November 12, 1981. Applicant: ARNIE MAKEEFF, d.b.a. MAKEEFF TRUCKING, 1347 Tillamack, Billings, MT 59101. Representative: Alma Longmire, P.O. Box 30351, Billings, MT 59107, (406) 252–9413. 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 151634 (Sub-3), filed November 24, 1981. Applicant: GOLDEN COACH, A.C., INC., Boston at Pacific, Atlantic City, NJ 08404. Representative: Larsh B. Mewhinney, 555 Madison Ave., New York, NY 10022, (212) 838–0600. 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 159244, filed November 24, 1981. Applicant: ROBERT WESLIE CARTER, Route 2 Box 75DA, Apex, NC 27502. Representative: Robert Weslie Carter (same address as applicant), (919) 362–7787. Transporting (1) *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 vehicle in such vehicle, between points in the U.S., and (2) *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 159434, filed November 24, 1981. Applicant: FEDERAL TRANSPORT, INC., 5658 Elmore Rd., Bartlett, TN 38134. Representative: Thomas A. Stroud, 2008 Clark Tower, 5100 Poplar Ave., Memphis, TN 38137, (901) 767–5600. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret marterials, and sensitive weapons and munitions), between points in the U.S.

Volume No. OPY–4–468

Decided: December 2, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 159407, filed November 24, 1981. Applicant: BONANZA VAN LINES, INC., 1501 S.E. 1st, Lawton, OK 73501. Representative: James J. Fratino, P.O. Box 82, Edgewater, MD 21037, (301) 261–7227. Transporting *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S.

MC 159427, filed November 24, 1981. Applicant: JAMES BRANT, d.b.a. BRANT TRUCKING, 1300 S.W. 196 Ave., Pembroke Pines, FL 33029. Representative: Richard B. Austin, 320 Rochester Bldg., 8390 N.W. 53rd. St., Miami, FL 33166, (305) 592–0036. 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–5–215

Decided: December 1, 1981.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 159338, filed November 18, 1981. Applicant: J & B EXPEDITERS, INC., P.O. Box 923, Bensenville, IL 60106. Representative: Patrick H. Smyth, 105 W. Madison, Suite 1008, Chicago, IL 60603, 312–263–2397. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 159349, filed November 18, 1981. Applicant: BOB DONALDSON TRUCKING, 503 Southern Ave., Selah, WA 98942. Representative: Robert A. Donaldson (same address as applicant), 509–697–8652. 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–5–217

Decided: December 4, 1981.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 142059 (Sub-182), filed November 20, 1981. Applicant: CARDINAL TRANSPORT, INC., 1230 Northern Illinois Dr., Channahon, IL 60410. Representative: Jack Riley (same address as applicant), (815) 729–3808. Transporting *general commodities* between Oconee and Vera, IL, Alta Vista, Elma, Fredericksburg, Garwin, Harlan, Irwin, McIntire, Riceville, Sumner, Toledo, and Westgate, IA, Dennison, Dundas, Elkton, Kenyon, Nerstrand, and West Concord, MN, Carlyle, MT, Great Bend, ND, Clarksville, OH, Forest City, Nicholson, Starruca, Thompson, and Union Dale, PA, Soumethun, TX, and Arpin, Barksdale, Cedar Lake, Clearwater Lake, Conover, Eagle River, Edgar, Fenwood, Gagen, Lac du Flambeau, Lake Tomahawk, Manitowish, Marathon City, McNaughton, Mercer, Idanah, Powell, Three Lakes, Vesper, Washburn, and Woodruff, WI, on the one hand, and, on the other, points in the U.S.

Note.—The sole purpose of this application is to substitute motor carrier service for completely abandoned rail service.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-35480 Filed 12-10-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's rules of practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be

construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OPI–316

Decided: December 3, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 18080 (Sub-5), filed November 13, 1981. Applicant: CONLEY TRUCK LINE, INC., P.O. Box 2312, Grand Island, NE 68802–2312. Representative: Johnnie K. Walker (Same address as applicant) (308) 381–8300. Transporting *iron and steel articles*, between Chicago, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 18080 (Sub-6), filed November 17, 1981. Applicant: CONLEY TRUCK LINE, INC., P.O. Box 2312, Grand Island, NE 68802–2312. Representative: Johnnie Walker, P.O. Box 313, Wood River, NE 68883 (308) 583–2000. Transporting *lumber and wood products*, between points in WY, MT, CA, ID, OR, and WA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 18080 (Sub-7), filed November 24, 1981. Applicant: CONLEY TRUCK LINE, INC., P.O. Box 2312, Grand Island, NE 68802–2312. Representative: Johnnie Walker, P.O. Box 313, Wood River, NE 68883. Transporting *hides, skins, pelts, and pieces of hides, skins, or pelts*, between points in NE and CO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 52460 (Sub-343), filed November 24, 1981. Applicant: ELLEX TRANSPORTATION, INC., 1420 W. 35th St., P.O. Box 9637, Tulsa, OK 74107. Representative: Don E. Kruizinga (Same address as applicant) (918) 445–4434. Transporting *transportation equipment*, between points in Los Angeles County, CA, Mercer County, OH, and Kay County, OK, on the one hand, and, on the other, points in the U.S.

MC 121470 (Sub-88), filed November 24, 1981. Applicant: TANKSLEY TRANSFER COMPANY, 801 Cowan St., Nashville, TN 37207. Representative: Helen Jones (same address as applicant) (615) 244–7417. Transporting *general commodities* (except household goods and classes A and B explosives), between points in TN, AL, and GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 124111 (Sub-71), filed November 18, 1981. Applicant: OHIO EASTERN EXPRESS, INC., P.O. Box 2297, Sandusky, OH 44870. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215 (614) 228–1541. Transporting *metal products*, between points in Columbiana County, OH, on the one hand, and, on the other, points in and east of MN, IA, MO, AR, and TX.

MC 124251 (Sub-77), filed November 18, 1981. Applicant: JACK JORDAN, INC., P.O. Box 689, Dalton, GA 30720. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345 (404) 321–1765. Transporting *pulp, paper and related products, and plastic composite tubes and cores*, between points in Whitfield County, GA, on the one hand, and, on the other, points in AL, FL, GA, NV, NC, SC and TN.

MC 127921 (Sub-5), filed November 19, 1981. Applicant: COOLEY TRANSPORT, INC., Route 8, Box 225, Inman, SC 29349. Representative: Steven L. Weiman, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760 (301) 840–8565. Transporting *general commodities* (except household goods and classes A and B explosives), between points in the U.S., under continuing contract(s) with Cargill, Inc., of Minnetonka, MN.

MC 128761 (Sub-7), filed November 16, 1981. Applicant: RICHARD M. GODFREY, 8530 Kingscove Dr., Salt Lake City, UT 84121. Representative: Irene Warr, 311 S. State St. Ste. 280, Salt Lake City, UT 84111 (801) 531–1300. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Grand Central, Inc., of Salt Lake City, UT.

MC 135231 (Sub-67), filed November 24, 1981. Applicant: NORTH STAR TRANSPORT, INC., Rt. 1 Hwy 1 and 59 West, Thief River Falls, MN 56701. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118 (612) 457–6889. Transporting *chemicals and related products*, between points in Morris County, NJ and Harrison County, TX, on the one hand, and, on the other, points in the U.S.

MC 135861 (Sub-99), filed November 19, 1981. Applicant: LISA MOTOR LINES, INC., P.O. Box 4550, Fort Worth, TX 76106. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103 (817) 332–4718. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Wes-Tex Shippers Association, of Lubbock, TX.

MC 141021 (Sub-2), filed November 13, 1981. Applicant: PETROLEUM TRANSPORT CO., INC., P.O. Drawer 1559, Kenner, LA 70063. Representative: Harold R. Ainsworth, 2307 American Bank Building, New Orleans, LA 70130 (504) 522–7284. Transporting *cement, oil field drilling mud and mineral filler*, between points in LA, on the one hand, and, on the other, points in MS.

MC 144011 (Sub-9), filed November 16, 1981. Applicant: HALL SYSTEMS, INC., 214 South 10th St., Birmingham, AL 35233. Representative: J. Wesley Raybon (Same address as applicant) (205) 324–5620. Transporting *metal products*, between points in the U.S., under continuing contracts(s) with Metalplate Galvanizing, Inc., of Birmingham, AL.

MC 145190 (Sub-6), filed November 16, 1981. Applicant: D. A. D. TRANSPORT CORPORATION, 3832 New Cummings Road, Chattanooga, TN 37409. Representative: Daniel O. Hands, 205 West Touhy Avenue, Suite 200–A, Park Ridge, IL 60068, (312) 698–2235. Transporting (1) *pulp, paper and related products* and (2) *rubber and plastic products*, between Chattanooga, TN, on the one hand, and, on the other, points in AL, AR, GA, LA, MS, NC, SC, and those in FL in and east of Jefferson County

MC 148380 (Sub-20), filed November 18, 1981. Applicant: CRESCO LINES, INC., 13900 South Keeler Avenue, Crestwood, IL 60445. Representative: Edward G. Bazelon, 29 South La Salle Street, Chicago, IL 60603, (312) 236–9375. Transporting *forest products, building materials, and lumber and wood products*, between points in the U.S., under continuing contract(s) with Babcock Lumber Co., of Pittsburgh, PA.

MC 148621 (Sub-1), filed November 16, 1981. Applicant: MIKE REYNOLDS TRUCKING COMPANY, INC., P.O. Box 197, Maplesville, AL 36750. Representative: Terry P. Wilson, 428 South Lawrence St., Montgomery, AL 36104 (205) 262–2756. Transporting *lumber and wood products*, between points in AL, on the one hand, and, on the other, points in the U.S.

MC 150700 (Sub-7), filed November 17, 1981. Applicant: OLIN WOOTEN TRANSPORT CO., INC., P.O. Box 731 Hazlehurst, GA 31539. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202, (904) 632–2300. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. (except AK and HI), under continuing contract(s) with Manville Forest Products Corporation of West Monroe, LA.

MC 150951 (Sub-9), filed November 17, 1981. Applicant: CRANSTON TRUCKING COMPANY, 1381 Cranston Street, Cranston, RI 02920 Representative: Paul M. Overton (same address as applicant), (401) 943–4800. Transporting *chemicals and related products*, between points in the U.S., under continuing contract(s) with Soluol Chemical Company, Inc., of West Warwick, RI.

MC 151981 (Sub-3), filed November 18, 1981. Applicant: JERRY L. ROVINETTE, d.b.a. JERRY L. ROBINETTE & SON TRUCKING, 599 Earlywood Drive, Franklin, IN 46131. Representative: Robert W. Loser II, 1101 Chamber of Commerce Bldg., 320 N. Meridian St., Indianapolis, IN 46204, (317) 635–2339. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with The Coca-Cola Company Foods Division, of Houston, TX.

MC 152730 (Sub-13), filed November 16, 1981. Applicant: DEPENDABLE TRANSIT, INC., P.O. Box 349, Hartford City, IN 47348. Representative: Larry Dee Garrett (same address as applicant), (317) 348–0051. Transporting *such commodities* as are dealt in or used by manufacturer and distributor of dairy products, between points in Madison County, IN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 155811, filed November 13, 1981. Applicant: TOM McCARTY TRUCKING, 2400 2nd N.W., Albuquerque, NM 87102. Representative: Tom McCarty, 436 Alcazar S.E., Albuquerque, NM 87108, (505) 265–4542. Transporting *clay, concrete, glass or stone products*, between points in IN and MO, on the one hand, and, on the other, points in WA, OR, CA, NV, UT, MT, WY, and AZ.

MC 156511 (Sub-1), filed November 13, 1981. Applicant: ANTHONY J. ULGIATI, d.b.a. A. J. TRANSPORTATION, 24 Lincoln Ave., Rochester, NY 14611. Representative: Raymond A. Richards, 35 Curtice Pk., Webster, NY 14580, (716) 265–9510. Transporting *such commodities* as are dealt in or used by a manufacturer of railroad machinery and devices, between points in NY, on the one hand, and, on the other, points in the U.S.

MC 159270, filed November 13, 1981. Applicant: DARYL O. HATTEN, d.b.a. D. O. HATTEN TRUCKING, East 7905 Boone, Spokane, WA 99206. Representative: Boyd Hartman, P.O. Box 3641, Bellevue, WA 98009. Transporting *building materials, iron and steel articles, scrap metal, machinery and parts*, and *commodities which because of size or weight require special equipment*, and *drilling supplies and equipment*, between points in WA, ID, OR, MT, WY, CO, NV, UT, CA, NM, and AZ.

MC 159300, filed November 16, 1981. Applicant: CHARLOTTE MESSNER, d.b.a. CHAR LYN TRUCKING, 1431 Taylor Ave., Altoona, PA 16602. Representative: Ray Messner (same address as applicant), (814) 942–3989. Transporting (1) *food and related products*, (2) *metal products*, (3) *plastic products*, and (4) *paper products*, between points in the U.S. (except AK and HI).

MC 159311, filed November 16, 1981. Applicant: MARTIN MOTOR COMPANY, INC., P.O. Box 263, Springdale, AR 72764. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72702, (501) 521–8121. Transporting *steam cleaning equipment, metal products, and chemicals and related products*, between points in AR, on the one hand, and, on the other, points in the U.S.

MC 159420, filed November 24, 1981. Applicant: M & W TRANSPORTATION CO., INC., P.O. Box 345, Conley, GA 30027. Representative: Paul P. Watkins, P.O. Box 76358, Atlanta, GA 30358, (404) 255–0688. Transporting *general commodities* (except classes A and B explosives), between points in AL, GA, and TN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Volume No. OPY–4–470

Decided: December 7, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 115826 (Sub-606), filed November 25, 1981. Applicant: W. J. DIGBY, INC., 6015 East 58th Ave., Commerce City, CO 80022. Representative: Charles J. Kimball, 1600 Sherman St., #665, Denver, CO 80203, (303) 839–5856. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Amoco Production Company, of Denver, CO, Ralston Purina Company, of St. Louis, MO, and Potters Industries, Inc., of Hasbrouck Heights, NJ.

MC 127876 (Sub-5), filed November 25, 1981. Applicant: EUCLIDE TRUCKING CO., INC., Route 1, Abrams, WI 54101. Representative: Edward J. Gerrity, 601 W. College Ave., P.O. Box 914, Appleton, WI 54912, (414) 734–5608. Transporting (1) *building materials*, between points in Brown County, WI, on the one hand, and, on the other, points in IL, and (2) *pulp, paper and related products*, between points in Outagamie and Winnebago Counties, WI, on the one hand, and, on the other, points in IL.

MC 130656 (Sub-1), filed November 27, 1981. Applicant: MARK ANTHONY COMPANY, d.b.a. SELECT TOURS, 114 East 8th St., P.O. Box 115, Madrid, IA 50156 0115. Representative: Mark Anthony (same address as applicant), (515) 795–3111. Transporting *passengers and their baggage*, in special and charter operations, between points in Carroll, Greene, Boone, Story, Polk, Hamilton, Webster, Calhoun, and Sac Counties, IA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 138126 (Sub-49), filed November 25, 1981. Applicant: WILLIAMS REFRIGERATED EXPRESS, INC., Route 313, P.O. Box 477, Federalsburg, MD 21632. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., N.W., Washington, DC 20005, (202) 296–3555. Transporting *food and related products*, between points in the U.S. (except AK and HI).

MC 144616 (Sub-16), filed November 24, 1981. Applicant: SOUTHWESTERN CARRIERS, INC., P.O. Box 79495, Saginaw, TX 76179. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Ft. Worth, TX 76112, (817) 457–0804. Transporting (1) *chemicals and related products*, and (2) *toilet preparations*, between points Duvall County, FL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146046 (Sub-5), filed November 27, 1981. Applicant: INTERCOASTAL LINES, LTD., 200 Foxhunt Crescent, Syosset, NY 11791. Representative: Eugene M. Malkin, Suite 1832, 2 World Trade Center, New York, NY 10048–0604, (212) 466–0220. Transporting (1) *such commodities* as are dealt in or used by manufacturers and distributors of alcoholic beverages, between points in the U.S. (except AK and HI), under continuing contract(s) with Paul Masson Vineyards, Inc., of San Jose, CA; and (2) *such commodities* as are dealt in or used by manufacturers and distributors of pharmaceutical and medical products, between points in the U.S. (except AK and HI), under continuing contract(s) with Schering Corporation, of Kenilworth, NJ.

MC 147196 (Sub-19), filed November 27, 1981. Applicant: ECONOMY TRANSPORT, INC., P.O. Box 50262, New Orleans, LA 70150. Representative: Fletcher W. Cochran, P.O. Box 741, Slidell, LA 70459, (504) 643–1700. Transporting *chemicals and related*

products, between points in the U.S. (except AK and HI), under continuing contract(s) with Anko Products, of Lancaster, TX.

MC 147746 (Sub-3), filed November 27, 1981. Applicant: TRI-UNION EXPRESS, INC., 3680—179th St., Hammond, IN 46323. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501, (515) 682–8154. Transporting *beverages and related products*, between points in IL, IN and WI.

MC 151566 (Sub-18), filed November 24, 1981. Applicant: PERRY TRANSPORT, INC., 14375—172nd Ave., Grand Haven, MI 49417. Representative: Richard O. Peel (same address as applicant), (616) 842–3550. Transporting *metal and plastic components*, between points in the U.S. (except AK and HI), under continuing contract(s) with Winward Products, Inc., of Grand Haven, MI. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343(A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to team 4, Room 2410.

MC 156866, filed November 27, 1981. Applicant: MUNDANZAS INTERNACIONALES MEXICANAS, INC., 10517 Long Beach Blvd., Lynwood, CA 90262. Representative: Floyd L. Farano, 2555 E. Chapman Ave., Suite 415, Fullerton, CA 92631, (714) 773–4111. Transporting *household goods*, between points in AZ and CA, on the one hand, and, on the other, ports of entry on the International Boundary line between the U.S. and the Republic of Mexico, at points in AZ and CA.

MC 159466, filed November 27, 1981. Applicant: CRYSTAL TRAVELS, INC., Rt. 8, Box 135, Rd. S–42–214, Inman, SC 29349. Representative: Joseph M. Epting, P.O. Box 11414, Columbia, SC 29211, (803) 799–9427. To operate as a *broker*, at Inman, SC, in arranging for the transportation of *passengers and their baggage*, between points in Spartanburg County, SC, and points in the U.S.

Volume No. OPY–4–472

Decided: December 7, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 115557 (Sub-41), filed November 30, 1981. Applicant: CHARLES A. McCAULEY, 308 Leasure Way, New Bethlehem, PA 16242. Representative: Verne T. Mahood (same address as applicant), (814) 365–5811. Transporting *materials, equipment and supplies used in the production, installation and distribution of glass containers* (except commodities in bulk), between Contra Costa, Alameda, Los Angeles, and Orange Counties, CA, Windham County, CT, Clayton County, GA, Grant County, IN, Indianapolis, IN, Jackson, MS, Armstrong, Clarion, Forest, and Venango County, PA, and Anderson County, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 135997 (Sub-2), filed November 25, 1981. Applicant: TEXAS TANK LEASING, INC., Route 5, Box 99, Conroe, TX 77301. Representative: William D. Lynch, P.O. Box 912, Austin, TX 78767, (512) 472–1101. Transporting *general commodities* (except classes A and B explosives and household goods), between the facilities of Owens-Corning Fiberglass Corporation at points in the U.S., on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 141317 (Sub-6), filed November 30, 1981. Applicant: HAAG TRANSPORT, INC., P.O. Box 25, Shelburn, IN. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846–6655. Transporting *metal products*, between points in Knox County, IN, Cuyahoga County, OH, and McIntosh County, OK, on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 151637 (Sub-3), filed November 30, 1981. Applicant: LARRY BREEDEN TRUCKING, INC., 1301 Fayetteville Rd., Van Buren, AR 72956. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72702, (501) 521–8121. Transporting *new furniture*, between points in Crawford and Sebastian Counties, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 157957, filed November 30, 1981. Applicnt: LORAS KALB, 904 Monticello Drive, Dubuque, IA 52001. Representative: Carl E. Munson, 469 Fischer Bldg., Dubuque, IA 52001 (319) 557–1320. Transporting *fertilizer*, between points in IL, IA, and WI.

MC 159487, filed November 30, 1981. Applicant: GARY PETERSON and CRAIG AUKES d.b.a. MIDWEST TRANSPORT CO., 101 3rd St., N.W., P.O. Box 138, Buffalo Center, IA 50424. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244–2329. Transporting *fertilizer*, (1) between points in Clinton, Hancock, Webster, and Woodbury Counties, IA, on the one hand, and, on the other, points in IL, MN, SD, and WI, and (2) between points in Winnebago and Kossuth Counties, IA, on the one hand, and, on the other, points in MN.

Volume No. OPY–5–216

Decided: December 4, 1981.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 41098, (Sub-70), filed November 27, 1981. Applicant: GLOBEL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K Street N.W., Washington, DC 20006, 202–833–8884. Transporting *transportation equipment*, between points in San Diego County, CA, on the one hand, and, on the other, points in the U.S.

MC 68368, (Sub-56), filed November 25, 1981. Applicant: CARTWRIGHT VAN LINES, INC., 11901 Cartwright Ave., Grandview, MO 64030. Representative: Thomas R. Kingsley, 10614 Amherst Avenue, Silver Spring, MD 20902, (301) 649–5074. Transporting (1) *machinery* and (2) *metal products*, between points in MI, on the one hand, and, on the other, points in the U.S.

MC 145559, (Sub-17), filed November 20, 1981. Applicant: NORTH ALABAMA TRANSPORTATION, INC., P.O. Box 38, Ider, AL 35981. Representative: William P. Jackson, Jr., 3426 N. Washington Boulevard, P.O. Box 1240, Arlington, VA 22210, (703) 525–4050. Transporting *such commodities* as are dealt in or used by a distributor of carpet or appliances, between points in AZ, on the one hand, and, on the other, points in the U.S.

MC 145939, (Sub-2), filed November 19, 1981. Applicant: ATLANTIC CARRIERS, INC., Box 284, Atlantic, IA 50022. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309, (515) 245–4300. Transporting *fertilizer* between points in IA, MO, and IL, on the one hand, and, on the other, points in IA, KS, MO, NE, SD, MN, WI, and IL.

MC 147499, (Sub-6), filed November 24, 1981. Applicant: D. H. TRANSFER, INC., 671 M–73, Iron River, MI 49935. Representative: Donald Hooper (same address as applicant), 906–265–9329. Transporting *lumber and wood products*, between points in Gogebic County, MI on the one hand, and, on the other, points in the U.S.

MC 147969 (Sub-10), filed November 24, 1981. Applicant: JOE S. BROWN, INC., P.O. Box 262, Springdale, AR 72764. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72702, 501–521–8121. Transporting (1) *such commodities* as are dealt in or used by manufacturers or distributors of artificial Christmas trees, portable ice

chests and plastic products, between points in Boone County, IN, on the one hand, and, on the other, points in the U.S. and (2) *edible flour*, between points in St. Clair County, IL, on the one hand, and, on the other, points in the U.S.

MC 148328 (Sub-3), filed November 20, 1981. Applicant: LEONARD ALLEN AND GARY ARIOTTI, d.b.a. ALLEN TRUCKING, 5257 N. Vincent, P.O. Box 2121, Irwindale, CA 91706. Representative: Leonard Allen (same address as applicant), (213) 332–4934. Transporting *general commodities* (except commodities in bulk and A and B explosives), between points in the U.S., under continuing contract(s) with Caltop Cooperative, Inc., of Bell, CA.

MC 150088 (Sub-9), filed November 25, 1981. Applicant: STERLING TRANSPORT DIVISION, INC., 2005 South Great Southwestern Pkwy., Grand Prairie, TX 75051. Representative: Robert K. Frisch, 6606 LBJ Freeway, Suite 5135, Dallas, TX 75240, (214) 934–0963. Transporting *general commodities*, (except classes A and B explosives, and commodities in bulk), between points in the U.S. under continuing contract(s) with Sterling Warehousing and Distribution, Inc. of Grand Prairie, TX.

MC 151448 (Sub-4), filed November 25, 1981. Applicant: BERNS TRANSPORTATION, INC., 4585 South Harding St., Indianapolis, IN 46217. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204, 317–638–1301. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in IL, IN, KY, MI and OH, on the one hand, and, on the other, points in AL, AR, CT, DE, FL, GA, IA, IL, IN, KY, LA, MA, MD, MI, MN, MO, MS, NC, NJ, NY, OH, OK, PA, SC, TN, TX, VA, WV, WI, and DC.

MC 151819 (Sub-7), filed November 20, 1981. Applicant: CARGO-MASTER, INC., 917 S. Harwood, Dallas, TX 75201. Representative: Jackson Salasky (same address as applicant), (214) 741–6185. Transporting *containers* between points in TX, on the one hand, and, on the other, points in the U.S.

MC 156588, filed November 24, 1981. Applicant: BISON TRANSPORT SERVICES, LTD., 1063 Sherwin Road, Winnipeg, Manitoba, Canada R3H OT8. Representative: Robert N. Maxwell, P.O. Box 2471, Fargo, ND 58108, (701) 237–4223. Transporting (1) *pulp, paper and related products* and (2) *food and related products*, between the ports of entry on the international boundary line between the U.S. and Canada at points in MN and ND, on the one hand, and, on the other, points in IL, IA, KS, MN, MO, NE, ND, SD, and WI.

MC 157728, filed November 19, 1981. Applicant: RICHARD D. VANZUIDEN, d.b.a. R & D TRUCKING, 11256 Billings Ave., Lafayette, CO 80026. Representative: Richard D. VanZuiden (same address as applicant), (303) 665–9899. Transporting (1) *metal products*, under continuing contract(s) with Explosive Fabricators, Inc., of Louisville, CO, and (2) *metal and fiberglass products, electronic equipment*, and *construction equipment*, under continuing contract(s) with Link-Up, Inc., of Arvada, CO, between points in the U.S.

MC 159328, filed November 24, 1981. Applicant: DAN DARROW, d.b.a. DARROW TRUCKING, 8185 S. Cole Road, Boise, ID 83709. Representative: Kevin M. Clark, 1003 N. 8th St., Suite 200, Boise, ID 83702. Transporting (1) *lumber and wood products*, (2) *pre-cut log homes*, and (3) *building materials*, between points in the U.S., under continuing contract(s) with Pressure Treated Timber Co., Inc., of Boise, ID.

MC 158039, filed November 20, 1981. Applicant: NORMA BESSIRE, d.b.a. SOLAR HULL COMPANY, P.O. Box 1272, Canadian, TX 79014. Representative: Harold O. Orlofske, 145 W. Wisconsin Ave., Neenah, WI 54956, (414) 722–2848. Transporting *Mercer commodities* (1) between points in Butte County, SD, Weston and Big Horn Counties, WY, Bowman County, ND, and Phillips County, MT, on the one hand, and, on the other, points in OK and TX, and (2) between points in Butte County, SD, Park, Big Horn, Sweetwater, Natrona, and Western Counties, WY, on the one hand, and, on the other, points in Seward County, KS, and those points in TX and north of Oldham, Potter, Carson, Gray, and Wheeler Counties.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-35492 Filed 12-10-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 81–32473, appearing at page 55568 in the issue of Tuesday, November 10, 1981, the 10th line of the second complete paragraph in column one on page 55572 should have read, "and, on the other, points in CO, IA, IN, MN,".

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; La Salle Fashions, Inc., et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period November 30–December 4, 1981.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–12,673; La Salle Fashions, Inc., Hoboken, NJ
TA–W–12,619; Uddeholm Corp., Stora Steel Div., Fairfield, NJ
TA–W–12,415; Lucy Rose Anna Coat Co., Inc., Hoboken, NJ
TA–W–12,379; The Bendix Corp., Electric & Fluid Power Div., Eatontown, NJ
TA–W–12,378; All Star Products, Inc., Edgerton, OH
TA–W–12,141; Asko, Inc., American Shear Knife Div., West Homestead, PA
TA–W–12,103; Colt Industries, Trent Tube Div., East Troy, WI
TA–W–11,367; Jack's Glove Co., Gloversville, NY
TA–W–11,326; Douglas & Lomason Co., Marianna, AR
TA–W–11,129; Weatherbee Coats, Youngstown, OH
TA–W–11,752; Commercial Dress Co., High Bridge, NJ
TA–W–11,572; Ina Sportswear, New York, NY
TA–W–10,974; Conaway Winter, Inc., Willow Springs, MO
TA–W–11,694; Bush Hog Continental Gin, Prattville, AL

TA-W-11,189; Rockwell International, Suspension Components Div., Chelsea, MI
TA-W-11,235; Welpro, Inc., Seabrook, NH
TA-W-11,833; Cowden Mfg. Co., Morehead, KY
TA-W-12,278; Mark Levinson Audio Systems, Ltd., Hamden, CT
TA-W-11,871; Sullivan Shoe Co., Sullivan, MO
TA-W-11,911; Bethlehem Steel Corp., Conemaugh & Backlick Railroad, Johnstown, PA
TA-W-11,821 & 11,822; Amax Specialty Metals Corp., Alloy Div., Florham Park, Newark, NJ
TA-W-11,107; National Steel Pellet Co., Keewatin, MN
TA-W-11,417 & 11,489; A&A Mfg. Corp., Springfield and Aurora, MO

In each of the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to worker separations at the firm.

TA-W-11,761; General Electric Co., Hermetic Motor Products Dept., Tiffin, OH
TA-W-11,768; Standard Alliance Industries, Inc., Transue Williams Div., Stamping Plant, Alliance, OH
TA-W-12,921; Georgetown Steel Corp., Georgetown, SC
TA-W-12,969; Chrysler Learning, Inc., McNicols Training Center, Highland Park, MI
TA-W-12,470; Mel Coat Fashions, Inc., Weehawkin, NJ
TA-W-12,454; Lunar Fashions, Hoboken, NJ
TA-W-12,122; Style Sportswear, Inc., Paterson, NJ
TA-W-12,067; Jessop Steel Co., Washington, PA
TA-W-11,514; Olivetti Corp., Harrisburg, PA
TA-W-12,650; Ship 'N Shore, Ephrata, PA

In each of the following cases the investigation revealed that criterion (3) has not been met for the reason(s) specified.

TA-W-12,156; Leather Mates, Inc., New York, NY

Aggregate U.S. imports of leather coats and jackets did not increase as required for certification.

TA-W-11,671; S.W.S. Silicones Corp., Adrian, MI

With respect to silicone rubber, a survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm. With respect to silicone fluids, U.S. imports are negligible.

TA-W-11,475 & 11,475A; Singer Mfg., Inc., M. Richard Singer & Co., Philadelphia, PA

Aggregate U.S. imports of men's and boys' suit coats and sportscoats did not increase as required for certification.

In the following case the investigation revealed that sales by manufacturers for which the subject firm produced under contract did not decline.

TA-W-11,923; Schwaid and Schwaid Corp., New York, NY

Affirmative Determinations

TA-W-12,168; Grizzly Shake Co., Forks, WA

A certification was issued in response to a petition received on January 23, 1981 covering all workers separated on or after January 12, 1980 and before June 1, 1980.

TA-W-11,255; Athalon Products, Ltd., Denver, CO

A certification was issued in response to a petition received on October 3, 1980 covering all workers separated on or after March 1, 1980.

TA-W-11,183; Dover Handbag Co., Inc., Netcong, NJ

A certification was issued in response to a petition received on September 29, 1980 covering all workers separated on or after September 24, 1979.

TA-W-10,484; Tiffin Crystal, Div. of Towle Mfg. Co., Tiffin, OH

A certification was issued in response to a petition received on August 1, 1980 covering all workers separated on or after January 18, 1980.

TA-W-11,033; 11,034; 11,035; 11,036; & 11,037; SCM Corp., Smith-Corona Group Plant #2, Cortland, NY; Plant #3, Groton, NY; Plant #5, Cortland, NY; Plant #8, Cortland, NY; and Plant #1, Cortland, NY

A certification was issued in response to a petition received on September 16, 1980 covering all workers separated on or after September 12, 1979 and before April 1, 1981.

TA-W-11,573; Mickey Madonn Handbags, Inc., New Bedford, MA

A certification was issued in response to a petition received on October 24, 1980 covering all workers of the firm separated on or after June 28, 1980.

I hereby certify that the aforementioned determinations were issued during the period November 30–December 4, 1981. Copies of these determinations are available for inspection in Room 10,332, U.S. Department of Labor, 601 D Street, NW, Washington, D.C. 20213 during normal working hours or will be mailed to persons who write to the above address.

Dated: December 7, 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-35471 Filed 12-10-81; 8:45 am]
BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Biquette, Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 7th day of December 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Biquette, Inc. (company)	W. New York, N.J.	12/4/81	11/30/81	TA-W-13,124	Sportswear—children.
Braddock Frosted Foods, Inc. (UFCW)	Hammonton, N.J.	11/25/81	11/16/81	TA-W-13,125	Seafood, vegetables—frozen.
Gerity Schultz (UAW)	Toledo, Ohio	12/1/81	11/24/81	TA-W-13,126	Carburators and parts.
Gulf & Western Enery Products Group, Taylor Forge (boilermakers).	Memphis, Tenn	12/1/81	12/1/81	TA-W-13,127	Steel—carbon, elbows and tees.
Jaques Syl Knitwear (company)	W. New York, N.J.	12/4/81	11/30/81	TA-W-13,128	Sportswear—childrens.
New Jersey Zinc, a Division of Gulf & Western Manufacturing Co. (USWA).	Thorn Hill, Tenn	11/25/81	11/23/81	TA-W-13,129	Zinc—mining.
Avon Services, Inc. (workers)	Battle Mt. Nev	12/4/81	11/30/81	TA-W-13,130	Barite mining.
Jeep Corp. (UAW)	Toledo, Ohio	12/4/81	11/25/81	TA-W-13,131	Trucks—pick-up, vehicles—general.

[FR Doc. 81-35469 Filed 12-10-81; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-81-233-C]

Valley Camp Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

The Valley Camp Coal Company, 2971 E. Dupont Avenue, Shrewsbury, WV 25184 has filed a petition to modify the application of 30 CFR 75.303(a) (preshift examinations) to its No. 9 Tunnel located in Kanawha County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that preshift examinations of seals be made within three hours immediately preceding the beginning of any shift.

2. The No. 9 tunnel is used to transport coal by belt from the petitioner's other mines to the preparation plant.

3. When extraction of coal was taking place from the No. 9 Tunnel, ten panels were mined off the main entries. Those ten panels were all sealed when extraction of coal was completed. Since the erection of the seals, numerous roof falls along the main entries adjacent to the seals have occurred to a point where the seals cannot be located or examined. The seals are now blocked by fallen rock extending from the seals to the main belt entries, a distance of approximately 50 to 100 feet.

4. As an alternative method, petitioner proposes to perform examinations for hazardous conditions at designated evaluation points near the location where the seals are blocked by rock and debris.

5. Petitioner states that this 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 January 11, 1982. Copies of the petition are available for inspection at that address.

Dated: December 1, 1981.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-35470 Filed 12-10-81; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefit Programs

[Application No. D-2554]

Proposed Exemption for Certain Transactions Involving the Robert V. Bain, M.D., P.C., Defined Benefit Pension Plan and Trust, Located in Salem, Oregon

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain sanctions resulting from the application of the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the contribution on December 31, 1980, by Robert V. Bain, M.D., P.C. (the Employer) to the Robert V. Bain, M.D., P.C., Defined Benefit Pension Plan and Trust (the Plan) of an option to purchase certain real property. The proposed exemption, if granted, would affect the Employer and Robert V. Bain, M.D., a disqualified person with respect to the Plan.

Since Dr. Bain is the sole shareholder and employee of the Employer and the only participant in the Plan, the Plan is not subject to Title I of the Employee Retirement Income Security Act of 1974 (the Act), including section 406, pursuant to 29 CFR 2510.3-3(c)(1). However, the Plan is subject to Title II of the Act, which includes section 4975 of the Code.

DATE: Written comments and requests for a public hearing must be received by the Department on or before January 11, 1982.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective on December 31, 1980.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2554. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund, of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Employer, pursuant to section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. Dr. Bain, the sole owner and employee of the Employer, is also both the administrator and trustee of the Plan, in which he is the only participant. The Plan, which became effective January 1, 1980, provides for an annual Employer contribution of $22,000. As of April 23, 1981, the Plan's assets totalled $22,000.

2. On December 31, 1980, the Employer contributed an option (the Option) to purchase the real property described below to the Plan, contingent upon the granting of an exemption by the Department regarding such non-cash contribution. The remaining portion of the contribution due to the Plan was made in cash. The real property which is the subject of the Option consists of three vacant lots (the Lots) located on Mountain Crest Way South, Salem, Oregon, and described as Lots 6, 7, and 8, Block 24, Skyline Village Phase IV, Marion County, Oregon. Mr. John P. Totten, MAI, and Ms. Christine A. Fisher, independent real-estate appraisers and analysts, have estimated the fair market value of each of the three Lots as $21,000 as of July 28, 1981, and have reported that the highest and best use of the Lots would be as single family residences. They also state that the Lots are considered to be the best in the subdivision and have an excellent view. There are no outstanding mortgages on the Lots. The property adjacent to the Lots is owned by Larry Epping Building Company (the Seller) on one side and by the Richard Baglien Construction Company on the other side. The Employer will not have an option to purchase or lease the Lots from the Plan. The Employer believes the Lots will appreciate in value, will be marketable to independent third parties in a period of time reasonable for similar property, and will bring a favorable rate of return. The Employer and Dr. Bain have concluded that the contribution of the Option meets various financial requirements and goals of the Plan.

3. The Employer purchased the Option on January 9, 1980, from the Seller, which is not related to either the Employer or to the Plan, for $10,000 cash. The Option provides that this sum will apply toward the purchase price of the Lots if the purchaser of the Option elects to purchase the Lots. Accordingly, the contribution of the Option to the Plan is required to be recorded at $10,000. The Plan exercised the Option on June 11, 1981. The total purchase price for the Lots is $60,660, of which $20,000 (including $10,000 applied from the Option) was paid by the Plan on June 11, 1981. The Plan is obligated to pay the remaining balance of $40,660 in monthly installments of at least $1,000 each, including principal and interest at the rate of 16 percent per annum on the unpaid balance. The Plan's sole purpose in acquiring the Lots is to sell the land for a profit within a suitable period of time.

4. In summary, the applicant represents that the contribution of the Option to the Plan meets the criteria for an exemption provided by section 4975(c)(2) of the Code because (a) the applicant believes the contribution provided an exceptionally favorable investment opportunity which would not be available to the Plan on the open market, (b) the contribution was a one-time transaction, (c) the contribution credited the Plan with $10,000 toward the purchase price of the Lots, and (d) the Plan trustee believes that the contribution was in the interests of the Plan and himself as sole participant of the Plan.

Notice to Interested Persons

Since Dr. Bain is the only participant in the Plan and the sole owner of the Employer, it has been determined that there is no need to distribute the notice of pendency to interested persons.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Code, including any prohibited transaction provisions to which the exemption does not apply; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the 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 contribution on December 31, 1980, of the Option by the Employer to the Plan provided the Option was valued at its fair market value on such date.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of this proposed exemption.

Signed at Washington, D.C., this 4th day of December 1981.

Alan D. Lebowitz,

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

[FR Doc. 81-35451 Filed 12-10-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2614]

Proposed Exemption for Certain Transactions Involving Bellco Glass, Inc.; Salaried Employees Pension Plan, Located in Vineland, N.J.

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt: (1) the proposed loan (the Plan Loan) of money by the Bellco Glass, Inc. Salaried Employees Pension Plan (the Plan) to Bellco Glass, Inc. (the Employer), a party in interest with respect to the Plan; and (2) a guarantee of repayment by the principal shareholders of the Employer. The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan and the Employer.

DATE: Written comments and requests for a public hearing must be received by the Department on or before January 21, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2614. The application for exemption and the Comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Horace C. Green of the Department, telephone (202) 523-8196. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Plan trustees (the Trustees), pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan was established by the Employer, a New Jersey manufacturer of biological glassware, as a defined benefit plan in 1960 and had total assets of $559,798 and 64 participants as of September 30, 1980. Investment decisions for the Plan are made by the Trustees, who are Donald Harker, president and 14% stockholder of the Employer, Ruth K. Harker, treasurer and 29% stockholder of the Employer and Russell Festa, vice president and 1% stockholder of the Employer.

2. The Plan is requesting an exemption which would permit it to make the Plan Loan to the Employer in the amount of $140,000. The proceeds from the Plan Loan would be used by the Employer to purchase certain equipment and to have a catalog published of its biological glassware products.

3. The Plan Loan will have: (a) a floating interest rate of 1% over the Bank of New Jersey prime rate adjusted quarterly with a floor of 10%; and (b) a term of five years. Repayments will be made in monthly installments to cover principal and interest. The Plan Loan will represent approximately 25% of the assets of the Plan as of September 30, 1980.

4. The Plan Loan will be secured by certain tangible assets (the Collateral) of the Employer located at 340 Edrudo Road, Vineland, New Jersey. The Collateral will include certain manufacturing and miscellaneous equipment related to the Employer's business. An appraisal performed by Gaylord Evey, the owner and president of Evey Engineering Company, Inc. (the Company) of Vineland, New Jersey, valued the Collateral at $434,740 as of March 31, 1981. The Company is in the business of buying and selling glassworking equipment. It is represented that: (a) Mr. Evey is qualified to perform the above appraisal; (b) the company and the Employer are totally independent companies; and (c) the only prior dealing between the two companies terminated eight years ago. A security agreement (the Security Agreement) and UCC financing statements (collectively, the Documents) will be executed by the Employer and the Plan recording the Plan's secured interest in the Collateral. The documents will be duly filed in the State of New Jersey where the Collateral is located. The Security Agreement provides that the Employer shall keep the collateral in good operating condition and repair, free of any liens, and shall keep the Collateral fully insured against theft, fire and other casualty loss throughout the term of the Plan Loan. It is represented that the Plan will be the named insured on all policies insuring the Collateral.

5. An unrelated party, Edward L. Avena (Avena), a public accountant who has experience auditing pension plans, has been appointed as an independent fiduciary with respect to the Plan Loan, effective April 13, 1981. Avena represents that after reviewing the nature of the proposed transaction and the accompanying security arrangements, he believes that the Plan Loan is in the best interests of the Plan, its participants and their beneficiaries and is protective of their rights. Avena will monitor all terms and conditions of the Plan Loan, will enforce collection of the Plan Loan in the event of default and will require annual appraisals of the Collateral. The cost of the appraisals will be borne by the Employer. Avena will also require the Employer to provide additional Collateral when the market value of the Collateral is less than 150% of the remaining unpaid balance of the Plan Loan. In such an instance, Avena will be provided with appraisals of additional Collateral, the cost of which will be borne by the Employer. It is represented that if the Collateral is found to be less than 150% of the remaining unpaid balance of the Plan Loan and additional Collateral cannot be provided, the Employer shall deposit with Avena the required amount in cash within 30 days of such finding, so that the value of the Collateral and cash will always represent 150% of the outstanding balance of the Plan Loan. Additionally, it is represented that if the Employer defaults on the Plan Loan, the Principal shareholders of the Employer (Principal Shareholders) Ruth K. Harker and Donald K. Harker will personally guarantee payment within 30 days of the default by the Employer. Ruth K. Harker has a net worth of approximately one million dollars and Donald K. Harker has a net worth of more than five hundred thousand dollars.

6. In summary, the applicant represents that the Plan Loan satisfies

the statutory criteria of section 408(a) of the Act because: (a) Avena, an independent party, has determined that the Plan Loan is in the best interest of the Plan participants and beneficiaries and protective of their rights; (b) the Plan Loan will at all time be secured by the Collateral and cash with a value of at least 150% of the outstanding balance of the Plan Loan; (c) the Collateral has been independently appraised and will be annually appraised by an independent appraiser; (d) the cost of the appraisals will be borne by the Employer; (e) the Plan will have a perfected first security interest in the Collateral; (f) the Plan will be the named insured on all policies insuring the Collateral; and (g) in event of default, the Principal Shareholders of the Employer will guarantee repayment of the Plan Loan.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all Plan participants and beneficiaries. Such notice will either be personally delivered to such interested persons or will be mailed to such interested persons at their last known personal residence by first class mail. Such notice will contain a copy of the notice of pendency of such exemption published in the **Federal Register** and timely inform such interested persons within 10 days of the time notice of the pendency of an exemption is published in the **Federal Register** of their right to comment and their right to request a hearing within the period set forth in the notice of pendency of exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) the Plan Loan as described herein, provided that the terms and conditions of the Plan Loan will be and remain at least as favorable to the Plan as an arm's-length transaction would be with an unrelated party; and (2) the guarantee of repayment by the Principal Shareholders should the Employer default on the Plan Loan.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 4th day of December 1981.

Alan D. Lebowitz,

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

[FR Doc. 81-35453 Filed 12-10-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2900]

Proposed Exemption for Certain Transactions Involving the Supplementary Unemployment Benefit Fund, of the International Ladies' Garment Workers' Union (the ILGWU), New York, N.Y.

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act). The proposed exemption would exempt the transfer of residual assets from the Supplementary Unemployment Benefit Fund, ILGWU (the SUB Fund) to the ILGWU National Retirement Fund (the National Retirement Fund) and the Retirement Fund, Local 102 ILGWU (the Local 102 Retirement Fund). (These plans are collectively referred to as the Funds.) The proposed exemption, if granted, would affect the trustees of the Funds, the participants and beneficiaries of the Funds and other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before February 11, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2900. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S.

Department of Labor , Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the Department of Labor, telephone (202) 523–7222. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406 (b)(2) of the Act. The proposed exemption was requested in an application filed by Mr. Theodore Bernstein, Director of the SUB Fund (the Applicant), pursuant to section 408(a) of the Act and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The SUB Fund is a multiemployer welfare plan, administered jointly by union and employer trustees (the Trustees) under an indenture (the Indenture) between the ILGWU and the Associated Corset and Brassiere Manufacturers, Inc., an employer association. The SUB Fund was created in 1960 to provide supplementary unemployment benefits to employees displaced as a result of the termination of their employer's business. Benefits have been provided to employees throughout the United States and Puerto Rico. The principal office of the SUB Fund is located in New York, New York.

Contributions to the SUB Fund were made until May 1979 by employers who were signatories to collective bargaining agreements in effect at that time. Because of adverse economic conditions affecting the garment industry during the 1970s, operating deficits occurred in the SUB Fund and resulted in reduced benefit levels. These events prompted the Trustees to adopt a resolution on November 15, 1978 whereby: the benefit program would be discontinued; benefits would cease to accrue after May 31, 1979; no claims for pre-May 31, 1979 terminations would be honored after December 31, 1980;[1] and the SUB Fund would be terminated in accordance with the provisions and procedures set forth in the Indenture. Thereafter, collective bargaining agreements negotiated contained no provisions for further employer contributions to the SUB Fund. Contributions which would otherwise have been made by employers to the SUB Fund were reallocated to other benefit programs covering the same individuals as those who participated in the SUB Fund.

The SUB Fund has continued in existence solely for the purpose of paying benefits accuring before June 1, 1979. As of June 30, 1979, there were 284,000 participants in the SUB Fund. As of August 31, 1980, the SUB Fund held assets with an approximate fair market value of $2.7 million. These assets consist of private placement and fixed income securities having an estimated par value of $3.6 million.

2. The National Retirement Fund and the Local 102 Retirement Fund are multiemployer, collectively bargained pension plans covering essentially all of the participants of the SUB Fund throughout the United States and Puerto Rico.[2]

The Retirement Funds are headquartered in New York, New York. According to union records for dues-paying members, as of June 30, 1979, there were an estimated 286,370 participants in the National Retirement Fund. There are no other retirement plans covering SUB Fund participants. Moreover, there are no other SUB funds covering participants in either the National Retirement Fund or the Local 102 Retirement Fund.

With the exeception of seven employer trustees, all of the SUB Fund Trustees are trustee of the National Retirement Fund. One SUB Fund Trustee is a trustee of the Local 102 Retirement Fund. In addition, the Applicant serves as the Director of the National Retirement Fund. The Applicant represents that the SUB Fund does not furnish or receive services from either Retirement Fund and is not otherwise a party in interest with respect to the Retirement Funds.

3. Due to the economic downshift in the garment industry as well as the November 15, 1978 resolution, the Trustees of the SUB Fund have determined the plan is no longer adequate to carry out its original intent and purpose which was to provide benefits to employees upon their loss of employment. Therefore, they propose to dissolve the SUB Fund and transfer the $2.7 million in residual assets to the two Retirement Funds. The transfer is authorized under section 8.2 of the Indenture. The amount transferred will be allocated between the Retirement Funds in proportion to the number of SUB Fund participants who are covered by each of the transferee Funds. The Applicant represents that the rights of SUB Fund participants will be protected by a provision stating that all assets transferred to the Retirement Funds will be subject to any future claims or liabilities which may arise against the SUB Fund.

4. The Applicant represents there is no other feasible way of disposing of the assets to benefit participants other than through a plan-to-plan transfer of the type proposed. No lists of SUB Fund participants have ever been compiled. The Applicant suggests it would be virtually impossible to construct a list of the names and addresses of SUB Fund participants through payroll records because many of the employers are no longer in business and as such, it is conceivable their records no longer exist. Therefore, a direct distribution of the residual assets to the SUB Fund participants would be impractical and costly.

In addition, the Trustees believe that even if the names and addresses of the SUB Fund participants are known, a direct distribution of the assets would, after administrative costs, produce a negligible per capita share. The Trustees feel it would not be in the best interests of the participants to incur such costs and thereby reduce the amount of assets that are available for the benefit of the participants.

5. In summary, the Applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) it will be the solitary action of a terminating plan; (b) it will not require administrative supervision or oversight; (c) to the best knowledge of the Trustees all benefits accrued under the SUB Fund have been fully paid; (d) it will eliminate administrative costs which would otherwise be incurred by the SUB Fund in distributing the assets directly to the participants; and (g) the rights of SUB Funds participants will be protected by a provision stating that all assets transferred to the National Retirement Fund and the Local 102 Retirement Fund will be subject to any future claims or liabilities which may arise against the SUB Fund.

Notice to Interested Persons

Notice of the pending exemption will be given to all current and former SUB Fund participants no later than thirty

[1] A subsequent Trustee resolution of July 23, 1981, which has been certified by the Applicant, states that to the best knowledge of the Trustees all benefits properly claimed by December 31, 1980 have been paid.

[2] There may be small differences resulting from the temporary nature of employment in the industry, and from the nature of the collective bargaining process. For example, in a small number of cases an employer may have agreed to contribute to a Retirement Fund but not to the SUB Fund.

(30) days following the publication of the notice of pendency in the **Federal Register**. The notice will include a copy of the notice of pendency as published in the **Federal Register** and will inform interested persons of their right to comment on and/or request a hearing with respct to the proposed exemption. Notice will be provided to interested persons by: (1) publication in the union newspaper "Justice"; (2) posting in all union officers and circulating copies at all meeting places; and (3) posting at the offices of the ILGWU in New York, New York.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interested from certain other provisions of the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Internal Revenue Code of 1954 that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(a) and 406 (b)(1) and (b)(3) of the Act;

(3) Before an exemption may be granted under section 408(a) of the Act, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption if granted, the resrictions of section 406(b)(2) of the Act shall not apply to the transfer by the SUB Fund of approximately $2.7 million in residual assets to the National Retirement Fund and the Local 102 Retirement Fund.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 7th day of December 1981.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Program, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-35448 Filed 12-10-81; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-116; exemption application No. D-2569]

Exemption From the Prohibitions for Certain Transactions Involving the BMC Pathology Group, P.A. Employees' Pension Plan Located in Birmingham, Alabama

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption will permit (1) the proposed sale of an improved parcel of real property (the Property) to Dr. Arthur S. Ludwig's (Dr. Ludwig) directed investment account (the Account) in the BMC Pathology Group, P.A. Employees Pension Plan (the Plan) by Dr. Ludwig, a party in interest with respect to the Plan; (2) the proposed lease-back of the Property (the Lease) by the Plan on behalf of the Account to Dr. Ludwig; and (3) a guarantee by Dr. Ludwig to the Plan with respect to the future disposition of the Property by the Plan.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. (202) 523-8881. (This is not a toll-free number.).

SUPPLEMENTARY INFORMATION: On October 20, 1981, notice was published in the **Federal Register** (46 FR 51499) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above-described transactions. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. 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) 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 exclusive benefit of the employees of the employe maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1)(A) through (E) of the Code, shall not apply to (1) the proposed sale of the Property by Dr. Ludwig to his Accoount in the Plan; (2) the proposed Lease of the Property by the Plan, on behalf of the Account, to Dr. Ludwig; and (3) the guarantee by Dr. Ludwig to the Plan, on behalf of the Account, with regard to the future disposition of the Property; provided that (a) the sales price of the Property is not less than its fair market value on the date of sale; and (b) the rental received by the Plan from the Property throughout the terms of the Lease is not less than the Property's fair market rental value.

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 4th day of December, 1981.

Alan D. Lebowitz,

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

[FR Doc. 81-35449 Filed 12-10-81; 8:45 am]
BILLING CODE 4510-29-M

[Application No. D-2654]

Proposed Exemption for Certain Transactions Involving Clementson Engineers, Inc., Profit Sharing Plan Located in San Antonio, Texas

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt (1) the proposed purchase of certain real property by the Clementson Engineers, Inc. Profit Sharing Plan (the Plan) from Mr. Rex Clementson (Clementson), a party in interest with respect to the Plan; and (2) the subsequent proposed leasing (the Lease) of the Property by the Plan to Clementson Engineers, Inc. (the Employer), the sponsor of the Plan. The proposed exemption, if granted, would affect Clementson, the Employer, participants and beneficiaries of the Plan and other persons participating in the proposed transactions.

DATES: Written comments and requests for a public hearing must be received by the Department on or before January 21, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2654. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by Clementson, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the applicaiton on file with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan which as of October 15, 1981 had 20 participants and assets of $111,600. The trustee of the Plan is Clementson who is also the president of the Employer.

2. The applicant is requesting an exemption that will permit the Plan to buy the Property from Clementson and subsequently lease the Property to the Employer. The Property consists of an unimproved parcel of land located in San Antonio, Texas. The Plan will pay cash of $39,100 for its purchase of the Property. On May 26, 1981, an appraisal (the Appraisal) of the Property was performed by an independent firm, Rafael Luebbert & Associates, which represented that the fair market value of the Property as of that date was $39,100. No sales commissions will be paid in the proposed sale.

3. After the Plan purchases the Property, the Property will be leased to the Employer. The Employer will then

construct a building on the Property. The Lease between the Plan and the Employer will be an absolute net lease for a period of nine years with two additional three year extension periods. The initial rent, which was established by the Appraisal, will be $5,865 per year. The rental rate will be adjusted periodically, but at a minimum of every three years, to a rate which is the greater of 15% of the fair market value of the Property as determined by an independent appraiser or the fair market rental value of the Property as determined by an independent appraiser. In addition, the Plan at all times has a put option to sell the Property to Clementson or the Employer at a price equal to the greater of the Property's fair market value at such time as determined by an independent appraiser or the Property's original cost to the Plan plus an incremental factor of 10% per annum from the time of purchase. The applicant represents that Clementson and the Employer each has a net worth in excess of $500,000.

4. An independent Plan fiduciary, Mr. Joe Hely, an attorney located in San Antonio, Texas, will examine the proposed transactions. Hely, in his law practice, represents businesses of various sizes and represents the real estate department of the National Bank of Commerce of San Antonio in San Antonio, Texas. Prior to the Plan entering into the proposed transactions, Hely must certify that (1) the proposed transactions are in the best interests of the participants and beneficiaries of the Plan; and (2) the terms and conditions of the proposed transactions are at least as favorable to the Plan as those which the Plan could receive in a similar transaction with an unrelated party. Hely also has the responsibility of (1) monitoring the terms and conditions of the proposed transactions on behalf of the Plan; (2) ensuring the rent is always at least the fair market rent; and (3) determining when and if the Plan should sell the Property.

5. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act as follows: (1) the trustee of the Plan represents that they are in the best interests of the participants and beneficiaries of the Plan; (2) the transactions will be approved and monitored by an independent fiduciary; (3) the rental rate and sales price of the Property have been established by a qualified, independent appraiser; (4) the rental rate will always be at least fair market rate, and (5) the Plan has a put option which will allow the independent fiduciary to sell the Property thus guaranteeing the Plan a high return on its investment.

Notice to Interested Persons

Within ten days of its publication in the **Federal Register**, a copy of the notice of pendency and a statement advising participants and beneficiaries of the Plan of their right to comment or request a hearing will be mailed to all participants and beneficiaries of the Plan.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) the proposed purchase of the Property by the Plan from Clementson for cash of $39,100 provided that this price is no more than the fair market value of the Property at the time of sale; and (2) the Lease of the Property by the Plan to the Employer provided that the terms and conditions of the Lease are at least as favorable to the Plan as those which the Plan could receive from an unrelated party in a similar transaction.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 4th day of December, 1981.

Alan D. Lebowitz,

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

[FR Doc. 81-35450 Filed 12-10-81; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-115; Exemption Application No. D-1619]

Exemption From the Prohibitions for Certain Transactions Involving the Durham Clinic, P.A. Profit Sharing Plan and Trust Locaed in Durham, North Carolina

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits both the sale of certain real property with improvements by the Hillandale Corporation (the Corporation) to the Durham Clinic, P.A. Profit Sharing Plan and Trust (the Trust) and the proposed lease of the same property by the Trust to the Durham Clinic, P.A. (the Employer).

FOR FURTHER INFORMATION CONTACT: C. E. Beaver of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, (202) 523-8671. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On October 27, 1981, notice was published in the **Federal Register** (46 FR 52451) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(a)(1) (A) through (E) of the Code, for the transactions described in the application filed by the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice was provided to interested persons in accordance with the requirements set forth in the notice of the 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 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 sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to both the sale of real property at 1830 Hillandale Road, Durham, North Carolina by the Corporation to the Trust and the lease of the same real property by the Trust to the Employer, if the sale and lease are in accordance with the terms set forth in the application for exemption filed by the Employers.

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 4th day of December 1981.

Alan D. Lebowitz,

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

[FR Doc. 81-35450 Filed 12-10-81; 8:45 am]

BILLING CODE 4510-29-M

[Application Nos. D-2690 and D-2691]

Proposed Exemption for Certain Transactions Involving the Fowler, White, Gillen, Boggs, Villareal, and Banker, P.A. Pension and Profit Sharing Plans and Related Trusts Located in Tampa, Florida

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt a loan (the Loan) by the Fowler, White, Gillen, Boggs, Villareal and Banker, P.A. Pension and Profit Sharing Plans and Related Trusts (the Plans) of the lesser of $850,000 or 25 percent of the Plans' aggregate assets to Fowler, White, Gillen, Boggs, Villareal and Banker, P.A. (the Employer), a party in interest with respect to the Plans. The proposed exemption, if granted, would affect the participants and beneficiaries

of the Plans, the trustee of the Plans, the Employer and other persons participating in the transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before January 25, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application Nos. D-2690 and D-2691. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the Department of Labor, telephone (202) 523-7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Employer is a law firm, engaged in the practice of law in Tampa, Florida. The Plans consist of one pension plan (the Pension Plan) and one profit sharing plan (the Profit Sharing Plan), each having 118 participants as of June 26, 1980. As of April 30, 1981, the Pension Plan had assets of $1,341,871; the Profit Sharing Plan had assets totaling $2,218,831. The trustee of the Plans is the First National Bank of Florida (First National) which is located in Tampa, Florida.

2. The Employer is requesting an exemption in order to borrow from the Plans either the lesser of $850,000 or 25 percent of the combined assets of the Plans. (A maximum of 25 percent of each Plan's assets would be borrowed.) The Loan would enable the Employer to acquire certain furniture, furnishings, telephone equipment and leasehold improvements for use in new offices into which the Employer intends to move in November 1981.

3. The Employer presently has a loan commitment of up to $850,000 for a term of seven years in order to make said purchases from the Metropolitan Bank and Trust Company (Metropolitan) of Tampa, Florida. Metropolitan is unrelated to the parties involved in the proposed transaction. In a letter of June 25, 1981, Metropolitan has indicated its loan commitment is for a ½ percent floating interest rate over the prime lending rate. The loan would be secured by an assignment of all accounts receivable of the Employer. Alternatively, Metropolitan has represented it would be willing to lend the Employer $850,000 at a floating interest rate of 1 percent over prime for a fifteen year duration. The loan would also be secured by the Employer's accounts receivable.

4. The proposed Loan between the Plans and the Employer would carry interest at a rate of 1¼ percent over the prime rate of Metropolitan, and include a floor of 12½ percent per annum. In addition, the Loan would be for a duration of seven years with equal monthly payments of principal and interest. The applicant further represents that the amount of interest paid on the proposed loan that exceeds the fair market value rate will be treated as an Employer contribution to the Plans and that such excess, when added to the balance of the annual additions to the Plans, will not exceed the limitation prescribed by section 415 of the Code.

5. To secure the Loan, the Plans would be given first security interests in a collateral pool (the Collateral) consisting of existing furniture, furnishings, and equipment which the Employer presently owns; new furniture, furnishings and leasehold improvements which the borrowed funds will be used to purchase; and a pledge of the Employer's accounts receivable. The Collateral thus designated would be evidenced by security agreements and financing statements executed by the Plans and the Employer. The documents would also be recorded. At all times during the term of the Loan, the Collateral would have a fair market value in excess of 150 percent of the outstanding Loan balance. In addition, the Collateral would be insured and the Plans named the beneficiaries of the insurance policies.

6. On August 28, 1981, the Collateral was preliminarily appraised by Messrs. Henry Shell and H. Blaine Strickland, two independent appraisers (the Appraisers) in the Tampa, Florida area. The Appraisers placed the value of the entire Collateral at $2,090,000 and also valued individual Collateral components. With respect to existing furniture, equipment, and the Employer's law firm library, the Appraisers reported a total cost of $626,088 and an actual cash value of $450,000. Considering that some of the items had appreciated in value (due some extent to refurbishing), the Appraisers said the existing items would have a value "over and above the normal run-of-the-mill conglomerate of office furniture."

With regard to the furniture, furnishings and equipment contemplated for purchase by the Employer, the Appraisers believed a valuation of $240,000, the proposed purchase price of 375 items under consideration, an appropriate figure. The Appraisers acknowledged that a specific inventory of the items designated for purchase was not available for their review inasmuch as a purchase contract had not been finalized by the Employer and the seller. However, predicated upon the contract's consummation and the quality and workmanship of the goods being compatible with the expectations of a law firm of the caliber of the Employer, the Appraisers considered the $240,000 figure "fair" for the purpose of Collateral.

The Appraisers placed the value of the Employer's accounts receivable, which totaled approximately $1,900,000 as of July 31, 1981, at $1,400,000. The appraised value, according to the Appraisers, represented a range of collectible monies based upon two formulations—an overall flat discount rate of 30 percent applied to the $1,900,000 total balance and individual discount rates ranging from 5 percent for current receivables up to 35 percent for 120 day items. The Appraisers also noted that more than 50 percent of the Employer's receivables are typically collected each month and that there were no serious uncollectible accounts that an "effort over and above customary office finesse and billing procedure could not collect."

7. First National has been designated as the independent fiduciary of the proposed Loan. First National has represented: it does not retain the Employer as its general counsel; that none of the shareholders of the Employer serves as a director of First National, its holding company or any other affiliate of the bank; and that the present balance of outstanding loans the Employer has with the bank ($248,921) is a negligible figure when compared to the $533 million total of outstanding loans the bank has overall.

As independent fiduciary, First National considers the Loan an appropriate and suitable investment for the Plans. First National believes the Loan will not alter the Plans' intended long term investment balances and it will represent only a portion of the reserve and fixed income balances in the Plans' investment portfolios. In addition, First National believes the Loan will enable the Plans to increase their rates of return and operate to the benefit of the participants in several significant ways. First, the annual rate of income return will float 1¼ percent over the generally regarded bank prime lending rate and also contain a floor of 12½ percent per annum. Second, amortization of the Loan will permit reinvestment of capital returned as a result of periodic amortized payments. Third, the annual accounting value of each participant's interest in the Plans for that portion invested in the Loan will not be subject to market variations as is true with current marketable fixed income investments. Further, First National considers the Collateral appropriate and marketable in the event of a default by the Employer.

With respect to specific duties it will undertake, First National will monitor the terms of the Loan to ensure repayment. The Employer will supply First National, upon demand, with a detailed listing of all receivables, and, if necessary, will notify all debtors involved to make their payments directly to the bank. In the event of a default by the Employer, First National will step in and levy on the Collateral to pay off the Loan within a sixty day period.

To ensure the Collateral is at all times 150 percent of the outstanding Loan balance, First National will institute certain inventorying procedures. These procedures require First National to perform physical inspections of the furniture and equipment as often as the bank deems it necessary and to have the Collateral appraised at least annually for revaluation purposes by an independent appraiser. For accounts receivable, First National will require an aging schedule from the Employer which would be certified for its accuracy. If at any time the value of the Collateral falls below the 150 percent level, First National will instruct the Employer to furnish additional collateral or to make additional Loan payments in order to reduce the Loan balance within the 150 percent parameter.

8. In summary, the applicant represents that the proposed Loan satisfies the statutory criteria set forth in section 408(a) of the Act because: (a) First National represents that the Loan is in the best interests of the Plans and of their participants; (b) First National will monitor the Loan to ensure repayment and levy on the Collateral should there be a default by the Employer; (c) the Loan will have a high rate of interest with a floor of 12½ percent per annum and, at all times, it will be secured by a Collateral pool consisting of furniture, furnishings, leasehold improvements, telephone equipment and accounts receivable having a combined fair market value in excess of 150 percent of the declining Loan balance; (d) The Plans will have perfected, first security interests in the Collateral; (e) the Collateral will be insured by the Employer and the Plans will be named the beneficiaries of the insurance policies; (f) the Collateral will be appraised during the term of the Loan whenever First National considers it necessary, but at least once a year; and (g) an independent third party, Metropolitan, has expressed its willingness to make a similar loan to the Employer but at a lesser interest rate.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the pending exemption will be given to present and former participants of the Plans within fifteen (15) days after publication of the notice of pendency in the **Federal Register**. Such notice shall contain a copy of the notice of pendency as proposed in the **Federal Register** and shall inform interested persons of their right to comment on and/or request a hearing regarding the pending exemption. Notice will be provided to interested persons by personal delivery and by first class mail.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for

public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed Loan by the Plans to the Employer of the lesser of $850,000 or 25 percent of the aggregate assets of the Plans provided that the terms and conditions of the Loan are at least as favorable to those which the Plans could receive in a similar transaction with an unrelated party.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 4th day of December 1981.

Alan D. Lebowitz,

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

[FR Doc. 81-35457 Filed 12-10-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2632]

Proposed Exemption for Certain Transactions Involving the Spreitzer, Inc., Profit Sharing Trust Located in Cedar Rapids, Iowa

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt for a period of five years the proposed loans of funds (the Loans) by the Spreitzer, Inc. Profit Sharing Trust (the Plan) to Spreitzer, Inc. (the Employer), the sponsor of the Plan. The proposed exemption, if granted would affect the Employer, the Plan and its participants and beneficiaries and other persons participating in the proposed transacton.

DATE: Written comments and requests for a public hearing must be received by the Department on or before January 29, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2632. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine D. Lewis of the Department, telephone (202) 523-7352. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) and 406(b)(1) and (2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Plan trustees (the Trustees), pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan with eleven participants. The Employer and sponsor of the Plan is an Iowa corporation engaged in the selling, leasing and servicing of construction and mining heavy equipment. As of December 31, 1980 the Plan had net assets of approximately $434,500.00. Messrs. Harry J. Spreitzer and Joseph Spreitzer are the Trustees of the Plan and decision-makers for the Plan with respect to Plan investments.

2. The Trustees seek an exemption to allow the Plan to enter into a loan agreement (the Loan Agreement) with the Employer whereby the Plan will periodically lend to the Employer amounts of money (the Loans) up to an aggregate at any point in time of the lesser of $152,075 or 35% of Plan assets. The Loans will be made over a five-year period, the first day of which will be the date the grant of an exemption is published in the **Federal Register**. All of the proposed Loans will mature and become due and payable on or before the last day of such five year period. Each individual Loan will have a maturity of ninety days or less. The interest rate for any Loan granted under the Loan Agreement will be ½ percent above the rate charged by the Merchants National Bank of Cedar Rapids, Iowa (the Bank) to its customers for prime commercial loans of ninety day maturity, but in no event less than 11% per annum. Principal and interest will be amortized equally in quarterly payments. The Trustees represent that no Loan will be made under the Loan Agreement unless the terms and conditions of the Loan are at least as favorable as those which the Plan could obtain from an unrelated third party.

3. Each Loan made during the five year period will be secured by a first lien on new and used construction and mining equipment (the Collateral). The Collateral is presently owned by the Employer and used to conduct the Employer's business operations. The Plan will have perfected first security interests in the Collateral through the execution and filing by the Employer of security agreements on behalf of the Plan. The Employer will pay all costs associated with the maintenance of the Collateral, including but not limited to paying all taxes, insurance premiums, repairs and storage costs. The Employer will warrant to own throughout the terms of the Loans, all Collateral free from any adverse claims, security interests (other than security interests granted to the Plan) or encumbrances. The Employer represents that the Collateral is marketable and that its value is not expected to decrease appreciably over the five year term of the Loans. The appraised market value of the Collateral for the Loans will at all

times during the term of the Loans be not less than 200% of the amount of the outstanding Loan balances. The fair market value of each piece of equipment comprising the Collateral will be determined by an independent appraiser, Mr. Gary Jung of Euclid, Inc., and each appraisal will be updated annually to assure that the required value of the Collateral is maintained. Mr. Gary Jung is a sales representative with Euclid, Inc., a manufacturer of off-highway trucks, and is familiar with the prices paid for such equipment based on four years of experience in selling such equipment throughout a 10 state area. The Collateral will be kept insured at the Employer's expense against theft, fire and other hazards, with the Plan designated as beneficiary of the insurance policy.

4. An independent attorney, Mr. Richard F. Nazette (Nazette) of Nazette, Hendrickson, Marner & Good in Cedar Rapids, Iowa, has been appointed as an independent fiduciary to approve, monitor and enforce the proposed Loans. Nazette has reviewed the needs of the Plan and the transactions as proposed and has concluded that the proposed Loans are in the best interests of the Plan. Nazette will approve all Loans made under the Loan Agreement, monitor all terms and conditions of the Loans and will enforce collection on the Loans in the event of a default. Nazette will also monitor the value of the Collateral so that at no time during the term of the Loans will the value of the Collateral fall below 200% of the aggregated outstanding Loan balances.

5. Additionally, Mr. Joseph Spreitzer, a major shareholder of the Employer, will personally guarantee to cure any default on the Loans within thirty days of receiving notice of such default. Mr. Joseph Spreitzer has a personal net worth in excess of $800,000.

6. In summary, the applicants represent that the proposed transaction satisfies the criteria for an exemption under section 408(a) of the Act because: (1) the Trustees and Nazette, the independent fiduciary for the Plan, represent that the proposed Loans are in the best interests of the participants and beneficiaries of the Plan; (2) Nazette will approve and monitor each Loan made under the Loan Agreement; (3) the Loans will be for a relatively short duration; (4) each Loan made will have a high rate of interest with a floor of 11% per annum and will at all times be secured by fully insured Collateral which will have a value of not less than 200% of the outstanding balance of all Loans; and (5) Mr. Joseph Spreitzer will personally guarantee to cure any default on the Loans within thirty days of receiving notice of such default.

Notice ot Interested Persons

Within ten days of its publication in the **Federal Register** a copy of the notice of pendency and a statement advising participants and beneficiaries of the Plan of their right to comment or request a hearing will be hand delivered or mailed to all participants and beneficiaries of the Plan.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the Loans by the Plan to the Employer as described herein, provided that the terms and conditions of the Loans are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 14th day of December 1981.

Alan D. Lebowitz,

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

[FR Doc. 81-35454 Filed 12-10-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2570]

Proposed Exemption for Certain Transactions Involving TP Laboratories, Inc., Revised Profit-Sharing Trust Plan Located in La Porte, Indiana

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of

the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed purchase by TP Laboratories, Inc. Revised Profit-Sharing Trust Plan (the Plan) from the Estate of the late Harold D. Kesling (the Estate), a party in interest with respect to the Plan, of 390 shares of common stock of The State Exchange Bank (SEB) and 390 shares of common stock of State Exchange Finance Company (SEFC). The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan; the Estate and its beneficiaries; SEB, as the executor of the Estate; the regular trustees of the Plan; and La Porte Bank & Trust Company (La Porte), a special trustee of the Plan with respect to the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Department on or before February 16, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2570. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund, of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Plan, its trustees, and La Porte, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Plan covered approximately 228 participants as of May 6, 1981, and had total assets of $1,192,373 as of June 30, 1980. The regular trustees of the Plan are Peter C. Kesling, David L. Kesling, and Marvin L. Myers. Peter C. Kesling, and David L. Kesling own the majority of the shares of common stock of TP Laboratories, Inc. (the Employer) and are, respectively, the Chairman of the Board and Vice President of the Employer. They are also the sons of the late Harold D. Kesling and Mrs. Jean Kesling, who owns 50 percent or more of the beneficial interest of the Estate. The remaining beneficiaries of the Estate are her grandchildren.

2. SEB is the executor of the Estate. SEFC is an affiliate of SEB. The shares of SEB stock and SEFC stock are not publicly traded. As of July 1, 1981, there were 30,000 shares of SEB common stock issued and outstanding, 30,000 shares of SEFC common stock issued and outstanding, and approximately 330 stockholders of both companies. At present, Jean Kesling owns 300 shares of common stock of both companies, Peter Kesling owns 1 share of common stock of both companies, and the Estate owns 2,600 shares of common stock of both companies. David Kesling, the Employer, and the Plan own no shares of either company. It is represented that the aggregate number of shares of common stock of SEB and of SEFC owned by members of the Kesling family and the Estate does not give them a controlling interest in these companies.

3. McQueen & Thieling, Certified Public Accountants (the Accountants) have been engaged for several years as the independent auditors and accountants for SEB and SEFC but do not have any relationship or previous contact with either the Kesling family or the Employer. They explain that the management of SEB and SEFC has a long history of establishing values for the purchase and sale of the shares of stock of these companies. Three different values have regularly been determined annually or, when circumstances dictated, semiannually: (1) a price at which the stock would be sold to the general public (the General Price), (2) a price at which the stock would be sold to employees and directors of the companies (the Employee/Director Price), and (3) a price at which SEFC would buy back shares within certain legal limitations (the Buy-Back Price). The values determined by management have been communicated to the various officers of the organization which are empowered to buy or sell stock. These values are then used by those persons until such time as management establishes new values. SEFC has, in effect, created a local buy and sell market for the stock and has conducted transactions as both buyer and seller for many years with both employees and outsiders. The Accountants believe there has never been a transfer of stock in one of the corporations without a simultaneous transfer of an equal number of shares of stock in the other corporation. The General Price, Employee/Director Price, and Buy-Back Price established by the management of SEB and SEFC for one share of the SEB and one share of SEFC for the past three yeas are: $360, $345, and $330, respectively, for 1979; $420, $405, and $385, respectively, for 1980; and $475, $455, and $435, respectively, for 1981. The Accountants have expressed their opinion that the methods used by the management of SEB and SEFC in valuing their stock are not unreasonable and result in a determination in the appropriate range of the fair market value of the companies.

4. The Estate proposes to sell to the Plan 390 shares of SEB common stock and 390 shares of SEFC common stock for $150,150, payable in a lump sum. This amount is the book value, and also the Buy-Back Price of the shares for 1980 (i.e., $385 for one SEB share plus one SEFC share). There are no commissions payable in connection with the proposed transaction. The Plan shall not bear the cost of legal fees incurred in preparing and processing the exemption application.

5. La Porte has been appointed as a special trustee of the Plan with respect to the proposed purchase of SEB and SEFC common stock. It is represented that La Porte is independent of the Employer, members of the Kesling family, SEB, and SEFC. Although Jean Kesling and David L. Kesling maintain checking accounts at La Porte, David L. Kesling has borrowed from La Porte, and the Employer has invested in certificates of deposit of La Porte, the amounts involved in each of these categories of transactions with these parties represent less than one percent

of the amounts of La Porte's total business transactions in each category. La Porte represents that it has independent and uninfluenced authority to approve or reject the proposed transaction. In its fiduciary capacity, La Porte has reviewed and approved the proposed purchase based upon the following factors, among others not specified: consistent capital ratios of approximately six months since 1975; continuous annual record of dividends and dividend growth; consistently increasing value of SEB stock and SEFC stock since 1976; Federal and State regulation of SEB and SEFC, as financial institutions; the small investment cost is relation to total Plan assets; the good history and viability of SEB as a whole; the fact that the amount of shares proposed to be purchased is not a substantial fraction of the total shares outstanding; and the fact that no apparent difficulty in the sale of this stock has occurred in the past even though the stock is not actively traded. La Porte also believes that the proposed purchase price does not exceed the fair market value of the shares proposed to be purchased by the Plan.

6. In summary, the applicants states that the proposed transaction would meet the criteria of section 408(a) of the Act because (a) an independent fiduciary has approved the proposed purchase on behalf of the Plan, (b) the independent fiduciary believes that the proposed purchase price of the shares does not exceed the current fair market value of the proposed purchase on behalf of the Plan, (b) the independent fiduciary believes that the proposed purchase price of the shares does not exceed the current fair market value of the shares, (c) the proposed purchase is a one-time transaction involving no ongoing relationship between the Plan and any party in interest with respect to the Plan, and (d) there are no commissions payable in connection with the proposed transaction and the Plan shall not bear the cost of legal fees incurred in preparing and processing the exemption application.

Notice to Interested Persons

Within 30 days of the date this notice of proposed exemption is published in the **Federal Register**, the applicants will notify all interested persons of the pendency of this application for exemption. Interested persons include all participants and beneficiaries of the Plan and fiduciaries with respect to the Plan. The notice will contain a copy of the notice published in the **Federal Register** and will inform interested persons of their rights to comment and/or request that a hearing be held with respect to the proposed exemption. The notice will be posted in all places commonly used on the business premises to provide notice to employees.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transmission is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed purchase by the Plan from the Estate of 390 shares of SEB common stock and 390 shares of SEFC common stock for $150,150 provided that this amount is not higher than the fair market value of such shares as of the date of purchase.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 4th day of December 1981.

Alan D. Lebowitz,

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

[FR Doc. 81-35452 Filed 12-10-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2645]

Proposed Exemption for Certain Transactions Involving the Littler, Mendelson, Fastiff & Tichy Profit Sharing Plan Located in San Francisco, California

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed temporary exemption would exempt for a period of three years the proposed loans of funds

(the Loans) by Littler, Mendelson, Fastiff & Tichy Profit Sharing Plan (the Plan) to Littler, Mendelson, Fastiff & Tichy (the Employer), the sponsor of the Plan. The proposed exemption, if granted, would affect the Employer, the Plan and its participants and beneficiaries and other persons participating in the proposed transaction.

DATE: Written comments and requests for a public hearing must be received by the Department on or before January 29, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D-2645. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine D. Lewis of the Department, telephone (202) 523-7352. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) and 406(b)(1) and (2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the trustees of the Plan (the Trustees), pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Employer is a legal professional corporation with offices in San Francisco, Los Angeles, Palo Alto, Fresno and San Jose, California. The Plan is a profit sharing plan with approximately thirty-five participants and assets of $850,000 as of February 1, 1981. The Trustees and administrators of the Plan are Wesley J. Fastiff, George J. Tichy II and John T. Hayden, all of whom are employees and shareholders of the Employer.

2. The Trustees seek an exemption to allow the Plan to enter into a loan agreement (the Loan Agreement) with the employer whereby the Plan will periodically lend to the Employer amounts of money (the Loans) up to an aggregate at any point in time of the lesser of $250,000 or 30% of Plan assets. The Loans will be made over a three year period, the first day of which will be the date the grant of an exemption is published in the **Federal Register**. All of the proposed loans will mature and become due and payable on or before the last day of such three year period. The interest rate for any Loan granted under the Loan Agreement will be 2% above the prime rate charged by Bank of America to its most creditworthy commercial customers. In no event may the rate of interest on the Loans be less than 15%. Principal and interest will be amortized equally in twelve equal quarterly payments. The Loans will be evidenced by negotiable promissory notes payable to the Plan by the Employer. The Trustees represent that no Loan will be made under the Loan Agreement unless the terms of the Loan are at least as favorable to the Plan as those which the Plan could obtain from an unrelated third party.

3. Loans made under the Loan Agreement will be secured by a perfected security interest in accounts receivable and contract rights in the amount of $1,983,000 and by a perfected security interest in the full value of the Employer's library assets at its various locations (the Collateral). The Employer states that, based on past experience, the accounts receivable and contract rights are collected at the rate of approximately one-half the above-referenced figure per month. The library assets were appraised on July 8, 1981 by Mr. Russ Lake of Lake Law Books, Inc. of San Francisco, California, who determined their aggregate fair market value on that date to be $121,221. Mr. Russ Lake and Lake Law Books, Inc. are independent of the Employer and the principals of the Employer. The library assets will be fully insured at the Employer's expense against theft, fire and other hazards, with the Plan named as beneficiary of the insurance policy. The appraised fair market value of the Collateral for the Loans will at all times during the term of the Loans be not less than 250% of the amount of the outstanding Loan balances. If the value of the Collateral at any time falls below that amount, additional collateral will be offered as security.

4. An independent attorney, Mr. Peter B. Lauritzen (Lauritzen) of Palo Alto, California, has been appointed as independent fiduciary for the Plan to approve, monitor and enforce the terms of the proposed Loan Agreement. Mr. Lauritzen has reviewed the proposed Loan Agreement and the needs of the Plan for liquidity and diversification and has determined that the Loans are in the best interests of the participants and beneficiaries of the Plan. Lauritzen will have the power to approve or disapprove any Loans by the Plan to the Employer under the Loan Agreement and to take any necessary steps in regard to any outstanding Loans in order to protect the Plan.

5. In summary, the applicants represent that the proposed transaction satisfies the criteria for an exemption under section 408(a) of the Act because: (a) the Trustees of the Plan and Lauritzen, an independent fiduciary for the Plan, represent that the proposed Loans are in the best interests of the Plan and its participants and beneficiaries; (b) the Loans will enable the Plan to realize a high rate of return which at all times will not be less than 15% per annum; (c) the total outstanding balance of all Loans will not at any time exceed 30% of Plan assets and will at all times be secured by Collateral having a fair market value of not less than 250% of the outstanding balances; (d) the Loans will be for a relatively short duration; and (e) Lauritzen will monitor and enforce the terms of the Loans and take any necessary steps with regard to any outstanding Loan in order to protect the interests of the Plan.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Within ten days of its publication in the **Federal Register** a copy of the notice

of pendency and a statement advising participants and beneficiaries of the Plan of their right to comment or request a hearing will be hand delivered or mailed to all participants and beneficiaries of the Plan.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the Loans by the Plan to the Employer as described herein, provided that the terms and conditions of each Loan are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 4th day of December 1981.

Alan D. Lebowitz,

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

[FR Doc. 81-35455 Filed 12-10-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2866]

Proposed Exemption for Certain Transactions Involving Gilmore Steel Corp. Pension Plan and Trust for Union Employees Located in Portland, Oregon

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

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the leasing (the Lease) of certain real property (the Property) by the Gilmore Steel Corporation Pension Plan and Trust for Union Employees (the Plan) to the Gilmore Steel Corporation (the Employer), the sponsor of the Plan. The proposed exemption, if granted, would affect the Employer, the participants and beneficiaries of the Plan and other persons participating in the proposed transaction.

EFFECTIVE DATE: The effective date of the proposed exemption is October 9, 1981.

DATES: Written comments and requests for a public hearing must be received by the Department on or before January 26, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2866. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Department, telephone (202) 523-8881. (This is not a toll-free number.).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons

are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a defined benefit plan. As of December 31, 1980, the Plan had 599 participants and assets of $19,908,000. All investment decisions for the Plan are made by an investment committee (the Investment Committee) whose members are: V. Neil Fulton, the Treasurer and Secretary of the Employer; David J. Tikka, and Assistant Treasurer of the Employer; and Walter E. Jameson, a member of the Employer's Board of Directors. The trustees (the Trustees) of the Plan are: C. Lee Emerson, the President of the Employer; Robert C. Harris, an Assistant Secretary of the Employer; and Walter E. Jameson. Messrs. Emerson and Harris are also members of the Employer's Board of Directors.

2. The Plan currently owns the Property which consists of 4.64 acres of land improved with a building. In 1979, the Plan leased the Property to Van Dorn Company (Van Dorn) for a term of twelve years at an annual rental of $119,587. Van Dorn is a Cleveland, Ohio company which is independent of the Employer. Van Dorn improved the Property as a heat treating and normalizing facility and processed plate steel for the Employer there.

3. The Employer represents that, because of the Property's proximity to its headquarters and its distance from Van Dorn's Cleveland headquarters, the heat treating process could be performed more efficiently by the Employer itself. Because of this, the Employer made an agreement with Van Dorn to purchase the heat treating equipment and to acquire Van Dorn's leasehold interest in the Property. On October 9, 1981, the Lease between the Plan and the Employer was entered into.

4. The Employer is requesting an exemption for the Lease. The initial term of the Lease is nine years with two options to renew the Lease for two additional three year periods. The initial rent on the Lease is $150,000 per year with upward adjustments every three years to reflect the then current fair market rental of the Property. The rental rate was established by an appraisal (the Appraisal) performed on September 22, 1981 by R.J. Frank & Associates of Portland, Oregon, an appraiser who is independent of the Employer. The Appraisal respresnts that the rental rate used in the Lease assures the Plan of receiving the fair market rent during the term of the Lease. The Lease also provides that the Employer will pay all taxes, insurance, maintenance costs, and any other costs of ownership or operation of the Property.

5. Prior to the Plan entering into the Lease an independent fiduciary, the First Interstate Bank of Oregon, N.A. (the Bank) examined the proposed transaction. The Bank certified the transaction as being in the best interests of the participants and beneficiaries of the Plan and that the terms and conditions of the Lease were at least as favorable to the Plan as those which the Plan could receive with an unrelated party. In addition, the Bank has the responsibility for monitoring the Lease and enforcing any rights the Plan has in the Lease. Also, prior to the Plan entering into the Lease, the Trustees and the Investment Committee certified that the transaction was in the best interests of the participants and beneficiaries of the Plan.

6. In summary, the applicant represents that the transaction meets the statutory requirements of section 408(a) of the Act as follows: (1) The Plan receives a higher rent on the Property than it was receiving prior to the Lease; (2) The rental rate was established by an appraisal performed by an independent qualified appraiser; (3) An independent fiduciary, prior to the Plan entering into the Lease, certified that the Lease was in the best interests of the participants and beneficiaries of the Plan; (4) The independent fiduciary has monitored and will continue to monitor the Lease on behalf of the Plan; and (5) The Trustees, prior to the Plan entering into the Lease, certified that the Lease was in the best interests of the participants and beneficiaries of the Plan.

Notice to Interested Persons

On or before December 28, 1981, a copy of the notice of pendency and a statement advising interested persons of their right to comment or request a hearing will be published at all locations of the Employer customarily used for employee communications. In addition the same information within the same time period will be mailed to all participants and beneficiaries of the Plan who are not currently employed by the Employer.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 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, effective October 9, 1981, to the Lease of the Property by the Plan to the Employer provided that the terms and conditions of the Lease are at least as favorable to the Plan as those which the Plan could have received in a similar transaction with an unrelated party at the time the Lease was entered into.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 4th day of December, 1981.

Alan D. Lebowitz,

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

[FR Doc. 81-35459 Filed 12-10-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2714]

Proposed Exemption for Certain Transactions Involving Henderson, Franklin, Starnes & Holt P.A. Second-Amended Employee Profit Sharing Plan and Trust Located in Fort Myers, Florida

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

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt (1) the proposed loan of $120,000 (the Loan) by the Henderson, Franklin, Starnes & Holt P.A. Second-Amended Employee Profit Sharing Plan and Trust (the Plan) to 2100 Second Street Partnership (the Partnership), a party in interest with respect to the Plan; and (2) the joint and several guarantee of the Partnership's obligations under the Loan by the eleven partners of the Partnership. The proposed exemption, if granted, would affect the Partnership, the Plan and its participants and any other persons participating in the proposed transactions.

DATES: Written comments and requests for a public hearing must be received by the Department on or before January 25, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2714. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Plan's sponsor, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan with 48 participants. As of January 31, 1981, the Plan had total assets of $386,073. The trustee of the Plan is the Lee County Bank (the Trustee) who maintains discretion with respect to Plan investments subject to regular review by employees and shareholders of Henderson, Franklin, Starnes & Holt (the Employer), the Plan sponsor, who suggest changes with respect to the Plan's investment portfolio. The Trustee maintains a commercial banking relationship with the Employer.

2. The Employer is a professional service corporation formed to provide legal services. The Partnership is a general partnership comprised of eleven partners who each maintain an equal interest in the Partnership. These partners are also the sole shareholders of the Employer and maintain equal shares of stock of the Employer. At least seven of the eleven partners have net worths which exceed the amount of the proposed Loan. The collective net worth of the partners exceeds $2,500,000.

3. The applicant is requesting an exemption to allow the Plan to engage in the Loan with the Partnership. The Loan amount represents approximately 31% of the Plan's total assets. The proceeds of the Loan will be used by the Partnership to complete certain improvements to an improved parcel of real property presently leased by the Partnership to the Employer (the Property). The Loan will be repaid in forty (40) equal quarterly installments of principal and interest. The interest rate on the promissory note evidencing the Loan will be adjusted on the first day of each quarter to the rate charged for comparable loans prevailing in Lee County, Florida. In no event will the interest rate be adjusted to less than twelve percent (12%) per annum.

4. The Loan will be secured by a duly recorded second mortgage on the Property. The Property is located at 2100 Second Street, Fort Myers, Florida. Mr. W. Stanley Hanson, Jr. MAI, SRPA, and Mr. Woodward S. Hanson, an appraiser-associate, both of Fort Myers, Florida, determined that the Property, as of April 20, 1981, had a fair market value of $1,165,000. This value includes proposed alterations and additions which will be funded by the proceeds of the Loan. As of March 20, 1981, the above appraisers determined that the Property had a fair market value of $975,000. Presently, the Property is subject to an existing first mortgage (the Mortgage) in the total amount of $409,374. The Loan will initially therefore represent approximately 13% of the value of the Property without the improvements and less than 10% of the Property after the improvements are completed. The initial outstanding balance of the Loan and the current outstanding balance of the Mortgage will collectively represent approximately 45% of the value of the Property as improved. The Partnership represents that it will add any additional collateral throughout the term of the Loan to assure that the value of the collateral securing the Loan is at all times equal to at least 150 percent of the

outstanding balance of the Loan. Throughout the term of the Loan the Partnership will keep the Property and other collateral, if added, adequately insured against fire or other loss at its expense. The Plan will be the named insured of such insurance.

5. Security Trust Company of Naples (Security) has been appointed to serve as the independent fiduciary manager with respect to the Loan. Security is completely independent of the Employer and the Partnership other than its proposed serving as independent fiduciary with respect to the Loan, and does not maintain a banking relationship with the Employer or the Partnership. Security has examined the terms of the Loan and has initially determined that the proposed Loan is appropriate and suitable for the Plan. Security will be required to render the same determination immediately prior to the consummation of the transaction. Security will be empowered and directed to enforce the terms of the Loan agreement, including making demand for timely payment, bringing suit, or other appropriate process against the Partnership in the event of default. Security will maintain accurate records and report at least annually on the performance of the Loan, and ensure that the value of the collateral securing the Loan remains equal to at least 150 percent of the outstanding balance of the Loan. Security will determine the rate of interest to which the Loan will be adjusted on a quarterly basis.

6. In summary, the applicant represents that the Loan will satisfy the criteria of section 408(a) of the Act because (a) the Loan will represent approximately 31% of the Plan's total assets; (b) the Loan will yield a high rate of return to the Plan; (c) the Loan will be secured by a second mortgage on the Property which has been appraised at over 200% of the total amount of liens to be outstanding on the Property; (d) the Loan will be jointly and severally guaranteed by the partners of the Partnership; (e) Security, a party independent of the Employer and the Partnership will establish the interest rate to be paid quarterly; and (f) Security has determined that the Loan is in the best interests of the Plan.

Notice to Interested Persons

On or before December 21, 1981, notice will be given to all Plan participants who are presently employed by the Employer by personal delivery and will be given to all non-employee Plan participants by mail. Such notice shall include a copy of the notice of pendency as published in the Federal Register and shall inform interested persons of their right to comment on and request a hearing with regard to the proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975)c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) the Loan by the Plan to the Partnership as described above provided that the terms and conditions of the Loan are not less favorable to the Plan than those obtainable in a similar transaction with an unrelated third party; and (2) the personal guarantees of the Partnership's obligations under the Loan by the eleven partners of the Partnership.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 4th day of December, 1981.

Alan D. Lebowitz,

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

[FR Doc. 81-35460 Filed 12-10-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2885]

Proposed Exemption for Certain Transactions Involving Rex Companies Employees' Profit Sharing Plan and Trust Located in Lansdale, Pennsylvania

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

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the

Code). The proposed exemption would exempt a loan (the Loan) by the Rex Companies Employees' Profit Sharing Plan and Trust (the Plan) of $150,000 to Rexmet Corporation (the Employer), a party in interest with respect to the Plan. The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan, the Plan trustee, the Employer and other persons participating in the proposed transaction.

DATE: Written comments and requests for a public hearing must be received by the Department of Labor on or before January 20, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216, Attention: Application No. D-2885. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the Department of Labor, telephone (202) 523-7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Employer, the successor of the J. W. Rex Company and the sponsor of the Plan, is engaged in the heat treatment of metals. At present, the Employer maintains its principal offices in Lansdale, Pennsylvania. The Employer also has plant locations in Georgia and Florida.

2. The Plan, which was established by the Employer's predecessor on November 10, 1951, is a profit sharing plan with 49 participants. As of September 30, 1980, the Plan had total assets of $1,026,901. The trustee of the Plan (the Trustee) is Mr. John Rex who is also the president of the Employer corporation. The Trustee makes investment decisions for the Plan. Managerial affairs governing the Plan are performed by an administrative committee, comprised of officers and employees of the Employer.

3. The Employer and Trustee wish to enter into an arrangement whereby the Plan will lend $150,000 to the Employer. The loaned funds will be used to finance certain computer equipment (the Equipment) the Employer acquired on January 13, 1981 from Digital Technique, Inc. (DTI) of Fairfield, New Jersey for a total purchase price of $150,000. The Equipment is presently installed in the Employer's main office facility. It consists of DEC PDP 1144 computer hardware (the Hardware) costing $116,900 and computer software (the Software) comprised of three programming modules (a heat treating financial base package, a job card system, and additional program development and customization) aggregately costing $32,100.

4. The proposed Loan will be structured along the lines of a loan commitment extended to the Employer by Union National Bank and Trust Company (Union National) of Souderton, Pennsylvania on March 20, 1981. According to the terms of the commitment, Union National offered to lend the Employer $150,000 for a term of seven years with the rate of interest established at the prime rate of the Manufacturers Hanover Trust Company. Union National also indicated it was willing to disburse the funds at one time or periodically, depending on the financial needs of the Employer.

5. The proposed Loan by the Plan will represent approximately 14.5 percent of the Plan's total assets. The Loan will have an interest rate floor of 12 percent per annum in addition to carrying a floating interest rate tied to the prime rate of the Manufacturers Hanover Trust Company. The interest rate will be adjusted quarterly by an independent fiduciary designated to oversee the Loan. Loan payments will be made in equal monthly installments of principal and interest over a seven year period. Any costs or expenses incurred in connection with the Loan will be borne by the Employer. To evidence the lending arrangement, the Employer will execute a corporate note.

6. As partial security for the Loan, the Employer will pledge the Equipment as collateral. The Employer will execute a Uniform Commercial Code financing Statement and Security Agreement thereby giving the Plan a first lien interest in the Equipment. To perfect the Plan's security interest, the Employer intends to file the financing statement and security agreement with the Secretary of the Commonwealth of Pennsylvania. As additional security, the Employer will execute and have duly recorded a second mortgage on its business premises (the Real Property) located at Eighth Street and Valley Forge Road in Lansdale, Pennsylvania. The principal amount due on the Employer's first mortgage of the Real Property was $349,406 as of July 31, 1981; the original amount of the first mortgage was $690,000.

7. Both the Equipment and Real Property will be insured against casualty loss or other perils by the Employer. In addition, the Plan will be named the beneficiary of the insurance policies.

8. The applicant represents that the Equipment and Real Property have a value greatly in excess of the amount of the Loan based upon the findings of several independent appraisals. The Equipment manufacturer, DTI, indicates in a letter of October 8, 1981 that the Equipment has appreciated in value since the time fo its purchase. DTI states the value of the Hardware (primarily, the DEC PDP 1144 Equipment) has undergone a price increase of 5 percent while the values of the peripherals (the VT 100's, Paper Tigers and Lear Siegler CRT's) have remained constant. In addition, DTI reports that the Software has increased in value from a package price of $32,000 to $40,000.

DTI has also made certin representations concerning the amortization of the computer Hardware over the term of the Loan. DTI believes the fair market value of the DEC PDP 1144 Hardware during the first three years of the Loan will remain extremely high but during the fourth and fifth year, it should decline to 30 percent of its original purchase price and then level off to 10 percent of its original purchase price by the seventh year.

With respect to the Real Property collateralizing the Loan, three distinct appraisals indicating its fair market value have been prepared. Mr. Robert W. Plank (Mr. Plank), an AMI–SRA appraiser of Philadelphia, Pennsylvania placed the fair market value of the Real Property at $1,150,000 as of May 16, 1972. On May 13, 1977, the Real Property was appraised for insurance purposes by Mr. George D. Sinclair (Mr. Sinclair), an MAI, FASA appraiser and President of the Keystone Appraisal Company located in Philadelphia, Pennsylvania. Mr. Sinclair placed the value of the Employer's business premises at $1,650,704. On April 29, 1981, Mr. Alan S. Apt (Mr. Apt), certified real estate appraiser in Landsdale, Pennsylvania determined the Real Property was worth $1,300,000. Mr. Apt's report states that he inspected the property and considered various sources of information (which included Mr. Plank's 1972 appraisal report, comparable and recent real estate sales data, construction cost data and comparable industrial rental data for the area) before rendering his opinion.

9. To monitor the Loan and ensure the Plan is repaid, the National Bank of Boyerton (National Bank) located in Boyerton, Pennsylvania has agreed to act as the independent fiduciary. National Bank has had no prior dealings with either the Employer or the Plan and as such, is completely independent of both entities. National Bank has reviewed the terms of the transaction and has concluded the Loan will benefit the Plan as well as the participants and beneficiaries. National Bank indicates the Loan is for a reasonably short term and is properly secured by the Equipment and Real Property in which the Employer has considerable equity. National Bank believes the Loan will be easy to monitor and will create little administrative difficulties.

10. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 498(a) of the Act because: (a) the Loan will be collateralized by perfected security interests in the Equipment and Real Property in which the Employer's equity greatly exceeds the amount of the Loan, and the collateral will be insured by the Employer; (b) the Plan will receive interest at the prime rate established by the Manufacturers Hanover Trust Company with a floor of 12%; (c) a third party lender has offered to make a similar loan and would not require as much collateral as is being provided by the Employer; and (d) an independent fiduciary, National Bank, has determined that the Loan is appropriate for the Plan and will monitor and act for the Plan during the duration of the Loan.

Notice to Interested Persons

Notice of the pending exemption will be given to current and former participants who have a vested interest in the Plan, on or before December 21, 1981. Such notice shall include a photocopy of the notice of pendency as proposed in the **Federal Register** and shall inform interested persons of their right to comment and request a hearing within the time period set forth in the proposed exemption. Notice will be provided to interested persons by personal delivery and/or first class mail, return receipt requested.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the Loan of $150,000 by the Plan to the Employer, provided the terms of the transaction are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time of consummation of the transaction.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 4th day of December, 1981.

Alan D. Lebowitz,

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

[FR Doc. 81-35461 Filed 12-10-81; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-259, 50-260, and 50-296]

Tennessee Valley Authority; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 79 to Facility Operating License No. DPR-33, Amendment No. 75 to Facility Operating License No. DPR-52, and Amendment No. 48 to Facility Operating License No. DPR-68 issued to Tennessee Valley Authority (the licensee), which revised Technical Specifications for operation of the Browns Ferry Nuclear Plant, Unit Nos 1, 2 and 3 (the facility) located in Limestone County, Alabama. The amendments are effective as of the date of issuance.

The amendments revise the administrative controls section of the Technical Specifications to reflect changes in the Tennessee Valley Authority and Browns Ferry Nuclear Plant organizations.

The application for the amendments 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 Ch. I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments 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 these amendments.

For further details with respect to this action, see (1) the application for amendments dated May 15, 1981, as supplemented by letter dated July 13, 1981, (2) Amendment No. 79 to License No. DPR-33, Amendment No. 75 to License No. DPR-52, and Amendment No. 48 to License No. DPR-68, 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, NW., Washington, D.C. and at the Athens Public Library, South and Forrest, Athens, Alabama 35611. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Md., this 2nd day of December 1981.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 81-35495 Filed 12-10-81; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Veterinary Medical Science Series, GS-701; Establishment of Prescribed Minimum Educational Requirements

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management has revised the prescribed minimum educational requirements for Veterinary Medical Officers employed within the Federal service. Veterinary Medical Science is a professional occupation, and the revised requirements will facilitate the procurement of qualified candidates for veterinary medical officer positions in the Federal service. The minimum educational requirements for this occupation were last revised in April 1980. Since that time, we have become aware of certain ambiguities in the language of the standard and, through this revision, have taken steps to clarify these requirements.

EFFECTIVE DATE: January 11, 1982.

FOR FURTHER INFORMATION CONTACT: Donald G. Brauer, Chief, Engineering and Science Occupations Division, Office of Standards Development, Staffing Services Group, U.S. Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415, 202-632-5612.

SUPPLEMENTARY INFORMATION: In accordance with Section 3308 of Title 5, United States Code, the Office of Personnel Management has established a prescribed minimum educational requirement for Veterinary Medical Officers employed within the Federal service. The requirement, the duties of the positions, and the reasons for the Office of Personnel Management's decision that the requirement is necessary are set forth below:

The Veterinary Medical Science Series, GS-701, GS-9 Through GS-15

Minimum Educational Requirement

Candidates must show successful completion of a full course of study leading to a degree of Doctor of Veterinary Medicine or equivalent at an accredited or approved ** veterinary medical school. These requirements also may be satisfied when candidates submit positive evidence of possession of equivalent qualification through recognition, certification, or approval by one of the following qualifying organizations in the United States:

—A department of higher education of one of the fifty States.

—An accredited or approved veterinary medical school (i.e., by acceptance of completed D.V.M. or equivalent degree work for advanced degree work).

—A Board of Veterinary Medical Examiners of one of the fifty States.

Graduates of foreign veterinary medical schools who do not meet the requirements specified above must furnish proof of (a) graduation from a veterinary medical school, (b) comprehension and ability to communicate in the English language, and (c) having passed the written examination in veterinary medicine of the Educational Commission on Foreign Veterinary Graduates or the U.S. National Board of Veterinary Medical Examiners. Proof of English language proficiency may be met by (1) achieving a total score on the Test of English as a Foreign Language of at least 550 with a listening comprehension score of at least 60 points, (2) earning an advanced degree (i.e., an MS or Ph.D.) at a U.S. college or university, *or* (3) graduating from a U.S. or Canadian English-speaking high school. Exceptions to these requirements are as follows:

—Certificates held by veterinarians who qualified between 1965 and 1972, under the program of the Educational Commission for Foreign Veterinary Graduates will be honored.

—Veterinarians who are graduates of foreign veterinary colleges which were included on the September 1, 1963 list entitled, "Foreign Veterinary Colleges Evaluated by the Council on Education, American Veterinary Medical Association," and who entered the United States or Canada and qualified as eligible for private

** For purposes of this standard, an approved veterinary medical school is a college of veterinary medicine outside the United States and Canada which has been granted *approval status* by the American Veterinary Medical Association.

practice or Federal employment on or before December 31, 1972, will be accepted.

Duties: Veterinary medical officers apply professional competence in the veterinary medical arts and sciences in programs that are established to protect and improve the health, products, and environment of or for the Nation's livestock, poultry, or other species for the benefit of human, as well as animal, well-being. They apply current, advanced, or specialized veterinary medical principles and practices of gross and microscopic anatomy; general, special, and post mortem pathology; microbiology and immunology; pharmacology and therapeutics; comparative physiology; toxicology; epidemiology; surgery; medicine; hygiene; reproduction; or other specialties of the profession to a variety of programs. They investigate, inspect, and deal with problems such as animal diseases, animal pollution, contamination of food of animal origin, health and safety of imported animals and animal products, safety and efficacy of many animal, as well as human drugs and biological products, and cooperative enforcement activities involving both the public and private sectors.

Reason for Establishing Requirements: The duties of these positions require the application of professional competence in the veterinary medical arts and sciences. Inherent in such professional competence is a thorough knowledge of the principles, concepts, techniques and practices of veterinary medicine and of the underlying scientific concepts. The only method by which the necessary knowledge and training may be acquired is through a full course of study leading to a degree of Doctor of Veterinary Medicine or equivalent at an accredited or approved veterinary medical school, or candidates must submit positive evidence of possession of equivalent qualifications as specified in the Minimum Educational Requirements, above. Meeting these requirements should provide evidence that the necessary knowledge and training were acquired through a directed course of study in a veterinary medical school where competent instruction and guidance are available; where there are adequate veterinary science libraries, laboratories, and facilities; where the course work is arranged in a systematic, progressive schedule; and where progress in the acquisition of professional and scientific knowledge and skill may be competently evaluated.

The revisions in the minimum educational requirements: (1) Clarify the intent of the standard with regard to comprehension and ability to communicate in the English language, (2) delete references to organizations which do not provide evidence of the qualifications of individual candidates for veterinary medical officer positions, and (3) eliminate other ambiguities in the language of the standard.

United States Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 81-35499 Filed 12-10-81; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 22302 (70-6679)]

Columbus and Southern Ohio Electric Co.; Proposed Issuance of Note To Purchase Waste Processing Plant; Exception From Competitive Bidding

December 7, 1981.

Columbus and Southern Ohio Electric Company ("CSOE"), 215 North Front Street, Columbus, Ohio 43215, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed an application-declaration to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder.

In 1975 CSOE contracted with Conversion Systems, Inc. ("CSI") to build and supervise the operation of a turbulant contact absorber producing flue gas desulfurization waste, basically a scrubber producing sludge, at CSOE's Conesville Generating Station Units 5 and 6 ("Facility"). The scrubber operation is used to comply with the Clean Air Act Amendments of 1970. Under the 1975 letter agreement ("Letter Agreement") expiring in 1996, CSOE makes monthly payments of $250,000 to CSI and CSOE has the option to purchase the Facility. Because of problems relating to sludge quality and capital investments, the Agreement was terminated and the companies will enter into a new contract ("Agreement").

In accordance with the Agreement, dated November 4, 1981, CSOE proposes to issue a promissory note in a principal amount of $9,400,000 to CSI for the purchase of the Facility and all related equipment. The purchase price will be paid in 180 equal monthly installments of $144,700, including interest at 17.01% per annum on the unpaid balance of the purchase price. The Agreement provides that CSOE will make a single monthly payment to CSI of $420,000, a sum which includes CSOE's purchase installment obligation, and payment for CSI's management and operation of the Facility, including labor costs. The purchase price is equivalent to CSOE's net estimated purchase cost of the Facility under the Letter Agreement plus approximately $3,400,000 of capital improvements that CSOE believes that it would have to make to the Facility, in the event CSOE were to exercise its option to purchase and operate the Facility now, in order to process scrubber sludge according to specifications.

Pursuant to the Agreement, CSI will manage, operate and maintain the Facility and a landfill for sludge owned by CSOE for 15 years. CSOE's monthly payment is subject to set-off and adjustment in the event CSI fails to process sludge according to the Agreement's specifications. CSI will also make certain specified capital improvements at its cost to the Facility. During the term of the Agreement, and until title thereto has been coveyed to CSOE at the termination thereof, all risks of loss of and damage to the Facility and the obligations to maintain and insure the Facility will remain with CSI. If the Agreement is terminated for any reason prior to its expiration, CSOE will be obligated to purchase the Facility for an amount equal to the unpaid principal balance due CSI multiplied by a specified percentage that varies depending upon whether such termination results from a default by CSOE or CSI.

An exception is requested from the competitive bidding requirements of Rule 50 pursuant to Rule 50(b)(5) for the note issuance because of the nature of the transaction and no public issuance of securities is involved.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 30, 1981, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order

issued in this matter. After said date the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-35487 Filed 12-10-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18315 (SR-NASD-77-17)]

National Association of Securities Dealers, Inc.; Order Approving Amended Proposed Rule Change

December 7, 1981.

On October 11, 1977, the National Association of Securities Dealers, Inc. ("NASD") 1735 K Street, N.W., Washington, D.C. 20006, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b–4 thereunder, copies of a proposed rule change which amends Section B.3.1. of Part II of Schedule D under Article XVI of the NASD's By-Laws to provide for the inclusion of beneficial owners as well as recordholders in meeting the 300 holder requirement for the initial inclusion and continued inclusion of securities on the NASDAQ System. On August 18, 1980, the NASD filed an amendment to the proposed rule change to define beneficial owners to include only customers accounts.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 14146, November 15, 1977) and by publication in the **Federal Register** (42 FR 59147, November 15, 1977). Notice of the amendment was given by publication of a Commission Release (Securities Exchange Act Release No. 17102, August 28, 1980) and by publication in the **Federal Register** (45 FR 58994, September 5, 1980). No comments were received on the proposal or the amendment.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-35484 Filed 12-10-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18316 (SR-NASD-81-12), (SR-NASD-81-13), and (SR-NSRB-81-7)]

National Association of Securities Dealers, Inc., and Municipal Securities Rulemaking Board; Order Approving Proposed Rule Changes

December 7, 1981.

The National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, N.W., Washington, D.C. 20006, submitted on June 12, 1981, and the Municipal Securities Rulemaking Board ("MSRB"), 1150 Connecticut Avenue, N.W., Washington, D.C. 20036, submitted on June 15, 1981, copies of proposed rule changes pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder to provide plans and specifications for a new qualification examination, the General Securities Sales Supervisor Examination (File Nos. SR–NASD–81–12 and SR–MSRB–81–7). The examination will be taken by individuals seeking to qualify as Limited Principal. General Securities Sales Principal under the rules of the NASD and as Municipal Securities Sales Principal under the rules of the MSRB. The examination was developed by a joint self-regulatory organization task force and will permit certain sales supervisors to qualify with all of the participating self-regulatory organizations by taking one examination, rather than several individual examinations.

The NASD submitted an amendment to the proposed rule change on December 2, 1981, which provides for separate grading of the options and non-options portions of the examination. In order to pass the examination, an applicant must receive a passing grade on both parts of the examination. The NASD filed the amendment in response to concern that persons qualifying in this new category should separately pass the options portion of the examination.

The NASD submitted on June 12, 1981, a second proposed rule change to amend its By-Laws to create the category of Limited Principal—General Securities Sales Supervisor for persons whose supervisory activities in the investment banking and securities business are limited to the securities sales activities of an NASD member, including training, and the maintenance of certain records. (File No. SR–NASD–81–13).

Notice of the proposed rule changes together with the terms of substance of the proposed rule changes was given by the issuance of a Commission Release (Securities Exchange Act Release No. 17876, June 19, 1981 and by publication in the **Federal Register** (45 FR 33160, June 26, 1981). The amendment to SR–NASD–81–12 was not published for comment. No comments were received with respect to the proposed rule filings.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and the MSRB and, in particular, the requirements of Sections 15A, and 15B, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and hereby are approved.

For the Commission, by the Division of market regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-35485 Filed 12-10-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22301 (70-6678)]

National Fuel Gas Co., et al.; Proposal Relating to Intra-System Borrowing Arrangements and Issuance and Sale of Commercial Paper and Notes to Banks by Holding Company; Request for Exception From Competitive Bidding

December 7, 1981.

In the matter of National Fuel Gas Company, 30 Rockefeller Plaza, New York, New York 10112; National Fuel Gas Distribution Corporation, Penn-York Energy Corporation, 10 Lafayette Square, Buffalo, New York 14203; and National Fuel Gas Supply Corporation, 308 Seneca Street, Oil City, Pennsylvania 16301.

National Fuel Gas Company ("National"), a registered holding company, and National Fuel Gas Distribution Corporation ("Distribution"), National Fuel Gas Supply Corporation ("Supply") and Penn-York Energy Corporation ("Penn-York"), each a subsidiary of National, have filed with this Commission an application-declaration pursuant to Sections 6(a), 7, 9(a), 10, 12(b), and 12(f) of the Public Utility Holding Company

Act of 1935 ("Act") and Rules 42(b)(2), 43, 45, 50(a)(2) and 50(a)(5) thereunder.

At certain times during the year, National and certain of its subsidiaries generate surplus funds. The Commission has authorized short-term loans of such surplus funds between subsidiaries (HCAR No. 20870, January 4, 1979; HCAR No. 21402, January 21, 1980). More recently the Commission authorized a money pool arrangement for the system (HCAR No. 21903, February 2, 1981).

Applicant-declarants propose that intra-system borrowing arrangements be authorized to continue in the form of the money pool arrangement. The money pool would consist of funds from the following sources: (1) Surplus funds of any of the subsidiaries; (2) surplus funds of National; (3) proceeds from National's sales of commercial paper; and (4) borrowings by National from banks. During 1982, it is anticipated that National and certain subsidiaries will have, on an aggregate basis, up to $100,000,000 of surplus funds which could be made available to other subsidiaries through the money pool.

National would administer the money pool by matching up, to the extent possible, the short-term cash surpluses and borrowing requirements of itself and its subsidiaries. Subsidiary requests for short-term loans would be met first from surplus funds of the other subsidiaries that would be available to the money pool, and then from National's corporate funds, to the extent available. It is not anticipated that National will need to make borrowings through the money pool and no "upstream loans" to National from any of the subsidiaries would be made. Each subsidiary would be authorized to make borrowings through the money pool up to the following maximum principal amounts:

Distribution	$80,000,000
Supply	40,000,000
Penn-York	50,000,000

Distribution would use the proceeds in connection with its construction program and the financing of deferred purchased gas costs. Supply would use the proceeds to purchase storage gas, to finance deferred purchased gas costs and in connection with its construction program. Penn-York would use the proceeds in connection with the construction of underground storage facilities to serve non-affiliates.

All borrowings on consolidated basis would never exceed 20% of the consolidated capitalization of the system, except that, Supply may borrow funds for the financing of its storage gas which are inventory loans and are excluded from the definition of unsecured debt in National's Certificate. These inventory borrowings might cause the outstanding short-term debt of the system to exceed 20% of its consolidated capitalization.

Borrowings from and contributions to the money pool will be adequately documented and will be evidenced on the books of each participant who is borrowing or contributing surplus funds through the money pool. The interest rate applicable to all loans of surplus funds through the money pool will be the lower of the rate for commercial paper placed by A. G. Becker & Co., Incorporated having the same rating as National and having a term most nearly equal to the particular money pool loan in question or the prime rate at The Chase Manhattan Bank, N.A.

The interest rate applicable to funds borrowed by National (either through commercial paper or bank loans) and loaned through the money pool will be equal to National's net cost for such external borrowings. In cases where both surplus funds from other subsidiaries and external funds are concurrently borrowed through the money pool, the interest rate applicable to all funds borrowed will be equal to the net cost of the externally borrowed funds. Interest on all borrowings through the money pool will be payable monthly until the principal amount is paid in full except where there are external borrowings from Chase. In that instance, interest will be payable in a manner to allow National to make its payment of interest to Chase on a quarterly basis. Supply is expected to repay borrowings from the money pool from funds received when gas in storage is withdrawn and sold and from other funds generated internally.

When sources of funds for the money pool become insufficient to meet short-term loan requests, borrowings would be made from outside the system through the issuance and sale of commercial paper and/or under bank lines of credit. National proposes to issue and sell from time to time during the period from January 1, 1982, through December 31, 1982, up to $80,000,000 aggregate principal amount at any one time outstanding of its commercial paper to A.G. Becker & Co., Incorporated ("Dealer") and/or short-term unsecured notes to Chase to evidence borrowings under a back-up line of credit and make the proceeds therefrom available to its subsidiaries through the money pool.

The commercial paper would be sold by National to the Dealer in minimum sales amounts of not less than $50,000 and note denominations of not less than $25,000, with varying maturities not to exceed nine months, and will not be prepayable prior to maturity. No commission will be payable in connection with the issuance and sale of the commercial paper; however, the Dealer will reoffer and sell the commercial paper at a discount rate of ⅛ of 1% per annum less than the prevailing discount rate from the Dealer to National. The Dealer, in reoffering the commercial paper, will limit the reoffer and sale to a nonpublic list of not more than 200 buyers of commercial paper. No additions will be made to such list of customers without approval of the Commission. It is anticipated that the commercial paper of National will be held by the buyer to maturity; however, the Dealer may, if desired, repurchase the commercial paper and reoffer it to others on the approved list of buyers.

The decision to issue commercial paper or short-term notes pursuant to the back-up line of credit would be at the discretion of National, except that, if the effective interest cost for commercial paper exceeds the effective cost of equivalent borrowings from Chase under the back-up line of credit on the date of issue, National will issue its short-term unsecured notes to Chase.

National also proposes to establish lines of credit (including the back-up line of credit mentioned above) with various banks aggregating $155,000,000 and to issue and sell from time to time during the period from January 1, 1982, through December 31, 1982, short-term unsecured notes pursuant thereto, up to an aggregate principal amount at any one time outstanding of $155,000,000 and make the proceeds therefrom available to its subsidiaries through the money pool. The names of the banks and the maximum principal amount to be borrowed and outstanding at any one time from each bank are as follows:

Bank	Amount of line
Chase Manhattan Bank, N.A.:	
Line of Credit	$40,000,000
Back-up Line of Credit	80,000,000
Buffalo Group:	
Marine Midland Bank-Western	14,000,000
Manufacturers and Traders Trust Company	7,000,000
Liberty National Bank and Trust Company	3,000,000
Erie Group:	
First National Bank of Pennsylvania	3,000,000
Marine Bank	2,000,000
Oil City Group:	
First Seneca Bank and Trust Company	2,000,000
Pennsylvania Bank and Trust Company	1,500,000
Northwest Pennsylvania Bank and Trust Company	1,500,000
McDowell National Bank	1,000,000
Total	155,000,000

Under each of the lines of credit, any unsecured note issued will be issued by National, will be dated as of the date of issue, will mature not later than twelve months from the date thereof and will be prepayable at any time, in whole or in part, without penalty or premium. The notes issued and sold to Chase and to the Erie and Oil City banks will bear interest at the prime rate of interest in effect from time to time at Chase. The notes issued and sold to the Buffalo banks will bear interest at the prime rate of interest in effect from time to time of each individual bank. In the case of Chase, interest will be payable quarterly until the principal amount is paid in full. In the case of all the other banks, interest will be payable monthly until the principal amount is paid in full.

In addition to the lines of credit, certain of the banks listed above may have small amounts of funds available, which they will lend to National at fixed rates below the existing prime rate for short periods of time (one day to sixty days). Depending upon market conditions, National may find it very beneficial to repay existing notes outstanding at the prime rate with funds borrowed at the lower fixed rate. Since the one-day—sixty-day notes are not prepayable, National will not utilize such notes unless it anticipates the need for the funds for at least the maturity of the notes. There will be no commitment fee or any closing or related costs in connection with the above borrowings. However, each bank may require the system to keep compensating balances on deposit at the bank.

In recent years the banks have required compensating balances from 5–10% of the line of credit and from 0–15% of the amount borrowed.

Under proposed lines, the banks have requested that the compensating balance arrangement vary depending upon market conditions, however, in no case would the compensating balance arrangement require a balance greater than 20% of the amount of fully utilized lines of credit. In most cases, the average balances maintained for normal operating needs across the system are sufficient to cover these amounts. Assuming National borrowed the full amount under each line of credit, and a compensating balance of 20% under each line was required, the effective cost of money, based on a 17.5% prime rate, would be 21%.

Costs, in the form of compensating balances, may be incurred to support the lines of credit. The aggregate of the operating balances of National, Distribution, Supply, and Penn-York are expected to cover these amounts. Initially, the cost compensating balances will be allocated to the subsidiaries on the basis of 50% to Distribution, 22% to Supply and 28% to Penn-York. At the end of the calendar year, the costs would be retroactively reallocated. Each subsidiary would be reallocated that proportion of the total line of credit costs which is equal to the percentage that its maximum amount of short-term borrowings during the year represents of the aggregate of the maximum short-term borrowings, on a non-coincidental basis, of all the subsidiaries.

National requests that the sale of its commercial paper be excepted from the requirements of Rule 50 pursuant to sub-paragraph (a)(5) thereof since the notes will have maturity not to exceed nine months, will be issued to a limited defined group of buyers, interest cost thereon will not exceed the cost of equivalent borrowings from Chase, and the rate for commercial paper for prime issuers such as National are at any time ascertainable by reference to daily publications.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 30, 1981, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-35486 Filed 12-10-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18304 (SR-OCC-81-9)]

The Options Clearing Corporation ("OCC"); Order Approving Proposed Rule Change

December 4, 1981.

On August 10, 1977, OCC filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b–4 thereunder, a proposed rule change giving OCC the flexibility to authorize repayment of subordinated loans that would otherwise be precluded by OCC rules, whenever the Clearing Member has satisfied OCC that it is not necessary for OCC to restrict the repayment.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 18213, October 26, 1981) and by publication in the **Federal Register** (46 FR 53,827, October 30, 1981). No written comments were received by the Commission or by OCC.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and in particular, the requirements of section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-35483 Filed 12-10-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12080; (813–50)]

PW Employee Investments; Filing of Application

December 7, 1981.

Notice is hereby given that PW Employee Investments (the "Applicant"), 100 Federal Street, Boston, Massachusetts 02110, registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified management investment company, filed an application on April 6, 1981, and amendments thereto on August 17 and November 25, 1981, pursuant to section 6(b) of the Act for an order exempting the Applicant from all provisions of the Act or, alternatively, from Sections 8(b), 10(a) and (b), 14(a), 15(a), 16(a), 17(a), (d), (f), and (g), 18(a)(1) and (i), 19(b), 20(a), 23(c), 30(a), (b), and (d) and 32 of the Act and Rules 10f-3 and 17g-1 thereunder. The application further requests an order pursuant to Section 45(a) of the Act granting confidential treatment to certain periodic reports to be filed with the Commission as described herein. 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 Applicant, a limited partnership formed under the laws of the Commonwealth of Massachusetts, was organized by Paine Webber Incorporated ("Paine Webber"), a publicly-owned holding company whose principal subsidiaries are engaged in various facets of the securities business. According to the application, limited partnership interests in the Applicant will be offered only to those officers, directors and employees of Paine Webber or its affiliates who have annual compensation for the preceding 12 months of at least $50,000 and certify a net worth of at least $25,000 exclusive of home, home furnishings and automobiles ("Limited Partners"). As such, the Applicant states that less than 10% of the approximately 10,000 employees of the Paine Webber organization will be eligible to invest in the Applicant. For each Limited Partner, the minimum capital contribution is $2,500 and the maximum contribution is 10% of such Limited Partner's aggregate compensation for the preceding 12 months. The Applicant further states that after the close of the initial offering of its limited partnership interests, no additional capital contributions will be accepted and no new Limited Partners will be admitted except for transferees or assignees of existing limited partnership interests who are approved for admission by the Applicant's general partner. The Applicant intends to pay all legal fees and other expenses incurred in connection with its organization and offering limited partnership interests unless such expenses should exceed 10% of the Applicant's total subscribed capital, in which case Paine Webber would pay the excess.

The Applicant's general partner, Paine Webber Employee Investments Management, Inc. (the "General Partner"), a wholly-owned subsidiary of Paine Webber, has exclusive control over the management and policy of the Applicant. The directors and officers of the General Partner, each of which intends to invest at least $5,000 in the Applicant, are all active or retired officers of the Paine Webber organization with responsibilities in the areas of general administration or venture capital investment. The Applicant further represents that the General Partner will make a capital contribution of at least 1% of the Applicant's total capital. The General Partner will manage the Applicant without any charge other than out-of-pocket expenses incurred in managing the operations of the Applicant.

In addition to the out-of-pocket expenses of the General Partner, other fees or charges may be paid by the Applicant to Paine Webber affiliates, including management fees on investments in funds advised by Paine Webber, brokerage fees, underwriting discounts or spreads, placement fees and charges for certain other services. The application states that the preservation of these underwriting, placement and other fees is considered necessary in order to preserve equality of treatment of the Applicant and third parties doing business with Paine Webber affiliates. It is contended that such charges will be negotiated on an arm's-length basis and should be comparable to those customarily charged by others for comparable services; and that all such fees will be reported to the Limited Partners in the Applicant's semi-annual reports to Limited Partners.

According to the application, the Applicant was created to give senior management and top sales personnel in the Paine Webber organization an opportunity that most of them would not otherwise have to invest limited amounts, without sales charges, in a portfolio of investments with high potential for long-term appreciation. The Applicant intends to invest principally in venture capital opportunities (but might also invest in private real estate an oil and gas ventures) identified by Paine Webber employees specializing in such investments, many of whom are expected to be Limited Partners in the Applicant. A substantial portion of the Applicant's investments are expected to be made in venture capital funds advised by Paine Webber subsidiaries ("PW Advised Funds") or in tandem with PW Advised Funds and other vehicles investors in which are affiliated persons of Paine Webber ("PW Affiliate Funds"). The Applicant further represents that Paine Webber, its subsidiaries and affiliated persons thereof (including officers and directors of the General Partner, and the Limited Partners) are now and in the future may become investors in such PW Advised Funds and PW Affiliate Funds.

The Applicant represents that in order to protect the customers of PW Advised Funds (most of whom are not employees of Paine Webber), the Applicant and other PW Affiliate Funds will not be entitled to participate in an investment opportunity until it has been offered to all of the PW Advised Funds. The extent of the priority of the PW Advised Funds will vary, with existing PW Advised Funds being entitled to take up to 100% of any investment opportunity before the opportunity may be offered to PW Affiliate Funds, while PW Advised Funds being organized now and in the future should have priority over PW Affiliate Funds only to the extent of 50% of any investment opportunity.

The Applicant further represents that none of the PW Affiliate Funds will have rights prior to the Applicant as to any investment opportunity. In the case of an oversubscription, it is proposed that the Applicant and the PW Affiliated Funds generally will participate in the investment opportunity on a pro rata basis, according to the amounts of capital available for investment. On the other hand, neither the Applicant, nor any venture capital fund in which it participates, will invest in securities issued by Paine Webber or its subsidiaries. Moreover, the Applicant will not make loans to its Limited Partners, the General Partner, any affiliated person of Paine Webber, or any officer, director or employee of the General Partner or any Paine Webber affiliate.

According to the application, the General Partner is required to keep or cause to be kept adequate books and records reflecting all activities of the Applicant and to cooperate with all the Limited Partners in making all such books and records available for their inspection. In addition, the General Partner is required to cause an audit to be made by an independent public accountant of the Applicant's financial statements for each year and to deliver a copy of such certified audit report to each Limited Partner. The General Partner is further required to furnish a semi-annual report to all the Limited Partners setting forth the status of each investment and summarizing the most recent financial information available with respect to the Applicant's investments and amounts paid or reimbursed by the Applicant to the General Partner and other affiliates of Paine Webber.

Section 2(a)(13) of the Act provides that an "employees' securities company" means any investment company or similar issuer all of the outstanding securities of which (other than short-term paper) are beneficially owned (A) by the employees or persons on retainer of a single employer or of two or more employers each of which is an affiliated company of the other, (B) by former employees of such employer or employers, (C) by members of the immediate family of such employees, persons on retainer, or former employees, (D) by any two or more of

the foregoing classes of persons, or (E) by such employer or employers together with any one or more of the foregoing classes of persons. Section 6(b) of the Act provides that, "Upon application by any employees' security (sic) company, the Commission shall by order exempt such company from the provisions of the Act and of the rules thereunder, if and to the extent that such exemption is consistent with the protection of investors. In determining the provisions to which such an order shall apply, the Commission shall give due weight, among other things, to the form or organization and the capital structure of such company, the persons by whom its voting securities, evidences of indebtedness, and other securities are owned and controlled, the prices at which securities issued by such company are sold and the sales load thereon, the disposition of the proceeds of such sales, the character of the securities in which such proceeds are invested, and any relationship between such company and the issuer of any such security."

The Applicant asserts that it meets the definition of an "employees' securities company" contained in section 2(a)(13) of the Act and should, as such, be exempted from all provisions of the Act. Alternatively, the Applicant requests that the Commission issue an order pursuant to Section 6(b) of the Act exempting it, to the extent noted below, from the following specific provisions of the Act:

(a) Section 8(b) of the Act and Rule 8b–16 thereunder would require the Applicant to submit annual amendments to its Registration Statement on Form N–2 filed with the Commission under the Act. The Applicant asserts that the filing of annual amendments to its Registration Statement is not necessary for the protection of investors, because the Applicant is a closed-end management company which intends to have only one offering of limited partnership interests, for which there will be no trading market. In addition, the Applicant states that the Limited Partners will receive periodic reports and accountings.

(b) Section 10(a) of the Act provides that no registered investment company shall have a board of directors more than 60 percent of the members of which are interested persons of such registered company. The Applicant requests an exemption from section 10(a) to permit it to be managed by the General Partner which is a wholly-owned subsidiary of Paine Webber and whose directors are nominees of Paine Webber.

(c) Section 10(b)(1) of the Act provides that no registered investment company shall employ as regular broker any director, officer, or employee of such registered company, or any person of which any such director, officer or employee is an affiliated person, unless a majority of the board of directors of such registered company shall be persons who are not such brokers or affiliated persons of any such brokers. The Applicant requests an exemption from section 10(b)(1) of the Act to permit it to effect brokerage transactions through the General Partner, officers and directors of the General Partner and subsidiaries of Paine Webber.

(d) Section 10(b)(2) of the Act makes it unlawful for a registered investment company to use as a principal underwriter of securities issued by it any director, officer, or employee of such registered company or any person of which any such director, officer or employee is an interested person, unless a majority of the board of directors of such registered company shall be persons who are not such principal underwriters or interested persons of any of such principal underwriters. The Applicant requests an exemption from section 10(b)(2) of the Act to permit it to employ the General Partner without charge as the principal underwriter of its limited partnership interests.

(e) Section 10(b)(3) of the Act prohibits a registered investment company from having as director, officer, or employee any investment banker, or any affiliated person of an investment banker, unless a majority of the board of directors of such registered company are not investment bankers or affiliated persons of any investment banker. The Applicant requests an exemption from section 10(b)(3) of the Act to permit it to be managed by the General Partner who, along with its directors, might be deemed to be affiliated persons of the investment bankers within the Paine Webber organization.

(f) Section 10(f) of the Act provides, in relevant part, that no registered investment company shall knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security (except a security of which such company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of such registered company, or is a person of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person. Rule 10f–3 promulgated under the Act provides an exemption from the prohibition of section 10(f), provided that certain specified conditions are met. The Applicant asserts that it is unable to avail itself of the conditional relief from section 10(f) of the Act provided by Rule 10f–3 because, due to its unique structure, it lacks any disinterested directors to perform the tasks required by paragraph (h) of rule 10f–3. Therefore, the Applicant requests an exemption from having to meet the requirements of Rule 10f–3(h) in order to permit it to purchase securities through an underwriting or selling syndicate of which a Paine Webber subsidiary acts as principal underwriter. The Applicant states that in order to utilize this exemption, it will have to meet the requirements of the other sections of the Rule (with the exception of Rule 10f–3(g)).

(g) Section 14(a) of the Act provides, in pertinent part, that no registered investment company shall make an initial public offering of its securities unless it has a net worth of $100,000. The Applicant requests an exemption from section 14(a) to the extent necessary to permit it to offer limited partnership interests to officers, directors and employees of Paine Webber and its affiliates prior to the time the Applicant has a net worth of $100,000.

(h) Section 15(a) of the Act provides, among other things, that no person shall act as an investment adviser of a registered investment company except pursuant to a written contract which has been approved by the vote of a majority of the outstanding voting securities of such registered investment company and which may be terminated at any time without penalty by the board of directors of such investment company, or by vote of a majority of the outstanding voting securities or such company. The Applicant requests an exemption from section 15(a) of the Act to permit the General Partner to provide investment advisory services to the Applicant, either at or below cost, without a written contract which has been approved by the Limited Partners. The Applicant will not be paying any commissions or finder's fees to either the General Partner and its offices, directors and employees, or to any other persons within or without the Paine Webber organization.

(i) Section 16(a) of the Act provides, among other things, that no person shall serve as a director of a registered investment company unless elected to that office by the holders of the outstanding voting securities of such company at an annual or special meeting duly called for such purpose. The Applicant requests an exemption from section 16(a) of the Act because, it

is asserted, compliance with the requirements of section 16(a) would prevent the formation of Applicant as a limited partnership. The Applicant asserts that at all times the officers and directors of the General Partner will also be active or former members of the senior management of Paine Webber.

(j) Section 17(a) of the Act, in pertinent part, prohibits an affiliated person of a registered investment company or any affiliated person of such an affiliated person, acting as principal, from knowingly purchasing or selling any security or other property from or to such registered company, subject to certain exceptions. The Applicant requests an exemption from section 17(a) of the Act to permit it to (i) purchase interests in, or purchase securities from, PW Advised Funds, (ii) purchase additional interests in a portfolio company where the Applicant or other Paine Webber affiliates already own 5% or more of the voting securities of the portfolio company or if such company is otherwise affiliated with the Applicant and (iii) to participate as a selling stockholder in a public offering that is underwritten by a Paine Webber subsidiary or in which a Paine Webber subsidiary acts as a member of the underwriting group. As a condition to the granting of this exemptive relief, the Applicant has agreed to limit its investments directly in PW Advised Funds to not more than 50% of the original capitalization of the Applicant. In addition, the Applicant represents that this exemption would not extend to purchases of securities from persons who are directors or officers of the General Partner or Paine Webber or directors of any of the subsidiaries of Paine Webber (except to the extent that such persons may participate indirectly by virtue of investments in PW Advised Funds or PW Affiliate Funds or by virtue of the compensation arrangements with certain existing and future PW Advised Funds or PW Affiliate Funds). The Applicant represents that it recognizes that any such transactions, or other types of transactions otherwise subject to section 17(a) of the Act for which exemptive relief has not been requested, would require specific approval by the Commission.

(k) Section 17(d) of the Act and Rule 17d–1 thereunder provide, in pertinent part, that it shall be unlawful for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, to participate in or effect any transaction in connection with any joint enterprise or other joint arrangement in which such registered company, or company controlled by such registered company, is a participant unless an application regarding such joint enterprise or arrangement has been filed with the Commission and an order granting such application has been issued. The Applicant requests an exemption from section 17(d) of the Act to permit it to purchase securities in tandem with other PW Advised Funds and to enter into agreements with respect to the transfer of securities of, the recapitalization or reorganization of, or the exercise of voting rights with respect to, any company in which the Applicant and other PW Advised Funds have invested. The Applicant asserts that to require an exemptive order with respect to each of these proposed joint transactions would be so time consuming and expensive that the proposed investment venture would be unworkable. As a condition to the relief requested, the Applicant represents that no director or officer of the General Partner or Paine Webber and no director of any subsidiary of Paine Webber will also be a participant in such investments (except to the extent that such person may be participating indirectly by virtue of an investment in a PW Advised Fund or a PW Affiliate Fund or by virtue of certain compensation arrangements with existing and future PW Advised Funds or PW Affiliate Funds).

The Applicant further agrees, with reference to the exemptions requested from sections 17(a) and 17(d), to the condition that with respect to every transaction of the Applicant for which the approval of the Commission would have been required under section 17(a) or 17(d) of the Act or the rules and regulations thereunder, were the Applicant not granted an exemption therefrom, the directors of the General Partner of the Applicant will maintain the records required by section 57(f)(3) of the Act. In addition, the directors of the General Partner of the Applicant will comply with the provisions of section 57(h) of the Act.

(l) Section 17(f) of the Act and Rule 17f–1 thereunder provide, in pertinent part, that no registered management investment company shall place or maintain any of its securities or similar investments in the custody of a company which is a member of a national securities exchange as defined in the Securities Exchange Act of 1934 except pursuant to a written contract which shall have been approved by a majority of the board of directors of such investment company. The Applicant requests an exemption from section 17(f) of the Act to the extent necessary to permit Paine Webber or its subsidiaries, one of which is a member of a national securities exchange, to act as custodian without a written contract. The Applicant asserts that, with the exception of a written contract, it will otherwise comply with all the remaining provisions of Rule 17f–1.

(m) Section 17(g) of the Act and Rule 17g–1 thereunder provide, as relevant here, that the fidelity bond protecting investors of a registered management investment company against larceny and embezzlement of its officers and employees be approved by a majority of the board of directors who are not "interested persons" of the investment company. Paragraph (h) of Rule 17g–1 further requires each registered management investment company to designate an officer thereof to make certain filings and give certain notices as required by this rule. Because the Applicant's organization as a limited partnership does not include disinterested directors or officers, the Applicant requests an exemption from those specific provisions of Rule 17g–1 which require that actions be taken by such persons. Except as provided in the application, the Applicant intends to otherwise comply with the remaining requirements of Rule 17g–1.

(n) The Applicant further requests an exemption from Section 18(a)(1) of the Act which provides, in pertinent part, that it shall be unlawful for any registered closed-end company to issue or sell any class of senior security which represents indebtedness unless (A) immediately after issuance or sale, it will have an asset coverage of at least 300 per centum; (B) the declaration of any dividend or any other distribution upon any class of the capital stock, or the purchase of any such capital stock is prohibited unless the senior security has at the time an asset coverage of at least 300 per centum after deducting the amount of such dividend, distribution or purchase; (C) the holders of such senior securities can elect a majority of the directors of the company where the asset coverage is less than 100 per centum for twelve consecutive calendar months, and a provision is made for the recognition of a default where the asset coverage is less than 100 per centum for 24 consecutive months. The Applicant represents that it does not intend to borrow money on a regular basis and is further prohibited from making any borrowings that would mature in more than nine months from anyone except a Limited Partner, the General Partner or an affiliate of Paine Webber. To the extent borrowings are contemplated, the Applicant considers the proper

valuation of non-liquid investments, for compliance with section 18(a)(1) of the Act, to be a time-consuming and expensive process that would require determinations by the Applicant and review by its independent public accountants. The Applicant further represents that it is, nevertheless, required to undertake this review covering all its portfolio investments, including its non-liquid investments in other PW Advised Funds, each year in preparation of the Applicant's annual audited financial statements.

(o) Section 18(i) of the Act provides, in pertinent part, that every share of stock issued by a registered management company shall be a voting stock and have equal voting rights with every other outstanding voting stock. It is asserted that, as a limited partnership, the Applicant cannot comply with the requirement of section 18(i) that every share of stock have equal voting rights. The limited partnership form of organization is necessary in order to pass through tax deductible items to the investors and eliminate double taxation upon distributions of income or gains by the Applicant to investors.

(p) Section 19(b) of the Act provides, in pertinent part, that it shall be unlawful in contravention of such rules, regulations or orders as the Commission may prescribe for any registered investment company to distribute long-term capital gains more frequently than once every 12 months. Rule 19b–1(b) under the Act provides, as herein relevant, that no registered investment company which is not a "regulated investment company" as defined by section 851 of the Internal Revenue Code shall make more than one distribution of capital gains in any one taxable year of such investment company. The Applicant requests an exemption from section 19(b) of the Act to permit it to distribute its portfolio securities, or the proceeds of such liquidated portfolio securities, to the Limited Partners more than once a year, a part of which could reflect long-term capital gains. The Applicant intends to hold each investment only until it becomes liquid and then to distribute either the investment or the proceeds thereof to its Limited Partners. The Applicant further intends to make certain distributions upon the withdrawal or removal of a Limited Partner. Accordingly, the Applicant contends that compliance with section 19(b) of the Act might seriously interfere with its proposed operations and that such a restriction would be contrary to the best interests of investors.

(q) Section 20(a) of the Act and Rule 20a–1 there under generally require that every registered investment company in soliciting proxies comply with the requirements of section 14(a) of the Securities Exchange Act of 1934 relating to such proxy material. The Applicant requests an exemption from the requirements of section 20(a) of the Act in connection with the Limited Partners' right to remove the General Partner, to approve significant amendments to the Articles of Limited Partnership, and to grant to General Partner their power of attorney to execute and file certain documents on behalf of the Applicant and to amend the Articles in minor respects. In seeking such relief, the Applicant asserts that compliance with the requirements of section 20(a) of the Act could involve difficult questions of interpretation likely to make the process of preparing and filing proxy statements unusually costly and prolonged. The Applicant further asserts that such costs seem unnecessary in view of the limited number and the sophisticated nature of the Limited Partners. As a condition of its exemption from the provisions of section 20(a) and the rules and regulations thereunder, the Applicant agrees that any solicitation of proxies of its Limited Partners will be conducted in accordance with the provisions of section 14(a) of the Securities Exchange Act of 1934 and the rules and regulations thereunder.

(r) Section 23(c)(3) of the Act permits a closed-end investment company to purchase its own securities under such circumstances as the Commission may permit by rules and regulations or orders for the protection of investors in order to insure that such purchases are made in a manner or on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased. Rule 23c–1(a) under the Act recites the conditions under which a registered closed-end company may purchase for cash securities of which it is the issuer other than on a securities exchange or pursuant to tenders. The Applicant seeks an exemption from section 23(c)(3) to permit it to repurchase limited partnership interests in the Applicant upon the withdrawal or removal of a Limited Partner. The Applicant asserts that it cannot satisfy the condition set forth in Rule 23c–1(a)(4) because in each repurchase the seller of the limited partnership interest (i.e., the Limited Partner) would be an affiliated person of the Applicant. The Applicant further represents that, due to the nature of its investments, it may encounter significant difficulty in complying with the requirement in paragraph (7) of the rule that the Applicant disclose the asset coverage of a withdrawing or removed Limited Partner's interest in the Applicant. The Applicant asserts that this difficult evaluation is unnecessary since in most cases, the Limited Partner will receive, in exchange for his limited partnership interest in the Applicant, his pro rata portion of the Applicant's assets in kind, and in any event cannot be compelled to accept a cash settlement. Moreover, the Applicant asserts that compliance with the six month notice requirement contained in paragraph (10) of the rule might in some instances require it to delay unnaturally the distribution to a withdrawing of removed Limited Partner.

(s) Sections 30(a), 30(b) and 30(d) of the Act and the rules thereunder generally require that registered investment companies prepare and file with the Commission and prepare and mail to their shareholders certain periodic reports and financial statements. The Applicant seeks exemptions from sections 30(a) and (b) of the Act to the extent necessary to exempt it from filing quarterly and annual reports with the Commission. The Applicant further requests relief to permit it to mail each semi-annual report to its Limited Partners of record within 60 days after the date as of which the semi-annual report was made rather than within the 45-day time period presently required by Rule 30-d(1)(a). The Applicant undertakes to supply in its semi-annual reports all information regarding fees earned by Paine Webber affiliates in connection with partnership transactions, all expenses or charges of the General Partner and any other Paine Webber affiliates paid or reimbursed by the Applicant and the fact and terms (to the extent known to the General Partner) of the removal or withdrawal of any Limited Partner. The Applicant believes that semi-annual reports to its Limited Parnters as proposed would permit it to report to its Limited Parners fully and in a manner that would not hinder the Applicant with excessive and burdensome administrative costs.

The Applicant further requests that all reports filed with the Commission under section 30 of the Act or in lieu of the reports by section 30 (including without limitation filings of semi-annual reports to the Limited Partners) be afforded confidential treatment under section 45(a) of the Act which provides in pertinent part that information filed with the Commission shall be made available to the public, unless and except insofar as the Commission by order upon application, finds that public disclosure

is neither necessary nor appropriate in the public interest or for the protection of investors. The Applicant asserts that confidential treatment is being requested because the investment situations in which the Applicant will be investing and information regarding the issuers are not generally available to the public and if made public may create unwarranted impressions or expectations in the securities industry. The Applicant further asserts that there is no public trading in limited partnership interests in the Applicant and the only persons possibly interested in such information will have all such data sent directly to them.

(t) Section 32 of the Act provides, among other things, that the selection of independent public accountants must be ratified by the shareholders of the investment company. The application states that the Applicant cannot comply with the provisions of section 32 of the Act, regarding the selection of an independent public accountant and the accountant's participation in the preparation of financial statements, because it has no board of directors or voting shareholders, and the members of the board of the General Partner may all be interested persons of the Applicant. The Applicant requests an exemption from section 32(a) of the Act to permit the General Partner to select independent public accountants to participate in the preparation of the Applicant's financial statements without submitting such selection to the Limited Partners for rejection or ratification.

The Applicant represent that granting the exemptions requested herein would be consistent with the protection of investors because of its organization as an employees' securities company conceived and organized by the persons who will be investing in the Applicant and not promoted by persons seeking to profit from fees for investment advice or from the distribution off securities. The Applicant further cites the fact that all the directors, officers, or employees of the General Partner and all the Limited Partners are officers or employees of Paine Webber and its subsidiaries. In addition, the Applicant argues that a community of economic and other interests exists among the Limited Partners as employees of Paine Webber and its subsidiaries. Finally, the Applicant represents that no sales load and no compensation (other than out-of-pocket expenses and fees related to the Applicant's interests in PW Advised Funds) is payable to the General Partner or any affiliated person.

Notice is further given that any interested person may, not later than December 31, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to the controverted, or he may request that he 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 Applicant at the address 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 said date 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 any notices and orders issued 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. 81-35468 Filed 12-10-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22298; 70-6666]

American Electric Power Co., Inc., et al.; Notice of Proposed Issuance and Sale of Short-Term Notes to Banks and Commercial Paper to Dealer

December 4, 1981.

In the matter of American Electric Power Company, Inc., 2 Broadway, New York, New York 10004; Appalachian Power Company, 40 Franklin Road, S.W., Roanoke, Virginia 24011; Columbus and Southern Ohio Electric Company, 215 North Front Street, Columbus, Ohio 43215; Indiana & Michigan Electric Company, One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801; Kentucky Power Company, 1701 Central Avenue, Ashland, Kentucky 41101; and Ohio Power Company, 301 Cleveland Avenue, SW., Canton, Ohio 44701.

American Electric Power Company, Inc. ("AEP"), a registered holding company, and Appalachian Power Company ("Appalachian"), Columbus and Southern Ohio Electric Company ("CSOE"), Indiana and Michigan Electric Company ("I&M"), Kentucky Power Company ("Kentucky") and Ohio Power Company ("Ohio"), electric utility subsidiaries of AEP, have filed an application-declaration and an amendment thereto with this Commission pursuant to Sections 6 and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45, 50(a)(2), and 50(a)(5) promulgated thereunder.

AEP requests authorization to incur short-term debt through the issuance and sale of notes to banks and commercial paper to a dealer in commercial paper in an aggregate amount not to exceed $165,000,000 outstanding at any one time. The notes to banks and commercial paper would be issued from time to time subsequent to December 31, 1981 and prior to January 1, 1983, but shall not mature later than June 30, 1983. AEP seeks an exemption pursuant to Section 6(b) of the Act to issue such notes and commercial paper. AEP proposes to issue and sell its short-term notes to two bank groups, including one group of domestic and one group of foreign banks, with which AEP maintains lines of credit totaling $318,000,000.

Each note to be issued to the domestic bank group will bear interest at up to 108.5% of the prime rate, will mature not more than 270 days after the date of issuance or renewal thereof, and will be prepayable at any time without premium or penalty. Compensating balances of 5% of the line of credit and a fee of ⅜ of 1% of the size of the line are generally required. The combination of 5% compensating balances and the fee is generally equivalent to compensating balances not in excess of 10% of the line of credit made available.

In the case of borrowings from the foreign bank group, no compensating balances are required, only a fee of ¼ of 1% of the unused amount of the line of credit. Borrowings from these five banks may be made in U.S. dollars and/or in Eurodollars except in the case of Royal Bank of Canada N.V., where the borrowings are on a Eurodollar basis only. Where such borrowings are made in Eurodollars, the rate of interest will be a designated percent over the London Interbank Offering Rate (LIBOR). Such borrowings are not prepayable. Borrowings in U.S. dollars will be at the prime rate then in effect and are prepayable at any time without premimum or penalty.

The total cost of borrowings from either bank group would not be greater than the effective rate for borrowings

bearing interest at the prime rate with compensating balances equal to 10% of the line of credit and 10% of the amount borrowed. If the balances maintained and fees paid by AEP with the banks were maintained and paid solely to fulfill requirements for borrowing, the effective annual interest cost under either of the above arrangements, assuming full use of the line of credit, would not exceed 125% of the prime commercial rate in effect from time to time, or not more than 20% on the basis of a prime commercial rate of 16%.

Credit arrangements with these banks are shared with Appalachian, CSOE, Kentucky, Ohio, and with the exception of the $20,000,000 commitment of Irving Trust Company, with I&M, all of which are subsidiaries of AEP. If proposed short-term bank borrowings through December 31, 1982, are permitted under Section 6(b) of the Act, AEP and these participating associate companies will be authorized to borrow a maximum aggregate amount of approximately $722,000,000 as of January 1, 1982. Fees and balances for shared lines of credit are borne by AEP and participating associate companies in proportion to their projected maximum need for such credit facilities.

AEP also has a money market facility with The Fidelity Bank of Philadelphia, Pa., in an aggregate amount of $10,000,000. This money market facility does not represent a formal commitment or engagement by The Fidelity Bank to AEP but represents merely the ability of AEP to request unsecured borrowings, in the form of promissory notes, on a case-by-case basis. Borrowings may be made for periods of up to 180 days after the date of issuance and any such borrowings are prepayable by AEP at any time without premium or penalty. No compensating balances are required. The interest rate which is to be negotiated on a case-by-case basis, will be a designated percent of the bank's average Federal Fund rate. However, the interest rate will be lower than the effective interest rates for the other bank borrowings described above.

Commercial paper will be sold directly by AEP to Lehman Commercial Paper Incorporated, a dealer in commercial paper. The commercial paper will be in the form of promissory notes in denominations of not less than $50,000 nor more than $5,000,000, and of varying maturities, with no maturity more than 270 days after the date of issue. Such notes will not be prepayable prior to maturity and will be sold at a discount rate not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. No commercial paper maturing in more than 90 days will be issued at an effective interest cost higher than bank borrowings of equal principal amount.

The commercial paper dealer will reoffer the commercial paper, at a discount rate of ⅛ of 1% less than the discount rate at which such notes were purchased from AEP, to not more than 200 of the dealer's customers identified and designated in a non-public list prepared by the dealer in advance. No sales of such commercial paper will be made to any customer unless that customer has received up-to-date reports as to the credit position of AEP. It is expected that such customers will hold such commercial paper notes to maturity; but if any such customer wishes to resell such commercial paper prior to maturity, the dealer, pursuant to a verbal repurchase agreement, will repurchase such commercial paper and reoffer it to other customers on its non-public list.

The proceeds from AEP's sale of notes and commercial paper will be invested by AEP in its public utility subsidiaries. Such funds together with the subsidiaries' general funds will be used to pay the subsidiaries' general obligations, including construction costs, to retire outstanding short-term debt and to serve other corporate purposes. The 1982 construction programs of Appalachian, CSOE, I&M, Kentucky, and Ohio are estimated to cost $173,000,000; $96,000,000; $296,000,000; $205,000,000; and $183,000,000, respectively.

AEP will make such equity investments in its subsidiaries by cash capital contributions from time to time subsequent to December 31, 1981 and prior to January 1, 1983. AEP proposes to make capital contributions of up to aggregate amounts of $20,000,000 in Appalachian, $10,000,000 in CSOE, $50,000,000 in I&M, $50,000,000 in Kentucky, and $60,000,000 in Ohio.

AEP seeks an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) for the issuance and sale of commercial paper because it is not practicable to invite competitive bids for commercial paper and current commercial paper rates for prime borrowers are published daily in financial publications.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 28, 1981, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-35504 Filed 12-10-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-18309; File No. SR-Amex 81-22]

American Stock Exchange, Inc.; Proposed Rule Change by Self-Regulatory Organization

In the matter of proposed rule relating to rate increases affecting listing fees and a change in billing date for annual fees. Comments requested on or before January 4, 1982.

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 November 30, 1981, the American 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 American Stock Exchange is proposing to amend Sections 151, 152 and 334 of the Amex Company Guide to revise the Exchange's listing fee schedules, and to change the month in which annual fees are due and payable.

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 changes. 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

(a) *Purpose.* The purpose of revising the listing fee schedule is to reflect and offset the increased costs of providing necessary surveillance and other services to listed companies and to provide the funds necessary to carry out planned programs. Over the past four years since selected rate increases were adopted, the costs associated with maintaining the Exchange's regulatory and oversight programs, listed company liaison and corporate finance areas have risen dramatically due to inflationary factors and to the upgrading of personnel and equipment. These costs are conservatively expected to rise by approximately 9% in the next year.

The change in annual billing date from July to January in each year beginning with 1982 is intended to change the billing year to a calendar year to facilitate financial planning.

Moving the unchanged information with respect to "backdoor" listing fees to the section of the Company Guide dealing with such listings is for clarification and does not represent a change in rule or policy.

(b) *Basis.* The proposed amendments are consistent with Section 6(b) of the Exchange Act in general and further the objectives of Section 6(b)(4) of the Act in particular in that they provide for the equitable allocation of reasonable fees among issuers using the facilities and services of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange has determined that the proposed rule changes will have no impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

On or before January 15, 1982 or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with the respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 January 4, 1982.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 4, 1981.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-35505 Filed 12-10-81; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 12079; 812-5004]

E. F. Hutton Investment Series, Inc.; Filing of Application

December 4, 1981.

Notice is hereby given that E. F. Hutton Investment Series, Inc. ("Applicant") One Battery Park Plaza, New York, New York 10004, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company filed an application on October 29, 1981, and an amendment thereto on November 27, 1981, requesting an order of the Commission pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Sections 2(a)(32), 2(a)(35), 2(a)(41) and 22(c) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to value the assets of its Short Term Investment Fund series pursuant to the amortized cost method of valuation and to permit Applicant to impose a contingent deferred sales charge upon all of its various series. 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.

According to the Application, Applicant was organized as a Maryland corporation on September 29, 1981. Applicant is a series type company consisting of three initial series (the "Funds"): the Short Term Investment Fund; the Growth Fund; and the Bond and Income Fund. Additional series may be established at any time by Applicant's board of directors.

(i) *Amortized Cost Valuation.*

The investment objective of the Short Term Investment Fund ("Fund") is to seek maximum current income consistent with preservation of principal by investing in one or more types of money market instruments. According to its investment policies, the Short Term Investment Fund may invest in the following money market instruments:

(a) U.S. treasury bills and other obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities;

(b) Certificates of deposit and bankers acceptances of (i) domestic banks (including foreign branches thereof), (ii) domestic savings and loan associations, (iii) foreign banks or (iv) domestic branches or agencies of foreign banks. Each such institution (together with its branches or subsidiaries) must have in the aggregate more than $2 billion (or the equivalent in other currencies) in total assets (except that the Fund may purchase all or a portion of a package of certificates of deposit of smaller domestic banks, provided that no obligation of any single bank in such package may exceed the Federal Deposit Insurance Corporation's insurance coverage of such obligation);

(c) Commercial paper issued by U.S. corporations or foreign corporations directly affiliated with U.S. corporations and rated at the date of investment Prime-1 by Moody's Investor Service, Inc. ("Moody's") or A-1 by Standard &

Poor's Corporation ("Standard & Poor's") or, if not rated by Moody's or Standard & Poor's, issued by a corporation having an outstanding debt issue rated Aa or better by Moody's or AA or better by Standard & Poor's. If issued by a foreign corporation, such commercial paper must be U.S. dollar-denominated and not subject at the time of purchase to foreign tax withholding;

(d) Bonds issued by U.S. corporations which at the time of purchase are rated Aa or better by Moody's or AA or better by Standard & Poor's; and

(e) Obligations of the International Bank for Reconstruction and Development (the World Bank).

Notwithstanding the foregoing, Applicant affirms that so long as the portfolio instruments of the Fund are valued pursuant to the amortized cost method of valuation, investments of the Fund will be limited as agreed to in the conditions set forth below.

According to Applicant, subject to certain limitations, the Fund also may enter into repurchase agreements, reverse repurchase agreements and firm commitment agreements with respect to the above securities and may lend its portfolio securities. Applicant states that it is aware of and will comply with present Commission positions and guidelines concerning reverse repurchase agreements. In addition, Applicant states that no more than 10% of the Fund's assets will be invested in illiquid securities, including securities subject to repurchase agreements with maturities in excess of 7 days.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors of the registered investment company. Rule 22c–1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a–4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution, repurchase and redemption shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a–4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things: (1) Rule 2a–4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

According to the Applicant, the investment objectives and policies of the Fund are similar to those generally associated with so-called "money market" funds, in that it seeks maximum current income consistent with preservation of pricnipal and limits its portfolio investments to short-term money market instruments.[1] However, it differs from what are popularly known as money market funds in that it is not designed to provide a short-term vehicle for the temporary "parking" of cash balances at high interest rates. The Fund does not provide for expedited purchases or for redemptions by telephone, wire or draft (although telephone exchanges among the Funds are permitted), and certain redemptions of Fund shares will result in payment of a contingent deferred sales charge. For these reasons, and due to the shareholder's ability to exchange shares among the Funds when investment objectives change or for other reasons, the Fund is expected to attract shareholders with a longer term investment horizon than that of the typical money market fund investor.

These differences notwithstanding, Applicant believes that investors have come to expect that money market-type funds will offer a constant net asset value per share and a relatively smooth stream of investment income, and that potential purchasers of shares of the Fund would seek other investment alternatives if they could not expect that shares of the Fund would maintain a constant net asset value during the life of the investment.[2] Applicant further believes that the amortized cost method of valuing the Fund's portfolio securities could facilitate the maintenance of a constant net asset value per share and offer the Fund's shareholders the convenience of being able to value their investments simply by knowing the number of shares they own. Applicant states that its board of directors has determined in good faith that, absent unusual circumstances, the amortized cost method of valuing portfolio securities represents the fair value of the Fund's money market instruments.

Applicant has agreed that the following conditions may be imposed in any Commission order granting the exemptions requested herein:

1. In supervising the operations of Applicant and the Fund and delegating special responsibilities involving portfolio management to its investment adviser, the board of directors of Applicant undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and the Fund's investment objective, to stabilize the Fund's net asset value per share, computed for the purpose of distribution and redemption, at $1.00 per share.

2. Included within the procedures to be adopted by the board of directors shall be the following:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are resonable in light of current market conditions, to determine the extent of deviation, if any, of the Fund's net asset value per share as determined by using available market quotations from its $1.00 amortized cost price per share, and the maintenance of records of such review. To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the board of directors in the exercise of its discretion to be appropriate indicators of value, which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the board of directors will promptly

[1] In this regard, Applicant acknowledges that the Fund is subject to the disclosure requirements set forth in Item 17 of Form N–1.

[2] A In this regard, Applicant anticipates that the Fund's seven-day yield quottions calculated in the manner prescribed in Item 17 of Form N–1 will be published in financial journal and in the financial section of major newspapers. Like other money market funds, the Fund intends to declare net income dividends on a daily basis.

consider what action, if any, should be initiated.

(c) If the board of directors believes the extent of any deviation from the Fund's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: selling portfolio instruments prior to maturity to realize capital gains or losses or to shorten the Fund's average portfolio maturity; withholding dividends; redeeming shares in kind; or utilizing a net asset value per share as determined by using available market quotations.

3. The Fund will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that it will not (a) purchase any instrument with a remaining maturity of greater than one year (except that securities held subject to repurchase agreements having a term of one year or less from the date of delivery of the repurchase agreement) or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days. If the disposition of a instrument should result in a dollar-weighted average portfolio maturity in excess of 120 days, the Fund's available cash will be invested in such a manner as to reduce such average maturity to 120 days or less as soon as reasonably practicable.

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and Applicant will record, maintain, and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of director's considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be include in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. The Fund's portfolio investments will be limited, including repurchase agreements, to those United States dollar-denominated instruments which the board of directors determines present minimal credit risks, and which are of "high quality." For this purpose, "high quality" instruments shall mean those instruments which are rated by any major rating agency within its two highest rating categories or, in the case of any instrument that is not rated, of comparable quality as determined by the board of directors.

6. The Fund will not invest in variable rate securities, and, with respect to any loans by the Fund of its portfolio securities, will observe the following conditions in addition to those otherwise applicable:

(a) In determining whether the Fund should lend securities to a particular broker, dealer or finanical institution, applicant's investment adviser will consider all relevant facts and circumstances including the credit worthiness of the broker, dealer or institution.

(b) Applicant will not enter into any securities lending agreement involving securities of the Fund having a duration greater than one year.

(c) Any securities with maturities in excess of one year that the Fund may receive as collateral for a particular loan will not become part of the Fund's portfolio either at the time of the loan or in the event the borrower defaults on its obligation to return the loaned securities.

7. Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

(ii) *Contingent Deferred Sales Charge.* According to Applicant, mutal funds similar to those offered by Applicant have traditionally imposed an up-front sales charge. Applicant proposes to eliminate the initial sales charge, and thereby enable purchasers to have the proceeds of their purchase payments fully invested from the time they are made. However, Applicant also proposes to pay to the distributor a contingent deferred sales charge from the proceeds of certain redemptions of shares of the Funds. Applicant states that in no event could the amount of such charges, in the aggregate, ever exceed 5% of the aggregate purchase payments made by the investor.

Applicant represents that the contingent deferred sales charge would be imposed if an investor redeems an amount which causes the value of the investor's account with the Funds to fall below the total dollar amount of purchase payments made by the investor during the past six years. No contingent deferred sales charge is imposed when the investor redeems amounts derived from (1) increases in the value of the account above the total dollar amount of purchase payments during the past six years (either through growth in net asset value per share of the Funds or through reinvestment of dividends and capital gains distributions in additional shares of the Funds) or (2) purchase payments made more than six years prior to the redemption. Were a contingent deferred sales charge is imposed, the amount of the charge will depend on the number of years since the investor made the purchase payment from which an amount is being redeemed, according to the following table:

Year since purchase payment was made	Percentage contingent deferred sales charge (percent)
First	5
Second	4
Third	3
Fourth	2
Fifth	2
Sixth	1
Seventh and following	0

Applicant proposes to impose the contingent deferred sales charge on an investment company-wide basis, with the result that aggregate purchase payments and current account value for purposes of the charge would be determined without regard to the particular fund to which purchase payments were allocated or from which the redemption is made. However, Applicant states that it will calculate the charge that would have been payable if the same formula had been applied to the current value and the aggregate purchase payments (including, for this purpose only, exchanges from other funds as of the date of exchange) of *only* the particular fund from which the shares are being redeemed. If the latter calculation would result in a lower contingent deferred sales charge, the lower charge will be applied.

The amount of the contingent deferred sales charge (if any) would be calcuated by determining the date on which the purchase payment which is the source of the redemption was made, and applying the appropriate percentage to the amount of the redemption subject to the charge. The Application contains the following example illustrating the operation of the proposed contingent deferred sales charge. Assuming that an investor makes a purchase payment of $10,000 and that 18 months later the value of the investor's account has grown through investment performance and reinvestment of distributions to

$12,000, the investor then may redeem up to $2,000 ($12,000 minus $10,000) without incurring a contingent deferred sales charge. If the investor should redeem $3,000, a contigent deferred sales charge would be imposed on $1,000 of the redemption (the amount by which the investor's account was reduced by the redemption below the amount of the initial purchase payment). The charge would be imposed at the rate of 4% because the redemption is made in the second year after the purchase payment, for a total contingent deferred sales charge of $40.00.

Applicant states that in determining whether a contingent deferred sales charge is payable and, if so, the percentage charge applicable, it would be assumed that shares held the longest are the first to be redeemed. There would be no contingent deferred sales charge on exchanges of shares between the Funds.

Applicant believes that imposition of the proposed contingent deferred sales charge is fair and is in the best interests of shareholders. Applicant submits that the proposed transaction permits shareholders to have the advantages of greater investment dollars working for them from the time of their purchases of shares of the Funds. Moreover, Applicant states that the contingent deferred sales charge applies only to redemptions of amounts representing purchase payments during the first six years after the payments; it does not apply to increases in the investor's account through reinvestment of distributions or increases in net asset value per share.

Applicant proposes to finance its own distribution expenses pursuant to a plan adopted under Rule 12b–1 under the Act (the "Distribution Plan"). Under the Distribution Plan an annual fee is paid by each of the Funds to the distributor, E. F. Hutton & Company Inc., as reimbursement for expenses incurred by the distributor in connection with the sale of shares of the Funds. These expenses include promotional costs, sales administration and related sales expenses and sales commissions. Because the majority of the distribution expenses are incurred upon the sale of shares, the Funds' distribution fees are calculated on the basis of 1.0% per annum of aggregate purchase payments (subject to a cap at 1.0% of net assets). Thus, at the present time, the annual distribution fee borne by each of the Funds is equal to 1.0% of the lesser of (i) aggregate gross sales of each Fund's shares (not including reinvestment of dividends or capital gains), less redemptions subject to the contingent deferred sales charge, or (ii) average daily net assets of the Fund.

Where amounts attributable to purchase payments are redeemed (and thus discontinue supporting the annual distribution charge), Applicant believes that it is fair (1) to impose on the withdrawing shareholder a lump sum payment reflecting approximately the amount of distribution expense which has not been recovered through payments by the Funds and (2) to remove the assets on which the contingent deferred sales charge was imposed from the base amount on which the Funds' distribution fees are calculated. Applicant asserts that the amount, computation and timing of the contingent deferred sales charge are designed to promote fair treatment of all shareholders, while permitting Applicant to offer investors the advantage of having purchase payments fully invested on their behalf immediately. Applicant states that, in its review of the Distribution Plan pursuant to Rule 12b–1, Applicant's board of directors will consider the effect of revenues raised by the proposed contingent deferred sales charge.

Applicant submits that the proposed contingent deferred sales charge is consistent with all provisions of the Act and that no exemptive relief is required in order to implement the proposed transaction. However, to avoid any possibility that questions may be raised as to the potential applicability of various definitional and regulatory sections of the Act, Applicant requests an exemptive order of the Commission, to the extent necessary, from the provisions of the Act detailed below. For the reasons stated herein, Applicant believes that such an exemption is in the public interest.

Section 2(a)(32) of the Act defines a "redeemable security" as any security, other than short-term paper, under the terms of which the holder upon its presentation to the issuer or to a person designated by the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

Applicant submits that the imposition of the contingent deferred sales charge in the manner described above would not cause shares of the Funds to fall outside the definition of "redeemable securit(ies)" in Section 2(a)(32) of the Act.

Applicant further believes that imposition of the contingent deferred sales charge will in no way restrict a shareholder from receiving his proportionate share of the current net assets of his fund, but will merely defer the deduction of a sales charge and make it contingent upon an event which may never occur. Although the contingent deferred sales charge is not a redemption charge in the ordinary sense, Applicant submits that the conditions of Section 10(d) of the Act contemplate that an investment company may both be an open-end company (subparagraph (1)) and impose a discount from net asset value on redemption of its shares (subparagraph (4)). However, in order to avoid uncertainty in this regard, Applicant requests an exemption from the operation of Section 2(a)(32) of the Act to the extent necessary to permit implementation of the proposed contingent deferred sales charge.

Section 2(a)(35) of the Act defines "sales load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

Applicant submits that the proposed contingent deferred sales charge is consistent with the intent of the above definition of sales load. The contingent charge is paid to the distributor to reimburse it solely for expenses related to the sale of shares and, therefore, Applicant submits that this arrangement is within the Section 2(a)(35) definition of sales load but for the timing of the imposition of the charge. Applicant contends that the deferral of its sales charge, and its contingency upon the occurrence of an event which may not occur, does not change the basic nature of the charge, which is in every other respect a sales charge. However, Applicant requests an exemption from the provisions of Section 2(a)(35) to the extent necessary to permit the implementation of the proposed charge.

Section 22(c) of the Act empowers the Commission to ". . . make rules and regulations applicable to registered investment companies and to principal underwriters of and dealers in, the redeemable securities of any registered investment company * * *" Rule 22c–1 promulgated under Section 22(c) of the Act, in pertinent part, prohibits a registered investment company issuing a redeemable security from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security. Applicant submits that implementation of the proposed contingent deferred sales charge is in no way violative of Section 22(c) or Rule 22c–1 thereunder.

When a redemption of shares of the Funds is effected, the price of the shares on redemption will be based on their current net asset value. The contingent deferred sales charge will merely be deducted at the time of redemption in arriving at the shareholder's proportionate redemption proceeds. However, in order to avoid any possibility that questions might be raised as to the potential applicability of Section 22(c) and Rule 22c–1, Applicant requests an exemption from the operation of the provisions of Rule 22c–1 to the extent necessary or appropriate to permit Applicant to implement the proposed contingent deferred sales charge.

Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of the rules or regulations 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.

Applicant submits that the exemptions it has requested are appropriate and in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Applicant, therefore, requests that the Commission issue an order under Section 6(c) of the Act granting the exemptions requested.

Notice is further given that any interested person may, not later than December 28, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he 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 Applicant at the address 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 herein will be issued as of course following said date 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 any notices and orders issued 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. 81-35506 Filed 12-10-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12074; 812-5008]

Keystone Custodian Funds, Inc., as Trustee for Keystone Custodian Funds, Series B–1, B–2, B–4, K–1, K–2, S–1, S–3, and S–4; Filing of Application

December 4, 1981.

Notice is hereby given that Keystone Custodian Funds, Inc. ("Keystone"), 99 High Street, Boston, Massachusetts 02104, a Delaware corporation, as trustee of each of eight trusts, namely, Keystone Custodian Funds, Series B–1, B–2, B–4, K–1, K–2, S–1, S–3 and S–4 ("Funds"), each registered under the Investment Company Act of 1940 ("Act") as an open-end investment company, filed an application on November 4, 1981, for an order pursuant to Section 6(c) of the Act. The application seeks to exempt each principal underwriter for each Fund from the provisions of Section 15(b)(1) of the Act, on condition that any contract with a Fund's principal underwriter which otherwise would be subject to Section 15(b)(1) of the Act shall continue in effect for a period of more than two years from its date of execution only so only so long as its continuance is specifically approved at least annually either (a) by the board of directors of Keystone or (b) by vote of a majority of the outstanding voting securities of such Fund. All interested persons are referred to the application on file with the Commission for a statement on the representations contained therein, which are summarized below.

The eight Funds, created in 1935, are unincorporated common law trusts, each existing under a separate but substantially identical trust agreement between Keystone as trustee and the investors in that Fund. Keystone, the trustee of each Fund, is a corporation which, pursuant to the terms of the trust agreements, performs as trustee all of the investment, management and administrative services required by that Fund. The Funds have no employees.

Shares in each of the Funds are offered for sale to the public in accordance with the terms of underwriting contracts between Keystone as trustee and principal underwriters. Currently Keystone Massachusetts Inc., a wholly-owned subsidiary of Keystone, is a principal underwriter for each of the Funds. In addition, Nomura Securities Co., Ltd. a company not affiliated with Keystone, serves as a principal underwriter for the sale of shares of Keystone Custodian Fund, Series S–4 in Japan and to non-United States nationals.

According to the application, all of the outstanding shares of capital stock of Keystone are currently held by The Travelers Corporation ("Travelers") as a result of the merger of a subsidiary of Travelers into Keystone. Keystone represents that no director, officer or employee of Travelers is at present or has been since January 26, 1979, a director of Keystone. Keystone further states that, apart from two of its directors selected by Travelers, as to which no opinion is expressed, no other "affiliated person", as defined in Section 2(a)(3) of the Act, of Travelers is a director of Keystone.

In addition, Keystone believes that its board of directors, if considered as the board of directors of each of the Funds, complies with the requirements of Sections 10(a) and 10(b)(2) of the Act. Keystone undertakes that any vacancy on its board of directors which occurs in connection with compliance with Sections 10(a) and 10(b)(2) of the Act and which must be filled by a person who is not an interested person of Keystone or any principal underwriter or any Fund shall be filled only be a person who has been approved for election by a majority of directors of Keystone who are not such interested persons.

Section 15(b)(1) of the Act makes it unlawful for any principal underwriter of a registered open-end investment company to offer securities of such company except pursuant to a written contract, which contract shall continue in effect for a period of more than two years from the date of its execution only so long as such continuance is specifically approved at least annually by the Board of Directors or by vote of a majority of the outstanding voting securities of such company.

Keystone states that each of the Funds is a common law trust with a

corporate trustee and does not have a board of directors. Therefore, absent an exemption from Section 15(b)(1) of the Act it would be necessary to submit annually the matter of the continuation of underwriting contracts to the shareholders of the Funds. Keystone further states that ordinarily no other matters are submitted for shareholder approval. Keystone represents that the cost of such a submission, which under the trust agreements is borne by Keystone, is large in relation to any interest of the shareholders in the matter. For example, the cost of the most recent submission, when there were approximately 297,500 shareholders in the eight Funds, was $178,362, of which about 58% represented postage at then applicable rates.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditonally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision or provisions of the Act or any rule or regulation 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 purposes fairly intended by the policy and provisions of the Act.

Keystone asserts that it is appropriate to grant the relief requested and thereby to reconcile the requirements of Section 15(b)(1) of the Act with the governance structure of Keystone and the Funds in an efficient, practical and sensible way and to reduce the substantial and unnecessary regulatory burden which otherwise would be imposed upon Keystone if the annual submission of underwriting contracts to shareholders of the Funds is required by the Act.

Keystone undertakes that it will not cause any Fund to enter into, renew, or perform any contract or agreement, written or oral, whereby a person undertakes regularly to serve or act as a principal underwriter for that Fund unless the terms of such contract or agreement and any renewal thereof have been approved by a majority of directors of Keystone, who are not parties to such contract or agreement or interested persons of any such party, cast in person at a meeting called for the purpose of voting on such approval. Keystone acknowledges that it would consider any change in the terms of any such contract or agreement to require such approval pursuant to such undertaking.

Keystone also has agreed, as a condition of the continuing availability of the relief sought in the order requested in this application, that it will not cause any Fund to enter into, renew or continue any contract or agreement whereby a person who is an affiliated person of Keystone within the meaning of Section 2(a)(3) of the Act, or, so long as Keystone is controlled by Travelers, such an affiliated person of Travelers, undertakes regularly to serve or act as a principal underwriter for that Fund, if (a) the contract or agreement is being entered into with a person not theretofore so acting or serving pursuant to a contract or agreement, or (b) the contract or agreement is being entered into as a result of an automatic termination by reason of an assignment of a contract or agreement theretofore in effect, or (c) the contract or agreement is being renewed or continued with a material change in the services to be performed or compensation to be received by the person from those specified in the contract or agreement with that person theretofore in effect, unless, in any such case, the terms of the contract or agreement shall have been approved by vote of a majority of the outstanding voting securities (within the meaning of the Act) of that Fund.

Notice is further given that any interested person may, not later than December 30, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to the controverted, or he may request that he 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 Keystone at the address 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 said date 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 any notices and orders issued 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. 81-35507 Filed 12-10-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18313; SR-MSRB-81-14]

Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

December 7, 1981.

On September 4, 1981, the Municipal Securities Rulemaking Board (the "MSRB") Suite 507, 1150 Connecticut Ave, N.W. Washington, D.C. 20036 filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, copies of a proposed rule change to adopt new MSRB rule G–33, which establishes a standard method for computing accrued interest on municipal securities transactions and sets forth standard formulas for computing dollar price and yield on municipal securities paying interest at maturity, paying interest on a periodic basis, or trading on a discounted basis. Further, in the case of municipal securities which pay interest on a periodic basis, the formulas distinguish between securities for which only the interest payment at maturity remains due and securities for which two or more interest payments are due. Proposed rule G–33 also sets forth standards for the accuracy of calculations and establishes "truncation" as the method for terminating computed numbers. The proposed rule change adopts the "30/360" day count basis for computations prescribed by the rule, except for municipal notes, in which case the day count basis selected by the issuer is to be used.

The proposed rule change would take effect six months following the date of Commission approval. The MSRB stated that this delay is necessary to allow sufficient time for the industry to receive information on, and acquaint itself with, the calculations standards. Additionally, the proposed rule change permits two computation practices commonly used in the industry to continue until January 1, 1984. Rather than using the actual computed results of the formulas prescribed by the proposed rule change, proposed rule G–33 permits, until January 1, 1984, use of the dollar price "100" for transactions effected at a yield price equal to the interest rate of securities with periodic interest

payments, and use of the interpolative method of deriving the dollar price of municipal securities from the yield. One of the reasons for allowing these two computation practices to remain in use until January 1, 1984, the MSRB stated, is to give the industry sufficient time to reprogram existing calculators.

Notice of the proposed rule change together with its terms of substance was given by publication of a Commission Release (Securities Exchange Act Release No. 18105, September 21, 1981) and by publication in the Federal Register (46 FR 47516, September 28, 1981). One comment letter with respect to the proposed rule change was received by the Commission and was made available to the public at the Commission's Public Reference Room. The comment letter supported the proposed rule change.[1]

Although MSRB rules G–12 and G–15 require intra-industry and customer confirmations to include certain information on the yeild and dollar price of a transaction, these rules do not contain any specific formulas for computing yields, dollar prices, or accrued interest amounts. Proposed rule G–33 establishes standard formulas for such calculations. Adoption of standard calculation methods will improve clearance and processing procedures for municipal securities transactions by, among other matters, facilitating the comparison and delivery of securities and ensuring that customers receive precise and consistent information on the yield and dollar price of their municipal securities transactions. Moreover, such standard methods should lessen the likelihood of disagreements between parties to a transaction with respect to interest and dollar price computations.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and, in particular, the requirements of Section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

[1]Letter to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, from Arthur J. Kalita, Executive Director, Public Securities Association (November 4, 1981) (received in the Office of the Secretary, November 10, 1981).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-35509 Filed 12-10-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22296; 70-6513]

New England Energy Inc.; Proposed Investment by Fuel Subsidiary in Existing Oil and Gas Exploration and Development Partnership

December 4, 1981.

New England Energy Incorporated ("NEEI"), 25 Research Drive, Westborough, Massachusetts 01581, a fuel subsidiary of New England Electric System ("NEES"), a registered holding company, has filed with this Commission a post-effective amendment to its application-declaration pursuant to Sections 6(a), 7, 9(a), 10, 12 and 13 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 45(c), 90 and 91 promulgated thereunder.

NEEI is engaged in various activities relating to fuel supply for the NEES system. By order dated December 30, 1980 (HCAR No. 21862) NEEI was authorized to enter into an oil and gas exploration and development partnership agreement ("Partnership Agreement") with Dorchester Exploration, Inc. ("Dorchester") and to invest up to $35 million therein for the calendar year 1981. Through September 30, 1981, NEEI's investment in the Dorchester partnership was $31.5 million, and the partnership has participated in drilling 30 wells, ten of which have been successful providing a total of 55,000 equivalent barrels of proved reserves.

The Partnership Agreement assigns to Dorchester, as managing partner, responsibility for developing, evaluating, and selecting new prospects for exploration. As a matter of practice, NEEI and its consultants are kept informed by Dorchester of this evaluation and selection process. Once a prospect has been identified as appropriate for investment by the partnership, Dorchester undertakes to acquire for the partnership an interest in the leases included in the prospect.

On the basis of Dorchester's projected activities for calendar year 1982, NEEI is seeking Commission authorization of investments in the partnership of up to $30 million for exploration expenses and $15 million for development expenses.

The financing for the proposed investment will consist of (1) additional funds from NEEI's Bank Loan authorized by order dated August 24, 1981 (HCAR No. 22175), borrowings thereunder being $134 million at August 31, 1981 with total borrowings of $180 million anticipated by December 31, 1981, leaving $220 million available through 1984; (2) continued investment by NEES in NEEI through the acquisition of subordinated notes or common stock, with NEES' outstanding investment at $40 million as of September 30, 1981, and with investments of $40 million anticipated at December 31, 1981; (3) additional funds from the receipt of the cash equivalent of reduction in consolidated tax liabilities as a result of the inclusion of NEEI's losses in the consolidated tax returns of the NEES system, it being estimated that NEEI will receive approximately $35 million from other NEES system companies in 1981; and (4) funds from the sale of NEEI production under the terms of the order of July 19, 1978 (HCAR No. 20632), NEEI presently expecting to recover approximately $55 million of its investment in this manner in 1982.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 28, 1981, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-35508 Filed 12-10-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12078; 811-1325]

Tax Exempt Income Fund, Series 1, c/o United States Trust Company of New York; Filing of Application

December 4, 1981.

Notice is hereby given that Tax Exempt Income Fund, Series 1 ("Applicant") 45 Wall Street, New York, New York 10005, registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, filed an application on July 21, 1981, and an amendment thereto on September 8, 1981, for an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an Investment company as defined by the Act. All interested persons are referred to the application of file with the Commission for a statement of the representations contained therein, a summary of which appears below.

Applicant registered under the Act on July 20, 1965. The application states that Applicant's trustee, United States Trust Company of New York ("Trustee"), is liquidating Applicant pursuant to the Trust Agreement governing Applicant ("Trust Agreement"). Applicant asserts that Section 8.01(g) of the Trust Agreement provides that the Trustee may in its discretion liquidate Applicant if its value is less than $2,000,000. The application states that as of January 16, 1981 Applicant had one class of 2,033 units outstanding with a net aggregate value of $1,113,575.75 or $547.75 per unit.

The application states that, pursuant to the Trust Agreement, the Trustee gave notice of termination to all of Applicant's unitholders and requested that they surrender their units for cancellation. The application states further that on June 26, 1981 a second request was mailed to all of Applicant's remaining unitholders requesting that they surrender their units for payment. Applicant's final liquidation price per unit was $473.18. The application states that through August 21, 1981, 1,724 units had been surrendered and distributions of $815,762.32 made to Applicant's unitholders. As of the same date, 27 unitholders held 309 units of Applicant's securities. Applicant represents that the Trust Agreement provides that if within one year after the second notice to Applicant's unitholders, all units have not been surrendered for cancellation, the Trustee or an agent appointed by the Trustee may take whatever steps are necessary and appropriate to contact the remaining unitholders. Until Applicant's outstanding unitholders have been located, their interests shall be preserved in trust by the Trustee.

Section 8(f) of the Act provides, in pertinent part, that when the Commission upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that, upon the effectiveness of such order, the registration of such company will cease to be in effect.

Notice is further given that any interested person may, not later than December 28, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he 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 Applicant at the address 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 said date 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 any notices and orders issued 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. 81-35510 Filed 12-10-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12076; 811-1357]

Tax Exempt Income Fund, Series 2, c/o United States Trust Company of New York; Filing of Application

December 4, 1981.

Notice is hereby given that Tax Exempt Income Fund, Series 2 ("Applicant") 45 Wall Street, New York, New York 10005, registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, filed an application on September 8, 1981, for an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, a summary of which appears below.

Applicant registered under the Act on December 29, 1965. The application states that Applicant's trustee, United States Trust Company of New York ("Trustee"), is liquidating Applicant pursuant to the Trust Agreement governing Applicant ("Trust Agreement"). Applicant asserts that Section 8.01(g) of the Trust Agreement provides that the Trustee may in its discretion liquidate Applicant if its value is less than $2,000,000. The application states that as of April 13, 1981 Applicant had one class of 2,221 units outstanding with a net aggregate value of $973,508.72, or $493.32 per unit.

The application states that pursuant to the Trust Agreement, the Trustee gave notice of termination to all the Applicant's unitholders and requested that they surrender their units for cancellation. The application states further that on June 26, 1981 a second request was mailed to all of Applicant's remaining unitholders requesting that they surrender their units for payment. The application further states that Applicant's final liquidation price per unit was $399.61 and that through August 21, 1981, 1,983 units had been surrendered and distributions of $792,426.63 made to Applicant's unitholders.

The application states that as of the same date, 26 unitholders held 238 units of Applicant's securities. Applicant represents that the Trust Agreement provides that if within one year after the second notice to Applicant's unitholders, all units have not been surrendered for cancellation, the Trustee or an agent appointed by the Trustee may take whatever steps are necessary and appropriate to contact the remaining unitholders. Until Applicant's outstanding unitholders have been located, their interests shall be preserved in trust by the Trustee.

Section 8(f) of the Act provides, in pertinent part, that when the Commission upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that, upon the effectiveness of such order, the registration of such company will cease to be in effect.

Notice is further given that any interested person may, not later than December 28, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application

accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he 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 Applicant at the address 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 said date 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 any notices and orders issued 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. 81-35511 Filed 12-10-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12075; 811-1481]

Tax Exempt Income Fund, Series 3, c/o United States Trust Company of New York; Filing of Application

December 4, 1981.

Notice is hereby given that Tax Exempt Income Fund, Series 3 ("Applicant") 45 Wall Street, New York, New York 10005, registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, filed an application on September 8, 1981, for an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, a summary of which appears below.

Applicant registered under the Act on March 16, 1967. The application states that Applicant's trustee, United States Trust Company of New York ("Trustee"), is liquidating Applicant pursuant to the Trust Agreement governing Applicant ("Trust Agreement"). Applicant asserts that Section 8.01(g) of the Trust Agreement provides that the Trustee may in its discretion liquidate Applicant if its value is less than $2,000,000. The application states that as of April 13, 1981 Applicant had one class of 2,124 units outstanding with a net aggregate value of $1,059,833.52, or $498.98 per unit.

The application states that pursuant to the Trust Agreement, the Trustee gave notice of termination to all the Applicant's unitholders and requested that they surrender their units for cancellation. The application states further that on June 26, 1981 a second request was mailed to all of Applicant's remaining unitholders requesting that they surrender their units for payment.

The application further states that Applicant's final liquidation price per unit was $489.90 and that through August 21, 1981, 1,943 units had been surrended and distributions of $951,875.70 made to Applicant's unitholders. The application states that as of the same date, 16 unitholders held 181 units of Applicant's securities. Applicant represents that the Trust Agreement provides that if within one year after the second notice to Applicant's unitholders, all units have not been surrendered for cancellation, the Trustee or an agent appointed by the Trustee may take whatever steps are necessary and appropriate to contact the remaining unitholders. Until Applicant's outstanding unitholders have been located, their interests shall be preserved in trust by the Trustee.

Section 8(f) of the Act provides, in pertinent part, that when the Commission upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that, upon the effectiveness of such order, the registration of such company will cease to be in effect.

Notice is further given that any interested person may, not later than December 28, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he 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 Applicant at the address 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 said date 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 any notices and orders issued 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. 81-35512 Filed 12-10-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12077; 811-1594]

Tax Exempt Income Fund, Series 4, c/o United States Trust Company of New York; Filing of Application

December 4, 1981.

Notice is hereby given that Tax Exempt Income Fund, Series 4 ("Applicant") 45 Wall Street, New York, New York 10005, registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, filed an application on September 8, 1981, for an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, a summary of which appears below.

Applicant registered under the Act on January 31, 1968. The application states that Applicant's trustee, United States Trust Company of New York ("Trustee"), is liquidating Applicant pursuant to the Trust Agreement governing Applicant ("Trust Agreement"). Applicant asserts that Section 8.01(g) of the Trust Agreement provides that the Trustee may in its discretion liquidate Applicant if its value is less than $2,000,000. The application states that as of April 13, 1981 Applicant had one class of 2,270 units outstanding with a net aggregate value of $1,214,064.10, or $534.83 per unit.

The application states that, pursuant to the Trust Agreement, the Trustee gave notice of termination to all of Applicant's unitholders and requested that they surrender their units for

cancellation. The application states further that on June 26, 1981 a second request was mailed to all of Applicant's remaining unitholders requesting that they surrender their units for payment. The application further states that Applicant's final liquidation price per unit was $542.19 and that through August 21, 1981, 1,832 units had been surrendered and distributions of $993,292.08 made to Applicant's unitholders. The application states that as of the date of its filing, 31 unitholders held 438 units of Applicant's securities. Applicant represents that the Trust Agreement provides that if within one year after the second notice to Applicant's unitholders, all units have not been surrendered for cancellation, the Trustee or an agent appointed by the Trustee may take whatever steps are necessary and appropriate to contact the remaining unitholders. Until Applicant's outstanding unitholders have been located, their interests shall be preserved in trust by the Trustee.

Section 8(f) of the Act provides, in pertinent part, that when the Commission upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that, upon the effectiveness of such order, the registration of such company will cease to be in effect.

Notice is further given that any interested person may, not later than December 28, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he 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 Applicant at the address 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 said date 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 any notices and orders issued 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. 81–35513 Filed 12–10–81; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 787]

Restriction on the Use of United States Passports for Travel to, in, or Through Libya

Pursuant to the authority of Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.72(a)(3), the use of United States passports for travel to, in, or through Libya is hereby restricted.

This action is required by the unsettled relations between the United States and the Government of Libya, and the increased threat of hostile acts against Americans. Travel to or residence in Libya by American citizens is hazardous, because of the continued anti-American stance and hostile actions of the Libyan Government. The Government of Libya has repeatedly demonstrated a willingness to direct hostile acts against United States nationals. The American Embassy in Tripoli remains closed and the United States Government is not in a position to provide diplomatic protection or consular assistance to Americans in Libya. Under the circumstances, there is an imminent danger to the physical safety of Americans traveling to or present in Libya.

Accordingly, United States passports shall cease to be valid for travel to, in, or through Libya unless specifically validated for such travel under the authority of the Secretary of State.

This Public Notice shall be effective upon publication in the **Federal Register** (December 11, 1981) and shall expire at the end of one year unless extended or sooner revoked by Public Notice.

Dated: December 9, 1981.

William P. Clark,

Acting Secretary of State.

[FR Doc. 81–35786 Filed 12–10–81; 12:30 pm]

BILLING CODE 4710–08–M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 238
Friday, December 11, 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
Depository Institutions Deregulation Committee	1
Federal Energy Regulatory Commission	2
Federal Trade Commission	3
National Railroad Passenger Corporation	4
Neighborhood Reinvestment Corporation	5
Nuclear Regulatory Commission	6, 7, 8
Occupational Safety and Health Review Commission	9

1

DEPOSITORY INSTITUTIONS DEREGULATION COMMITTEE

TIME AND DATE: 3 p.m., December 16, 1981.

PLACE: Cash Room, Department of the Treasury (use Pennsylvania Avenue entrance), Pennsylvania Avenue between 15th Street and East Executive Avenue, Washington, D.C. 20220.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Consideration of a plan to deregulate interest rate limitations on time deposits.
2. Consideration of short-term deposit instrument proposals.
3. Consideration of the interest rate ceiling for savings deposits.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the DIDC offices at the Department of the Treasury, and copies may be purchased for $5.00 per cassette by calling (202) 566–5152 or by writing to: Depository Institutions Deregulation Committee, Department of the Treasury, Room 1054 MT, Washington, D.C. 20220.

For further information about the DIDC and the December 16 meeting, please call (202) 566–3734.

Steven L. Skancke,
Executive Secretary of the Committee.

[S-1854-81 Filed 12-9-81; 3:03 pm]

BILLING CODE 4810-25-M

2

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46 FR 59691, December 7, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., December 9, 1981.

CHANGE IN THE MEETING: The following items have been added:

Item No., Docket No., and Company

P-2: (A) Project No. 3842, East Columbia Basin Irrigation District, Quincy-Columbia Basin Irrigation District, and South Columbia Basin Irrigation District
P-2: (B) Project No. 3843, East Columbia Basin Irrigation District, Quincy-Columbia Basin Irrigation District, and South Columbia Basin Irrigation District
CP-9: CP81-349-000, Northern Natural Gas Company, Division of InterNorth, Inc.

Kenneth F. Plumb,
Secretary.

[S-1856-81 Filed 12-9-81; 3:16 pm]

BILLING CODE 6717-01-M

3

FEDERAL TRADE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: FR 46 56695, November 18, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2 a.m., Monday, November 23, 1981.

CHANGES IN THE AGENDA: Due to a hiatus in appropriations the Federal Trade Commission cancelled its Oral Argument scheduled for November 23, 1981. The argument has been rescheduled for Monday, December 14, 1981, at 2:00 p.m., in room 532.

[S-1855-81 Filed 12-9-81; 3:04 pm]

BILLING CODE 6750-01-M

4

NATIONAL RAILROAD PASSENGER CORPORATION

Amendment to Notice of Meeting

In accordance with Rule 4(d) of Appendix A of the Bylaws of the National Railroad Passenger Corporation, notice is given that the Board of Directors, at its meeting on December 9, 1981, voted to amend its agenda to adopt a resolution relating to the Washington Terminal Company land exchange.

Board members Boyd, Lamphier, Langdon, Mills, Neel, Quinn, Knouse, Trent, Swinburn, Teele, and Robert W. Blanchette, representing Drew Lewis, by unanimous recorded vote, affirmed that no earlier announcement of the change was possible and directed the issuance of this notice at the earliest practicable time.

The agenda was amended to add the following item:

9b. Resolution—Washington Terminal Company Land Exchange.

Inquiries regarding the agenda for the December 9, 1981, Board meeting should be directed to the Corporate Secretary at (202) 383–3754.

Dated: December 9, 1981.

Sandra Spence,
Corporate Secretary.

[S-1853-81 Filed 12-9-81; 3:03 pm]

5

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular meeting of the board

TIME AND DATE: 3:30 p.m., December 15, 1981.

PLACE: Board Room, sixth floor, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Timothy McCarthy, Associate Director, Communications, 202–377–6815.

AGENDA:

I. Call to Order and Remarks of the Chairman.
II. Approval of Minutes, August 31, 1981.
III. Election of Vice Chairman.
IV. Election of Officer.
V. Executive Director's Report.
VI. Treasurer's Report.

No. 20, December 8, 1981.

Donnie L. Bryant,
Secretary.

[S-1851-81 Filed 12-8-81; 4:43 pm]

6

NUCLEAR REGULATORY COMMISSION

DATE: Week of December 7, 1981 (revised).

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open/closed.

MATTERS TO BE CONSIDERED: *Tuesday, December 8:*

2:00 p.m.:
1. Discussion of Policy and Planning Guidance (public meeting) (rescheduled from December 9)

Wednesday, December 9:

10:00 a.m.:
1. Discussion of Scheduling Matters Regarding TMI–1 Restart (closed—Exemption 10) (as announced)

2:00 p.m.:
1. Discussion of Clinch River Breeder Reactor (approximately 1½ hours) (public meeting) (rescheduled from December 8)
2. Discussion of DOE Petition on Clinch River Breeder Reactor (Approximately 1 hour) (public meeting) (additional item)

Thursday, December 10:

9:30 a.m.:
1. Discussion of Management-Organization and Internal Personnel Matters (approximately 1 hour) (closed—Exemptions 2, 6) (time changed)

(10:30 a.m.):
2. Discussion of Congressional Testimony (closed—Exemption 9) (additional item)

2:30 p.m.:
Affirmation/Discussion Session (approximately 30 minutes) (public meeting) (items revised)
Affirmation and/or Discussion and Vote:
a. Proposed Amendment to 10 CFR 50.54(r)—Modification of Requirements for Submittal of Emergency Plans by Research and Test Reactor Licensees
b. Final Amendments to 10 CFR Parts 71 and 73 for Advance Notification to Governors of Transportation of Nuclear Waste Including Spent Fuel
c. Final Rule on Intransit Physical Protection of Special Nuclear Material of Moderate Strategic Significance
d. Review of Director's Decision on 2.206 Petition (Florida Power and Light Company)

(3:30 p.m.):
Discussion of FY 83 Budget (closed subject to Court Approval—Exemptions 2, 6, 9, 10) (additional item)

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,
Secretary.

[S–1858–81 Filed 12–9–81; 3:59 pm]
BILLING CODE 7590–01–M

7

NUCLEAR REGULATORY COMMISSION

DATE: Friday, December 11, 1981 (additional item).

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open.

MATTER TO BE CONSIDERED: Friday, December 11:

10:30 a.m.:
Oral Presentations on Clinch River Breeder Reactor (approximately 1 hour) (public meeting)

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.

[S–1859–81 Filed 12–9–81; 3:59 pm]
BILLING CODE 7590–01–M

8

NUCLEAR REGULATORY COMMISSION

DATE: Week of December 14, 1981.

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open/closed.

MATTERS TO BE CONSIDERED: *Tuesday, December 15:*

2:00 p.m.:
Discussion of Export Licensing Policy (closed meeting)

Wednesday, December 16:

2:00 p.m.:
Discussion of Policy and Planning Guidance (public meeting)

Thursday, December 17:

3:00 p.m.:
Affirmation/Discussion Session (public meeting)
a. Revised General Statement of Policy and Procedure for Enforcement Actions
b. Proposed Rulemaking, "Environmental Qualification of Electric Equipment for Nuclear Power Plants"
c. Export and Import of Nuclear Equipment and Material: Proposed Amendments to NRC's Regulations
d. Suggested Time Periods for Issuance of Initial Decisions

ADDITIONAL INFORMATION: Affirmations of Amendments to 10 CFR Chapter I Parts 19, 30, 40, 50, 60, 70, 72 and 150 With Respect to Employees Who Provide Information; Proposed Amendment to 10 CFR Part 50, Appendix E, Frequency of Emergency Preparedness Exercises; and Final Rule for Pending CP/ML Applications, scheduled for December 4, were 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.

[S–1857–81 Filed 12–9–81; 3:49 pm]
BILLING CODE 7590–01–M

9

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m. on December 21, 1981.

PLACE: Room 1101, 1825 K Street, N.W., Washington, D.C.

STATUS: Open meeting.

MATTERS TO BE CONSIDERED: A discussion of the Simplified Proceedings—Evaluating the experiment.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Patricia Bausell (202) 634–4015.

Dated: December 9, 1981.

[S–1852–81 Filed 12–9–81; 11:02 am]
BILLING CODE 7600–01–M

federal register

Friday
December 11, 1981

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Arizona: AZ81-5142	Aug. 14, 1981.
Kansas: KS81-4053	Oct. 2, 1981.
Colorado: CO81-5145	Sept. 4, 1981.
CO81-5146	Sept. 4, 1981.
CO81-5147	Sept. 4, 1981.
CO81-5148	Sept. 4, 1981.
Hawaii: HI81-5153	Sept. 25, 1981.
Iowa: IA81-4088	Nov. 13, 1981.
IA81-4089	Nov. 13, 1981.
IA81-4091	Nov. 13, 1981.
IA81-4094	Nov. 27, 1981.
IA81-4097	Nov. 27, 1981.
IA81-4098	Nov. 27, 1981.
Maryland: MD80-3047	Aug. 29, 1980.
MD81-3031	May 15, 1981.
Michigan: MI81-2030	June 26, 1981.
New Hampshire: NH81-3086	Nov. 13, 1981.
New Jersey: NJ81-3053	Oct. 9, 1981.
New York: NY81-3018	March 27, 1981.
North Carolina: NC81-1148	Dec. 30, 1980.
Ohio: OH81-2039	July 5, 1981.
OH81-2040	July 5, 1981.
Tennessee: TN79-1146	Nov. 16, 1981.
TN81-1202	May 1, 1981.
TN81-1203	May 1, 1981.
TN81-1204	May 8, 1981.
Vermont: VT81-3079	Oct. 30, 1981.

Supersedeas Decisions To General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Iowa: IA80-4044 (IA81-4090)	Aug. 8, 1980.
IA81-4010 (IA81-4101)	Feb. 6, 1981.
Minnesota: MN79-2056 (MN81-2065)	June 15, 1979.

Signed at Washington, D.C., this 4th day of December 1981.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

DECISION NO. AZ81-5142 - Mod. #4
(46 FR 41299-August 14, 1981)
Statewide, Arizona

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Marble Workers:					
Area 1	$13.71	.90	$1.10		.19
Terrazzo Workers; Tile Setters:					
Area 1	13.71	.90	1.10		.19
ADD:					
Plumbers:					
Zone 4	19.35	1.25	2.50		.08
Hoover Dam only					

DECISION No. KS81-4053 - MOD. #1
(46 FR 48847 - October 2, 1981)
Leavenworth County, Kansas

CHANGE:					
ASBESTOS WORKERS	$16.69	1.05	1.75		.06
CEMENT MASONS	13.925	.80	.85		
ELECTRICIANS:					
Zone 1: Delaware, Kickapoo, High Prairie and Leavenworth Townships	16.18	.69	3%+1.00	7%	.12
Zone 2: Remainder of County	15.55	1.00	3%+ .80		.13
GLAZIERS	13.53	.90	1.34	17.14%	.05
IRONWORKERS	14.00	.85	1.80	1.00	.10
SHEET METAL WORKERS	14.17	.75	1.44		.17

DECISION NO. CO81-5145 - Mod. #4
(46 FR 44602-September 4, 1981)
Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Eagle, Elbert, Gilpin, Grand, Jefferson, Lake, Larimer, Morgan, Park, Summit, and Weld Counties, Colorado

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers; Stonemasons					
Eagle County	$14.49	.85	$1.10		.06
Plumbers; Steamfitters:					
Boulder County	15.15	1.00	1.50	1.00	.15
Remaining Counties (including northern portions of Douglas, Elbert, and Park Counties)	15.22	1.00	1.50	1.00	.08
Roofers:					
Eagle County and southern portions of Lake, Jefferson, Park, Douglas, and Elbert Counties	12.36	.84	.40		

DECISION NO. CO81-5146 - Mod. #3
(46 FR 44607-September 4, 1981)
El Paso County, Colorado

Change:					
Electricians	15.90	1.00	3%+1.00		.015
Roofers	12.36	.84	.40		

DECISION NO. CO81-5147 - Mod. #3
(46 FR 44611-September 4, 1981)
Delta, Garfield, Gunnison, Mesa, Montrose, and Pitkin Counties, Colorado

Change:					
Boilermakers	14.97	1.375	1.15		.05
Bricklayers; Stonemasons:					
Pitkin County	14.49	.85	1.10		.06

DECISION NO. CO8-15147 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Remaining Counties	$12.90	.85	$1.10		.05
Lathers:					
Delta, Gunnison, and Montrose Counties	12.64				
DECISION NO. CO81-5148 - Mod. #3					
(46 FR 44616-September 4, 1981)					
Las Animas, Otero, and Pueblo Counties, Colorado					
Change:					
Electricians:					
Contract over $100,000.00:					
Electricians;					
Technicians	15.94	1.00	3%+1.00		1½%
Cable Splicers	17.53	1.00	3%+1.00		1½%
Contract under $100,000.00:					
Electricians;					
Technicians	12.00	1.00	3%+.80		1½%
Roofers	12.36	.84	.40		
DECISION NO. HI81-5153 - Mod #3					
(46 FR 47394 - Sept. 25, 1981)					
Statewide Hawaii					
CHANGE:					
SHEET METAL WORKERS	$13.50	1.96	3.01	1.22	.44

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. IA81-4088 - MOD. #1					
(46 FR 56121 - November 13, 1981)					
Black Hawk County, Iowa					
CHANGE:					
Building, Water Treatment Plants & Sewage Disposal Plants Construction:					
Electricians:					
Electricians	$15.64	.65	3%		3/4%
Cable splicers	16.11	.65	3%		3/4%
DECISION NO. IA81-4089 - MOD. #2					
(46 FR 56122 - November 13 1981)					
Clinton County, Iowa					
CHANGE:					
Building, Water Treatment Plants & Sewage Disposal Plants Construction:					
Carpenters - Millwrights	16.65	.75	1.45		.25
Sheet metal workers	14.45	.75	1.72		.14
DECISION NO. IA81-4091 - MOD. #1					
(46 FR 56123 - November 13, 1981)					
Dubuque County, Iowa					
CHANGE:					
Building, Water Treatment Plants & Sewage Disposal Plants Construction:					
Electricians	14.85	.75	3%+.50		3/4%
Sheet metal workers	14.45	.75	1.72		.14
DECISION NO. IA81-4094 - MOD. #1					
(46 FR 58019 - November 27, 1981)					
Polk County, Iowa					
CHANGE:					
Building, Water Treatment Plants & Sewage Disposal Plants Construction:					
Electricians	15.18	.75	3%+1.60		3/4%
Glaziers	13.64	.75	.55	4.35%+c	.01

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. IA81-4097 - MOD. #1 (46 FR 58016 - November 27, 1981) Cerro Gordo County, Iowa					
CHANGE: Building, Water Treatment Plants & Sewage Disposal Plants Construction: Electricians	$15.26	.65	3%		3/4%
DECISION NO. IA81-4098 - MOD. #1 (46 FR 58021 - November 27, 1981) Scott County, Iowa					
CHANGE: Sheet metal workers	14.45	.75	1.72		.14

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. MD80-3047 - MOD. #3 (45 FR 57922 - August 29, 1980) ALLEGANY AND GARRETT COUNTIES, MARYLAND					
CHANGE:					
BRICKLAYERS	13.54	.80	1.00		
CARPENTERS	12.71	.80	1.15		.04
CEMENT MASONS	14.50	.75			
ELECTRICIANS - Allegany County	14.20	.90	3%+.80		.75%
ELECTRICIANS - Garrett County	14.60	.90	3%+.80		.75%
IRONWORKERS: Structural & Reinforcing	14.03	.80	1.70		
LABORERS: Unskilled, landscape workers, tool checkers, dumpmen, handymen, & truck spotters	10.45	1.00	1.70		
Power tool operators, masons & plasterers tenders, mortar mixer by hand, scaffold builders, hod carriers, concrete puddlers, pipe layers, chainmen-rodmen, rammers & grade checkers	10.61	1.00	1.70		
Mortar mixer by machine	10.70	1.00	1.70		
Barco tampers	10.78	1.00	1.70		
Blaster/dynamite & wagon drill operator (air track)	10.83	1.00	1.70		
Tunnel workers: Caisson, driller & mucker	11.47	1.00	1.70		
Labor - unskilled	11.03	1.00	1.70		
PILEDRIVERMEN	13.06	.80	1.15		.04
TRUCK DRIVERS					
Group 1	10.80	1.10	1.35		
Group 2	10.99	1.10	1.35		
Group 3	11.24	1.10	1.35		
Group 4	11.48	1.10	1.35		
Group 5	11.77	1.10	1.35		

Modification Page 7

DECISION NO. MD81-3031 - MOD. #2 (46 FR 27051 - May 15, 1981) ALLEGANY AND GARRETT COUNTIES, MARYLAND	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BOILERMAKERS	16.025	1.275	1.25		.04
BRICKLAYERS, MARBLE MASONS, STONE MASONS, TERRAZZO WORKERS, AND TILE SETTERS	13.54	.80	1.00		
CARPENTERS	12.84	.80	1.15		.04
CEMENT MASONS AND PLASTERERS	14.80	.75			
ELECTRICIANS:					
Allegany County	14.20	.90	3%+.80		.75%
Garrett County	14.60	.90	3%+.80		.75%
IRONWORKERS:					
Structural, Ornamental, & Reinforcing	14.03	.80	1.70		
LINEMEN-Allegany and Garrett (east of Rte. 219) Counties					
Linemen	14.20	.90	3%+.80		.75%
Equipment Operator	13.49	.90	3%+.80		.75%
Truck Driver	9.23	.90	3%+.80		.75%
Groundmen	9.23	.90	3%+.80		.75%
LINEMEN-Garrett County (west of Rte. 219)					
Linemen	14.60	.90	3%+.80		.75%
Equipment Operator	13.89	.90	3%+.80		.75%
Truck Driver	9.63	.90	3%+.80		.75%
Groundmen	9.63	.90	3%+.80		.75%
MILLWRIGHTS	13.28	.80	1.15		.04
PILEDRIVERMEN	13.22	.80	1.15		.04
ROOFERS:					
Composition	12.35	.75	.40		
Mopmen-composition	12.60	.75	.40		
Slaters	12.55	.75	.40		
SHEET METAL WORKERS	15.24		.36		.12

Modification Page 8

DECISION NO. MD81-3031 - (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Group I	10.61	1.00	1.70		
Group II	10.64	1.00	1.70		
Group III	10.78	1.00	1.70		
Group IV	10.85	1.00	1.70		
Group V	10.92	1.00	1.70		
Group VI	11.03	1.00	1.70		
Group VII	11.63	1.00	1.70		
Group VIII	11.16	1.00	1.70		
Group IX	11.16	1.00	1.70		
TRUCK DRIVERS:					
Group I	10.96	1.10	1.35		
Group II	11.14	1.10	1.35		
Group III	11.39	1.10	1.35		
Group IV	11.62	1.10	1.35		
Group V	11.91	1.10	1.35		
DECISION #MI81-2030 - Mod. #1 (46 FR 33193 - June 26, 1981) Kent County, Michigan					
CHANGE:					
Electricians	$11.00	.85	3% + .35		.01

DECISION NO. NH81-3086 - MOD. #1 (46 FR 56126 - November 13, 1981) HILLSBOROUGH & MERRIMACK COUNTIES, NEW HAMPSHIRE	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
CARPENTERS & SOFT FLOOR LAYERS (MERRIMACK CO.)	11.36	.65	.85		.03
MILLWRIGHTS & PILEDRIVERS	12.21	.65	.85		.03
ELECTRICIANS (MERRIMACK CO.)					
Hookset	13.85	.80	3%		.03
Remainder of County:					
Gen. Contracts $500,000 & Over	14.47	1.15	3%+.50		.02
Gen. Contracts Less Than $500,000 Or Electrical Contract of $50,000 Or Less	9.94	1.15	3%+.50		.02
ELECTRICIANS (HILLSBROUGH CO.):					
Remainder of County	13.85	.80	3%		.03
LABORERS					
BUILDING CONSTRUCTION					
Laborers	9.11	.90	1.20		.15
Plasterers' Tenders	9.30	.90	1.20		.15
Pipelayers, Fence & Guard Rail Erectors	9.44	.90	1.20		.15
Pneumatic Tool Ops., Pavement Breakers, Drillers, Chipping Gun Op., Creosote Work, Powdermen & Blasters	9.77	.90	1.20		.15
Pneumatic Tool Ops. on Boiler and Stack Work	10.29	.90	1.20		.15
SHEET METAL WORKERS	12.52	.85	3%+.85		.07

DECISION NO. NJ81-3053 - MOD #2 (46 FR 50243 - October 9, 1981) BERGEN, ESSEX, HUDSON, HUNTERDON, MIDDLESEX, MORRIS, PASSAIC, SOMERSET, SUSSEX, UNION AND WARREN COUNTIES, NEW JERSEY	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ASBESTOS WORKERS:					
ZONE 1	16.02	1.00	1.60		.06
BRICKLAYERS, STONE MASONS, CEMENT MASONS & PLASTERERS:					
ZONE 4					
Bricklayers & Stone Masons	13.66	.87	.75		
ZONE 9	14.08	.75	1.10		.04
CARPENTERS, INSULATORS & MILLWRIGHTS:					
ZONE 1	13.60	1.43	1.89		.06
ZONE 4					
Carpenters & Insulators	14.75	8%	7%		½%
Millwrights	15.25	8%	7%		½%
IRONWORKERS-STRUCTURAL, REINFORCING & ORNAMENTAL:					
Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset Sussex and Union Counties	15.35	1.15	2.85	1.15	.11
LABORERS, BUILDING CONSTRUCTION:					
ZONE 1	10.05	.85	.85		.10
LABORERS:					
ZONE 2	9.55	1.20	1.00		.10
ZONE 5	9.90	.85	1.00		.10

Modification Page 11

DECISION NO. NJ81-3053 - (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLESETTERS, TERRAZZO WORKERS & TILESETTERS:					
ZONE 2					
Marble Setters	10.25	1.21	1.71	f	
PLUMBERS:					
ZONE 1	15.78	1.00	2.65		.25
ZONE 3	16.48	1.04	1.80		.11
SHEET METAL WORKERS:					
Middlesex County	14.09	7%	13%+.12		.09
Warren County	13.51	3%+1.20	1.18		.23
Morris, Somerset, Sussex and Union Counties	14.61	1.20	2.10		.15
Hunterdon County	13.86	3%+2.05	1.32		.04
ADD:					
ELECTRICIANS:					
Rail-Road Construction: Bergen & Hudson Cos.	17.00	7%	9%+.58		.75%
Commerical Telephone Installation: Bergen & Hudson Cos.	17.00	9%	9%+.58		5/10%

Modification Page 12

DECISION NO. NY81-3018 - Mod. #3
(46 FR 19174 - March 27, 1981)
Albany, Rensselaer, Saratoga & Schenectady Counties, New York

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
SCHEDULE #1					
ALBANY COUNTY, NEW YORK					
ASBESTOS WORKERS	14.60	1.07	.66		.02
BOILERMAKERS	16.53	1.275	1.653		.04
CARPENTERS (3)					
CLASS A	13.18	.70	1.00		.02
CLASS B	13.68	.70	1.00		.02
CLASS E	9.46	.70	1.00		.02
CEMENT MASONS (Heavy & Highway)	11.15	.80	1.40		
ELECTRICIANS(4)					
ZONE I	14.20	.85	3%+1.45		.03
ZONE II	14.85	.90	3%+ .60		.05
ELEVATOR CONSTRUCTORS	13.25	1.345	1.085	d+c	.035
ELEVATOR CONSTRUCTORS HELPERS	9.275	1.345	1.085	d+c	.035
ELEVATOR CONSTRUCTORS HELPERS PROBATIONARY	6.625				
IRONWORKERS (5)					
CLASS A	12.85	.75	1.81		.08
CLASS B	13.10	.75	1.81		.08
CLASS C	12.975	.75	1.81		.08
MARBLE (9)	11.95	.80	1.40		
PAINTERS (10)	13.07		1.00		.02
SHEET METAL WORKERS	13.86	3%+1.07	1.04	h	.07
SPRINKLER FITTERS	15.55	.95	1.40		.08
LABORERS, (Building) (6)					
ZONE I					
CLASS A					
GROUP 1	10.98	1.10	1.30		.17
GROUP 2	11.13	1.10	1.30		.17
GROUP 3	11.155	1.10	1.30		.17
GROUP 4	11.205	1.10	1.30		.17
GROUP 5	11.255	1.10	1.30		.17
GROUP 6	11.23	1.10	1.30		.17
GROUP 7	11.455	1.10	1.30		.17
CLASS B	7.59	1.10	1.30		.17

DECISION NO. NY81-3018 - Mod. #3 CONT'D

SCHEDULE #1 ALBANY COUNTY, NEW YORK	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS, (Building) Cont'd					
ZONE II					
CLASS A					
GROUP 1	11.20	.90	1.30		.12
GROUP 2	11.35	.90	1.30		.12
GROUP 3	11.375	.90	1.30		.12
GROUP 4	11.425	.90	1.30		.12
GROUP 5	11.475	.90	1.30		.12
GROUP 6	11.45	.90	1.30		.12
GROUP 7	11.675	.90	1.30		.12
LINE CONSTRUCTION (8)					
CLASS A					
GROUP 1	12.00	1.40	3%+1.00	f	
GROUP 2	16.00	1.40	3%+1.00	f	
GROUP 3	10.80	1.40	3%+1.00	f	
GROUP 4	9.60	1.40	3%+1.00	f	
GROUP 5	10.20	1.40	3%+1.00	f	
GROUP 6	9.00	1.40	3%+1.00	f	
CLASS B					
GROUP 1	13.80	1.40	3%+1.00	f	
GROUP 3	12.42	1.40	3%+1.00	f	
GROUP 4	11.04	1.40	3%+1.00	f	
GROUP 5	11.73	1.40	3%+1.00	f	
GROUP 6	10.35	1.40	3%+1.00	f	
CLASS C					
GROUP 1	14.55	1.40	3%+1.00	f	
GROUP 2	16.005	1.40	3%+1.00	f	
GROUP 3	13.095	1.40	3%+1.00	f	
GROUP 4	11.64	1.40	3%+1.00	f	
GROUP 5	12.36	1.40	3%+1.00	f	
GROUP 6	10.91	1.40	3%+1.00	f	
CLASS D					
GROUP 7	11.64	1.40	3%+1.00	f	
GROUP 8	12.36	1.40	3%+1.00	f	
GROUP 2	16.005	1.40	3%+1.00	f	
GROUP 9	14.55	1.40	3%+1.00	f	
GROUP 5	12.36	1.40	3%+1.00	f	
GROUP 10	11.64	1.40	3%+1.00	f	
GROUP 11	10.91	1.40	3%+1.00	f	

DECISION NO. NY81-3018 - Mod. #3 CONT'D

SCHEDULE #1 ALBANY COUNTY, NEW YORK	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS (12) (Building)					
CLASS A					
GROUP 1	12.82	1.15	1.25	g	.15
GROUP 2	12.91	1.15	1.25	g	.15
GROUP 3	13.08	1.15	1.25	g	.15
GROUP 4	13.35	1.15	1.25	g	.15
GROUP 5	13.80	1.15	1.25	g	.15
GROUP 6	14.02	1.15	1.25	g	.15
GROUP 7	14.31	1.15	1.25	g	.15
SCHEDULE #2 RENSSELAER COUNTY, NEW YORK					
ASBESTOS WORKERS	14.60	1.07	.66		.02
BOILERMAKERS	16.53	1.275	1.653		.04
CARPENTERS (2)					
CLASS A	13.18	.70	1.00		.02
CLASS B	13.68	.70	1.00		.02
CLASS D	9.46	.70	1.00		.02
CEMENT MASONS (Heavy & Highway)	11.15	.80	1.40		
ELECTRICIANS (3)					
ZONE I	14.85	.90	3%+ .60		.05
ZONE II	14.50	.95	3%+ .95		.05
ELEVATOR CONSTRUCTORS	13.25	1.345	1.085	d+c	.035
ELEVATOR CONSTRUCTORS HELPER	9.275	1.345	1.085	d+c	.035
ELEVATOR CONSTRUCTORS HELPER PROBATIONARY	6.625				
IRONWORKERS (9)					
CLASS A	12.85	.75	1.81		.08
CLASS B	13.10	.75	1.81		.08
CLASS C	12.975	.75	1.81		.08
LABORERS (Building) (5)					
ZONE I					
CLASS A					
GROUP 1	11.20	.90	1.30		.12
GROUP 2	11.35	.90	1.30		.12
GROUP 3	11.375	.90	1.30		.12
GROUP 4	11.425	.90	1.30		.12
GROUP 5	11.475	.90	1.30		.12
GROUP 6	11.45	.90	1.30		.12
GROUP 7	11.675	.90	1.30		.12

Modification Page 15

DECISION NO. NY81-3018 - Mod. #3 CONT'D

SCHEDULE #2 RENSSELAER COUNTY, NEW YORK	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (Building) Cont'd					
ZONE II					
CLASS A					
GROUP 1	10.98	1.10	1.30		.17
GROUP 2	11.13	1.10	1.30		.17
GROUP 3	11.155	1.10	1.30		.17
GROUP 4	11.205	1.10	1.30		.17
GROUP 5	11.255	1.10	1.30		.17
GROUP 6	11.23	1.10	1.30		.17
GROUP 7	11.455	1.10	1.30		.17
CLASS B	7.59	1.10	1.30		.17
LINE CONSTRUCTION (7)					
CLASS A					
GROUP 1	12.00	1.40	3%+1.00	f	
GROUP 2	16.00	1.40	3%+1.00	f	
GROUP 3	10.80	1.40	3%+1.00	f	
GROUP 4	9.60	1.40	3%+1.00	f	
GROUP 5	10.20	1.40	3%+1.00	f	
GROUP 6	9.00	1.40	3%+1.00	f	
CLASS B					
GROUP 1	13.80	1.40	3%+1.00	f	
GROUP 3	12.42	1.40	3%+1.00	f	
GROUP 4	11.04	1.40	3%+1.00	f	
GROUP 5	11.73	1.40	3%+1.00	f	
GROUP 6	10.35	1.40	3%+1.00	f	
CLASS C					
GROUP 1	14.35	1.40	3%+1.00	f	
GROUP 2	16.005	1.40	3%+1.00	f	
GROUP 3	13.095	1.40	3%+1.00	f	
GROUP 4	11.64	1.40	3%+1.00	f	
GROUP 5	12.36	1.40	3%+1.00	f	
GROUP 6	10.91	1.40	3%+1.00	f	
CLASS D					
GROUP 7	11.64	1.40	3%+1.00	f	
GROUP 8	12.36	1.40	3%+1.00	f	
GROUP 2	16.005	1.40	3%+1.00	f	
GROUP 9	14.55	1.40	3%+1.00	f	
GROUP 5	12.36	1.40	3%+1.00	f	
GROUP 10	11.64	1.40	3%+1.00	f	
GROUP 11	10.91	1.40	3%+1.00	f	

Modification Page 16

DECISION NO. NY81-3018 - Mod. #3 CONT'D

SCHEDULE #2 RENSSELAER COUNTY, NEW YORK	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE (8)	11.95	.80	1.40		
PAINTERS (9)	13.07		1.00		.02
POWER EQUIPMENT OPERATORS (11) (Building)					
CLASS A					
GROUP 1	12.82	1.15	1.25	e	
GROUP 2	12.91	1.15	1.25	e	
GROUP 3	13.08	1.15	1.25	e	
GROUP 4	13.35	1.15	1.25	e	
GROUP 5	13.80	1.15	1.25	e	
GROUP 6	14.02	1.15	1.25	e	
GROUP 7	14.31	1.15	1.25	e	
SHEET METAL WORKERS	13.86	3%+1.07	1.04	g	.07
SPRINKLER FITTERS	15.55	.95	1.40		.08
SCHEDULE #3 SARATOGA COUNTY, NEW YORK					
ASBESTOS WORKERS	14.60	1.07	.66		.02
BOILERMAKERS	16.53	1.275	1.653		.04
CARPENTERS (2)					
ZONE I					
CLASS A	13.10	.60	1.15		.005
CLASS B	13.35	.60	1.15		.005
CLASS C	13.25	.60	1.15		.005
ZONE II					
CLASS A	13.18	.70	1.00		.02
CLASS B	13.68	.70	1.00		.02
CLASS E	9.46	.70	1.00		.02
CEMENT MASONS (Heavy & Highway)	11.15	.80	1.40		
ELECTRICIANS (3)					
ZONE I	14.50	.95	3%+ .95		.05
ZONE II					
CLASS A	14.20	.85	3%+1.45		.03
CLASS B	14.70	.85	3%+1.45		.03
ELEVATOR CONSTRUCTORS	13.25	1.345	1.085	c+d	.035
ELEVATOR CONSTRUCTORS HELPERS	9.275	1.345	1.085	c+d	.035
ELEVATOR CONSTRUCTORS HELPERS PROBATIONARY	6.625				

DECISION NO. NY81-3018 - Mod. #3 CONT'D

SCHEDULE #3 SARATOGA COUNTY, NEW YORK	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
IRONWORKERS (4)					
CLASS A	12.85	.75	1.81		.08
CLASS B	13.10	.75	1.81		.08
CLASS C	12.975	.75	1.81		.08
LABORERS (Building) (5)					
ZONE I					
CLASS A					
GROUP 1	11.39	.90	1.20		.12
GROUP 2	11.54	.90	1.20		.12
GROUP 3	11.565	.90	1.20		.12
GROUP 4	11.615	.90	1.20		.12
GROUP 5	11.665	.90	1.20		.12
GROUP 6	11.64	.90	1.20		.12
GROUP 7	11.865	.90	1.20		.12
ZONE II					
CLASS A					
GROUP 1	10.98	1.10	1.30		.17
GROUP 2	11.13	1.10	1.30		.17
GROUP 3	11.155	1.10	1.30		.17
GROUP 4	11.205	1.10	1.30		.17
GROUP 5	11.255	1.10	1.30		.17
GROUP 6	11.23	1.10	1.30		.17
GROUP 7	11.455	1.10	1.30		.17
CLASS B	7.59	1.10	1.30		.17
LINE CONSTRUCTION (7)					
CLASS A					
GROUP 1	12.00	1.40	3%+1.00	f	
GROUP 2	16.00	1.40	3%+1.00	f	
GROUP 3	10.80	1.40	3%+1.00	f	
GROUP 4	9.60	1.40	3%+1.00	f	
GROUP 5	10.20	1.40	3%+1.00	f	
GROUP 6	9.00	1.40	3%+1.00	f	
CLASS B					
GROUP 1	13.80	1.40	3%+1.00	f	
GROUP 3	12.42	1.40	3%+1.00	f	
GROUP 4	11.04	1.40	3%+1.00	f	
GROUP 5	11.73	1.40	3%+1.00	f	
GROUP 6	10.35	1.40	3%+1.00	f	
CLASS C					
GROUP 1	14.55	1.40	3%+1.00	f	
GROUP 2	16.005	1.40	3%+1.00	f	
GROUP 3	13.095	1.40	3%+1.00	f	
GROUP 4	11.64	1.40	3%+1.00	f	

DECISION NO. NY81-3018 - Mod. #3 CONT'D

SCHEDULE #3 SARATOGA COUNTY, NEW YORK	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION Cont'd					
CLASS C					
GROUP 5	12.36	1.40	3%+1.00	f	
GROUP 6	10.91	1.40	3%+1.00	f	
CLASS D					
GROUP 7	11.64	1.40	3%+1.00	f	
GROUP 8	12.36	1.40	3%+1.00	f	
GROUP 2	16.005	1.40	3%+1.00	f	
GROUP 9	14.55	1.40	3%+1.00	f	
GROUP 5	12.36	1.40	3%+1.00	f	
GROUP 10	11.64	1.40	3%+1.00	f	
GROUP 11	10.91	1.40	3%+1.00	f	
MARBLE (8)	11.95	.75	1.81		.08
PAINTERS (9)					
ZONE I					
CLASS A	10.10	.65	.65		
CLASS B	10.50	.65	.65		
CLASS C	11.00	.65	.65		
ZONE II	13.07		1.00		.02
PLUMBERS & STEAMFITTERS (10)					
ZONE I					
CLASS A	14.90	.90	1.10		.10
ZONE II	13.00	.90	1.20		.10
POWER EQUIPMENT OPERATORS (11)					
Building					
CLASS A					
GROUP 1	12.82	1.15	1.25	e	.15
GROUP 2	12.91	1.15	1.25	e	.15
GROUP 3	13.08	1.15	1.25	e	.15
GROUP 4	13.35	1.15	1.25	e	.15
GROUP 5	13.80	1.15	1.25	e	.15
GROUP 6	14.02	1.15	1.25	e	.15
GROUP 7	14.31	1.15	1.25	e	.15
SHEET METAL WORKERS	13.86	3%+1.07	1.04	g	.07
SCHEDULE #4 SCHENECTADY COUNTY, NEW YORK					
ASBESTOS WORKERS	14.60	1.07	.66		.02
BOILERMAKERS	16.53	1.275	1.653		.04
CARPENTERS (2)					
CLASS A	13.18	.70	1.00		.02
CLASS B	13.68	.70	1.00		.02
CLASS C	9.46	.70	1.00		.02

DECISION NO.NY81-3018 - Mod. #3 CONT'D

SCHEDULE #4 SCHENECTADY COUNTY, NEW YORK	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS (Heavy & Highway)					
ELECTRICIANS (3)					
CLASS A	14.20	.85	3%+1.45		.03
CLASS B	14.70	.85	3%+1.45		.03
ELEVATOR CONSTRUCTORS	13.25	1.345	1.085	b+c	.035
ELEVATOR CONSTRUCTORS HELPER	9.275	1.345	1.085	b+c	.035
ELEVATOR CONSTRUCTORS HELPER PROBATIONARY	6.625				
IRONWORKERS (4)					
CLASS A	12.85	.75	1.81		.08
CLASS B	13.10	.75	1.81		.08
CLASS C	12.975	.75	1.81		.08
LABORERS (Building) (5)					
CLASS A					
GROUP 1	11.39	.90	1.20		.12
GROUP 2	11.54	.90	1.20		.12
GROUP 3	11.565	.90	1.20		.12
GROUP 4	11.615	.90	1.20		.12
GROUP 5	11.665	.90	1.20		.12
GROUP 6	11.64	.90	1.20		.12
GROUP 7	11.865	.90	1.20		.12
LINE CONSTRUCTION (7)					
CLASS A					
GROUP 1	12.00	1.40	3%+1.00	e	
GROUP 2	16.00	1.40	3%+1.00	e	
GROUP 3	10.80	1.40	3%+1.00	e	
GROUP 4	9.60	1.40	3%+1.00	e	
GROUP 5	10.20	1.40	3%+1.00	e	
GROUP 6	9.00	1.40	3%+1.00	e	
CLASS B					
GROUP 1	13.80	1.40	3%+1.00	e	
GROUP 3	12.42	1.40	3%+1.00	e	
GROUP 4	11.04	1.40	3%+1.00	e	
GROUP 5	11.73	1.40	3%+1.00	e	
GROUP 6	10.35	1.40	3%+1.00	e	
CLASS C					
GROUP 1	14.55	1.40	3%+1.00	e	
GROUP 2	16.005	1.40	3%+1.00	e	
GROUP 3	13.095	1.40	3%+1.00	e	
GROUP 4	11.64	1.40	3%+1.00	e	
GROUP 5	12.36	1.40	3%+1.00	e	
GROUP 6	10.91	1.40	3%+1.00	e	
CLASS D					
GROUP 7	11.64	1.40	3%+1.00	e	
GROUP 8	12.36	1.40	3%+1.00	e	
GROUP 2	16.005	1.40	3%+1.00	e	
GROUP 9	14.55	1.40	3%+1.00	e	
GROUP 5	12.36	1.40	3%+1.00	e	
GROUP 10	11.64	1.40	3%+1.00	e	
GROUP 11	10.91	1.40	3%+1.00	e	

DECISION NO. NY81-3018 - Mod. #3 CONT'D

SCHEDULE #4 SCHENECTADY COUNTY, NEW YORK	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE (8)	11.95	.80	1.40		
PAINTERS (9)	13.07		1.00		.02
PLUMBERS & STEAMFITTERS (10)					
CLASS A	14.90	.90	1.10		.10
POWER EQUIPMENT OPERATORS (11) (Building)					
CLASS A					
GROUP 1	12.82	1.15	1.25	d	.15
GROUP 2	12.91	1.15	1.25	d	.15
GROUP 3	13.08	1.15	1.25	d	.15
GROUP 4	13.35	1.15	1.25	d	.15
GROUP 5	13.80	1.15	1.25	d	.15
GROUP 6	14.02	1.15	1.25	d	.15
GROUP 7	14.31	1.15	1.25	d	.15
SHEET METAL WORKERS	13.86	3%+1.07	1.04	f	.07
SPRINKLER FITTERS	15.55	.95	1.40		

DECISION #NC81-1148 - MOD. #1
(45 FR 86200 - December 30, 1980)
Statewide, North Carolina
Water, Sewer, & Heavy Construction

ADD:
ELECTRICIANS $6.50

DECISION #OH81-2039 MOD. #1 (46 FR 35017 - July 6, 1981) Lucas County, Ohio	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos Workers	$16.85	.70	1.70		.02
Boilermakers	17.90	1.275	1.50		.28
Electricians:					
Commercial:					
Electricians	17.40	.85	3%+.95		.3%
Cable Splicers	20.01	.85	3%+.95		.3%
Elevator Constructors:					
Mechanics	16.57	1.345	1.085	a&b	.035
Helpers	70%JR	1.345	1.085	a&b	.035
Helpers (Prob.)	50%JR				
Glaziers	15.89	.85	1.10		.02
Line Construction:					
Linemen	16.75	.70	8%	c	½%
Cable Splicers	19.26	.70	8%	c	½%
Groundmen	10.05	.70	8%	c	½%
Painters:					
Commercial:					
Brush; Drywall Tapers; & Paperhangers	14.70	1.06	2.00		
Bridge; Railings; Powerhouse; Refinery Tanks	14.95	1.06	2.00		
Sandblasting; Spray; Pressure Cleaning	15.25	1.06	2.00		
Residential Work	13.56	1.06	2.00		
Laborers:					
Unskilled	14.03	.95	1.35		.11
Mason Tenders	14.18	.95	1.35		.11
Gunnite Pot Men	14.23	.95	1.35		.11
Mortar Mixers	14.25	.95	1.35		.11
Concrete Pump Nozzle Men; All Power Driven Tools; & Power Buggies	14.185	.95	1.35		.11
Pipe Layers; Bellmen; Bottom Men for Fire Brick Work Only	14.285	.95	1.35		.11
Nozzle Operators for Gunnite Work	14.94	.95	1.35		.11
Plasterers' Tenders & Mixers	14.05	.95	1.35		.11

DECISION NO. OH81-2040 - MOD #1 (46 FR 35014 - July 6, 1981) Mahoning & Trumbull Counties, Ohio	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos Workers	$15.64	.65	1.75		.02
Electricians:					
Mahoning (Milton Twp.) & Trumbull (Excluding Hubbard & Liberty Twps.) Cos.	16.62	1.00	9%		.702%
Mahoning (Excluding Milton & Smith Twps.) & Trumbull (Hubbard & Liberty Twps.) Cos.	16.09	1.00	11%		.5%
Mahoning (Smith Twp.) Co.:					
Commercial Building	15.70	1.00	3%+1.00		.3%
Residential (4 Units only)	10.94	1.00	3%+.80		.3%
Line Construction:					
Mahoning (Excluding Smith Twp.) & Trumbull Cos.:					
Linemen; Cable Splicer; Operator - Pole Digging Equipment	17.08	.70	8%		½%
Groundmen	13.66	.70	8%		½%
Mahoning Co. (Smith Twp.):					
Linemen	15.70	1.00	3%+1.00		.3%
Cable Splicer	14.59	1.00	3%+1.00		.3%
Line Equipment Operators	13.44	1.00	3%+1.00		.3%
Groundman; Truck Driver	9.84	1.00	3%+1.00		.3%
Marble Setters; Terrazzo Workers; & Tile Setters:					
Mahoning Co.	16.505				
Omit:					
Sheet Metal Workers:					
Commercial	15.41	.75	.83		.06
Residential	15.14	.75	.83		.06
Add:					
Sheet Metal Workers	15.14	.75	.83		.06

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TN79-1146 Mod. #7 (44FR66147 November 16, 1979) Davidson County, Tennessee					
CHANGE:					
Boilermakers	$14.50	1.375	1.50		.04
Ironworkers	12.35	.95	.95		.17
DECISION #TN81-1202 Mod. #3 (46FR24886 May 1, 1981) Shelby county, Tennessee					
CHANGE:					
Boilermakers	14.50	1.375	1.50		.04
Ironworkers	13.30	.73	1.00		.15
DECISION #TN81-1203 Mod. #2 (46FR24887 May 1, 1981) Anderson, Knox, Monroe & Roane Counties, Tennessee					
CHANGE:					
Boilermakers	14.50	1.375	1.50		.04
DECISION #TN81-1204 Mod. #4. (46FR25979 May 8, 1981) Hamilton (Building & Heavy), Marion, Polk & Rhea (Building Construction only) Counties Tennessee					
CHANGE:					
Boilermakers	14.50	1.375	1.50		.04
Ironworkers	12.06	.95	.90		1%
DECISION NO. VT81-3079 - MOD. #1 (46 FR 53953 - October 30, 1981) CHITTENDEN COUNTY, VERMONT					
CHANGE:					
BRICK MASONS/CEMENT MASON	9.95	.90	.40		.01
ELECTRICIANS	11.80	.50	3%+.70		½%
ROOFERS	5.48				

STATE: Iowa COUNTY: Des Moines
DECISION NO.: IA81-4090 DATE: Date of Publication
Supersedes Decision No. IA80-4044, dated August 8, 1980, in 45 FR 53044.
DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories).

BUILDING, WATER TREATMENT PLANTS & SEWAGE DISPOSAL PLANTS CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$16.21	.60	1.35		.20
BOILERMAKERS	14.97	1.375	1.15		.05
BRICKLAYERS & STONEMASONS	14.18	.90	.60		.07
CARPENTERS:					
Carpenters	14.35	1.00	1.00		.08
Millwrights & piledrivermen	15.05	1.00	1.00		.08
CEMENT MASONS	11.15				
ELECTRICIANS	15.77	.70	3%+.70		3/4%
GLAZIERS	14.31	.75	1.00		.02
IRONWORKERS	15.05	.80	1.05		.06
LABORERS:					
GROUP 1 - Common laborers, wrecking, deck hand	12.50	.50	.80		.05
GROUP 2 - Plaster tender, mortar mixer, mason tender, stone & marble setter tender, drill operator, air tamper, air spade (electric or pneumatic spraying equipment & all mechanically operated tools, excavation over 6 ft. deep below ground level or basement level	12.66	.50	.80		.05
GROUP 3 - Tile layers (sewers); jackhammer & pavement breaker, 80 lbs. & over, on side walls & overhead	12.76	.50	.80		.05
GROUP 4 - Gunniting & sandblasting	12.87	.50	.80		.05
GROUP 5 - Tunnel & sewer mucker & miner over 6 ft. deep, powdermen	12.97	.50	.80		.05
LINE CONSTRUCTION:					
GROUP 1 - Lineman; all rigs setting assembled "H" fixtures & steel transmission structures	13.26	.45	7%	a	1/2%
GROUP 2 - Blaster; special equipment operations (hole digging machines, all tractors, transmission line pole hauling & setting equipment other than assembled "H" fixtures	10.61	.45	7%	a	1/2%

BUILDING, WATER TREATMENT PLANTS & SEWAGE DISPOSAL PLANTS CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION (CONT'D):					
GROUP 3 - Groundman	$ 8.62	.45	7%	a	1/2%
GROUP 4 - Groundman, truck driver	8.75	.45	7%	a	1/2%
GROUP 5 - Pole treating truck driver	8.49	.45	7%	a	1/2%
GROUP 6 - Pole treating specialist	10.21	.45	7%	a	1/2%
PAINTERS:					
GROUP 1 - Brush & paperhangers	13.00		.50		
GROUP 2 - Rollers	13.10		.50		
GROUP 3 - Sign	13.50		.50		
GROUP 4 - Structural steel over 25 ft. from the ground or floor, bridges, water towers & stage work	13.70		.50		
GROUP 5 - Spray gun & sandblasting	14.00		.50		
PLASTERERS	10.78				
PLUMBERS & PIPEFITTERS	15.15	.70	1.65		.05
ROOFERS	13.13				
SHEET METAL WORKERS	14.45	.75	1.72		.14
SOFT FLOOR LAYERS	14.35	1.00	1.00		.08
SPRINKLER FITTERS	15.10	.95	1.40		.08
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					
POWER EQUIPMENT OPERATORS:					
GROUP 1	14.80	1.00	.90		.08
GROUP 2	13.40	1.00	.90		.08
GROUP 3	12.35	1.00	.90		.08

FOOTNOTE FOR LINE CONSTRUCTION:
a - Seven Paid Holidays: New Years's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day, The Friday after Thanksgiving Day; Christmas Day

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - All hoists or steel erecting equipment; Crane, Shovel, Clamshell, Dragline, Backhoe, Derrick, Tower Crane, Cable Way, Concrete Spreader (servicing 2 pavers), Asphalt Spreader, Asphalt Mixer Plant Engineer, Dipper Dredge Op., Dipper Dredge Craneman, Dual Purpose Truck (boom or winch), Leverman or Engineman (hydraulic dredge), Mechanic, Paving Mixer with tower attached (2 operators required), Piledriver, Boom Tractor, Stationary, Portable or Floating Mixing Plant, Trenching Machine (over 40 HP), Building Hoist (2 drums), Hot Paint Wrapping Machine, Cleaning & Priming Machine, Backfiller (throw bucket), Locomotive Engineer, Qualified Welder, Tow or Push Boat, Concrete Paver, Seaman Trav-L-Plant or similar machines, CMI Autograder or similar machines, Slip Form Paver, Caisson Augering Machine, Mucking Machine, Asphalt Heater-Planer Unit, Hydraulic Cranes, Mine Hoists; Athey, Barber-Green, Euclid or Haiss Loader, Asphalt Pug Mill, Fireman and Drier, Concrete Pump, Concrete Spreader (servicing 1 paver), Bulldozer, Endloader, Log Chippers or similar machines, Elevating Grader, Group Equipment Greaser, LaTourneaupull and similar machines, DW-10, Hyster Winch & similar machines, Motor Patrol, Power Blade, Push Cat, Tractor Pulling Elevating Grader or Power Blade, Tractor Operating Scoop or Scraper, Tractor with Power Attachments, Roller on Asphalt or Blacktop, Single Drum Hoist, Jaeger Mix & Place Machine, Pipe Bending Machine, Flexaplane or similar machines, Automatic Curbing Machines, Automatic Cement & Gravel Batch Plant (1 stop set-up), Seaman Pulvi-Mixer or similar machines, Blastholer Self-propelled Rotary Drill or similar machines, Work Boat, Combination Concrete Finishing Machine & Float, Self-propelled Sheepsfoot Roller or Compactor (used in conjunction with a Grading Spread), Asphalt Spreader Screen Operator, Aspco Spreader or similar machine, Slusher, Forklift (over 6000 lbs. capacity or working at heights above 28 ft.), Concrete Conveyors

GROUP 2 - Asphalt Booster, Fireman and Pump Operator at Asphalt Plant, Mud Jack, Underground Boring Machine, Concrete Finishing Machine, Form Grader with Roller on Earth, Mixers (3 bag to 16E), Power Operated Bull Float, Tractor without Power attachment, Dope Pot (agitating motor), Dope Chop Machine, Distributor (back end), Straddle Carrier, Portable Machine Fireman, Hydro-Hammer, Power Winch on Paving Work, Self-propelled Roller or Compactor (other than provided for above), Pump Op. (more than 1 well point pump), Portable Crusher, Trench Machine (under 40 HP), Power Subgrader (on forms) or similar machines, Forklift (6000 lbs. or less capacity), Gypsum Pump, Conveyor over 20 HP, Fuller Kenyon Cement Pump or similar machines; Air Compressors (275 CFM or over), Driver on Truck Crane or similar machines, Light Plant, Mixers (1 or 2 bag), Power Batching Machine (Cement Auger or Conveyor), Boiler (Engineer or Fireman), Water Pumps, Mechanical Broom, Automatic Cement & Gravel Batch Plant (2 or 3 stop set-up), Small Rubber-tired Tractors (not including backhoes or endloaders), Self-propelled curing machine

GROUP 3 - Oiler, Mechanical Heater (other than steam boiler), Belt Machine, Small Outboard Motor Boat, Engine Driven Welding Machine

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Iowa COUNTY: Pottawattamie
DECISION NO.: IA81-4101 DATE: Date of Publication
Supersedes Decision No. IA81-4010, dated February 6, 1981, in 46 FR 11476.
DESCRIPTION OF WORK: Building Projects in entire County (does not include single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$16.68	1.00	1.00		.06
BOILERMAKERS	14.97	1.375	1.15		.05
BRICKLAYERS & STONEMASONS	14.24	.85	.80		.05
CARPENTERS:					
Carpenters	13.82	1.10	.70		.05
Piledrivermen	13.955	1.10	.70		.05
Millwrights	14.10	1.10	.70		.05
CEMENT MASONS	13.85	.85	1.00		
DRYWALL TAPERS & FINISHERS	12.19	.61		.60	
ELECTRICIANS	15.14	.90	3%+1.75		1/2%
ELEVATOR CONSTRUCTORS:					
Mechanics	14.54	1.345	1.085	a	.035
Helpers	70%JR	1.345	1.085	a	.035
Helpers (Prob.)	50%JR				
GLAZIERS	14.45	.90	.60		.01
IRONWORKERS	12.60	1.10	1.25	1.00	.05
LABORERS:					
Common laborers	11.01	.80	.70		.05
Mason tenders; mortar mixers; pipelayers	11.185	.80	.70		.05
Buggymobile operators	11.35	.80	.70		.05
Plasterers' tenders	11.395	.80	.70		.05
LINE CONSTRUCTION:					
GROUP 1 - Linemen; all rigs setting assembled "H" fixtures & steel transmission structures	13.26	.45	7%	b	1/2%
GROUP 2 - Blaster; special equipment operations (hole digging machines, all tractors, transmission line pole hauling & setting equipment other than assembled "H" fixtures)	10.61	.45	7%	b	1/2%
GROUP 3 - Groundman	8.62	.45	7%	b	1/2%
GROUP 4 - Groundman - truck driver	8.75	.45	7%	b	1/2%
GROUP 5 - Pole treating truck driver	8.49	.45	7%	b	1/2%
GROUP 6 - Pole treating specialist	10.21	.45	7%	b	1/2%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Brush; Paperhangers	$10.60		.25		
Highwork; spray; stage; structural steel	11.15		.25		
PLASTERERS	14.42	.85	.58		
PLUMBERS	14.59	1.20	1.25		.20
ROOFERS:					
Slate; tile	11.20	.70	.20		.01
Composition	10.90	.70	.20		.01
SHEET METAL WORKERS	15.59	.75			.09
SPRINKLER FITTERS	15.10	.95	1.40		.08
TERRAZZO WORKERS; TILE SETTERS; MARBLE SETTERS	14.37	.45	.40		
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTES:
a - Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit; Seven Paid Holidays A thru G
b - Seven Paid Holidays A thru G

PAID HOLIDAYS:
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
GROUP 1	$12.32	.90	.90		.10
GROUP 2	12.085	.90	.90		.10
GROUP 3	10.78	.90	.90		.10
GROUP 4	10.015	.90	.90		.10

GROUP 1 - Crane including those being used as backhoe, dragline, clamshell, etc.; tower cranes; truck cranes & cherry pickers 12½ ton & over rated capacity; derricks; piledrivers & extractors; caisson rigs; side boom & winch truck used for erection of structural steel & moving & setting of heavy machinery; 3 drum hoist; welders; mechanics; locomotive; dredge (levermen)

GROUP 2 - 1 & 2 drum hoists; air & electric tuggers (on power plants or setting & grating); economobiles; plant mixers; farm type tractors (with loaders, backhoes, attachments, etc.); scrapers (tournapull, etc.); endloaders; dredge (engineer); side boom & winch truck other than Group No. 1; motor patrol; bulldozers; push cat; truck cranes & cherry pickers (under 12½ tons); concrete mixers (1 yard & over); ditching machine (8" & over); fork lifts (on steel erection & machinery moving or hoisting above one complete story); concrete pump; dewatering pumps; temporary hoist cage operated; second man on locomotive; vibrating concrete spreader (Gomaco, C-450 or equal)

GROUP 3 - Tractors (under 35 HP) with or without attachments; endloaders (under 35 HP) with or without attachments; air compressors (one or a combination of 250 cfm or more); pumps 3" or over; welding machines 600 amps or combination thereof; conveyors; firemen (boiler); generator (75 KW & over); fork lifts (other than above Group No. 2); gunnite machine; self-propelled rollers; stump chippers; self-propelled tampers; air & electric tuggers (other than above); ditching machine under 8"

GROUP 4 - Oilers; mechanical heaters; truck crane drivers; permanent elevators

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

[FR Doc. 81-35227 Filed 12-10-81; 8:45 am]

BILLING CODE 4510-27-C

SUPERSEDEAS DECISION

STATE: MINNESOTA
COUNTIES: BIG STONE, CHIPPEWA, DOUGLAS, GRANT, KANDIYOHI, LAC QUI PARLE, POPE, RENVILLE, STEVENS, SWIFT, & TRAVERSE.
DECISION NUMBER: MN81-2065 DATE: DATE OF PUBLICATION
Supersedes Decision Number MN79-2056, dated June 15, 1979, in 44 FR 34751.
DESCRIPTION OF WORK: HEAVY & HIGHWAY CONSTRUCTION PROJECTS.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS	$10.95	.50			
CEMENT MASONS	11.10				
LABORERS:					
Unskilled	6.52				
Asphalt rakers	7.09	.46	.40		
Pipe layers	9.30	.35	.15		
POWER EQUIPMENT OPERATORS:					
Asphalt plant	9.92	.46	.40		
Backhoe	9.93				
Bulldozer	9.09				
Crane, derrick, dragline	9.00				
Crusher	9.31				
Crushing plant operator	8.58				
Finish blade grader	10.46				
Front end loader	9.04				
Greaser	7.25				
Mechanic	9.54	.46	.40		
Motor grader	8.86				
Motor patrol	9.11				
Packer	7.03				
Paver	8.99				
Roller - base	8.73	.46	.40		
Roller - compaction	8.32	.45	.30		
Roller - finish	9.54	.46	.40		
Screedman	9.54	.46	.40		
TRUCK DRIVERS:					
Five axle, low boy, & trailer trucks	9.13	.46	.40		
Semi trucks	9.91	.57	.40		
Single axle trucks	8.22	.46	.40		
Tandem trucks	8.73	.46	.40		
Wheel tractors	8.05	.46	.40		
WELDERS: Rate for craft.					

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clause (29 CFR, 5.5 (a) (1) (ii)).

federal register

Friday
December 11, 1981

Part III

Department of Labor

Occupational Safety and Health Administration

Occupational Exposure to Lead; Revised Supplemental Statement of Reasons; Amendment of Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-004E]

Occupational Exposure to Lead; Revised Supplemental Statement of Reasons; Amendment of Final Rule

AGENCY: Occupational Safety and Health Administration, Labor.

ACTIONS: Revised Supplemental Statement of Reasons; Amendment of Final Rule.

SUMMARY: OSHA is revising the Supplemental Statement of Reasons, published on January 21, 1981 (46 FR 6134), concerning the feasibility of complying with the lead standard for certain industries. In addition, OSHA is amending paragraph (e)(1) of the lead standard, 29 CFR 1910.1025(e)(1), in several important respects. First, the language of paragraph (e)(1) has been amended, consistent with the decision in *United Steelworkers of America* v. *Marshall*, 647 F. 2d 1189 (D.C. Cir. 1980), *cert. denied* 101 S. Ct. 3148 (1981), to reflect the fact that only feasible engineering controls are required by the standard. Second, a limited exclusion, which would allow employers whose employees have 30 or fewer days of exposure per year above the PEL to be exempt from the requirement to control exposures through engineering controls has been incorporated into paragraph (e) to provide a solution to the problem of intermittent lead exposures. Third, table 1 of paragraph (e) has been amended to extend the compliance deadline for the "other industries" to two and one half years to allow sufficient time for the design and installation of controls and to prevent potential inequities to the affected industries as a result of the Secretary's reconsideration of the standard. Finally, OSHA is requesting that the Court of Appeals return the record to the Agency for eight industries because further proceedings on feasibility are necessary. In addition, OSHA has proposed to administratively stay the application of the entire standard in the stevedoring industry and has initiated rulemaking to evaluate the unique problems posed by application of the lead standard in this industry.

EFFECTIVE DATE: January 11, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. John Martonik, Acting Director, Health Standards Directorate, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N-3718, Washington, D.C. 20210. Telephone: (202) 523-7076.

SUPPLEMENTARY INFORMATION:

1. Regulatory and Judicial History

On November 14, 1978, OSHA published a final standard limiting occupational exposure to inorganic lead to airborne concentrations of 50 $\mu g/m^3$ based on an 8-hour time weighted average. 29 CFR 1910.1025 (43 FR 52952). This standard superseded the permissible exposure limit (PEL) which had been adopted from a national consensus standard pursuant to section 6(a) of the Occupational Safety and Health Act of 1970. Additional protective provisions included environmental monitoring, recordkeeping, employee education and training, medical surveillance, medical removal protection, hygiene facilities, and other requirements.

Immediately after promulgation, the lead standard was challenged by both industry and labor in several U.S. Courts of Appeals. All cases were transferred and consolidated in the U.S. Court of Appeals for the District of Columbia Circuit.

In an opinion issued on August 15, 1980, the United States Court of Appeals for the District of Columbia Circuit, per Chief Judge Wright, upheld the validity of OSHA's lead standard in most respects. However, the court found that OSHA failed to present substantial evidence or adequate reasons to support the feasibility of the standard with respect to certain industries, and remanded the standard to the Agency for reconsideration of the question of the technological and economic feasibility of the standard for thirty-eight industries, and for these industries stayed the requirement that the 50 $\mu g/m^3$ PEL must be met primarily through the use of engineering controls, while maintaining the requirement that these industries install engineering controls to meet the preexisting 200 $\mu g/m^3$ exposure level. *United Steelworkers, supra*, 647 F. 2d at 1311. The Court gave OSHA until February 15, 1981 to respond to the remand order.

Accordingly, on September 24, 1980, OSHA published a **Federal Register** notice (45 FR 63476) which reopened the rulemaking record for the limited and express purpose of soliciting and receiving additional information pertaining to the technological and economic feasibility of meeting the 50 $\mu g/m^3$ PEL solely by engineering controls and work practices. An informal public hearing was held on November 5-7, 1981. The record remained open for the receipt of additional comment and data until December 1, and, for posthearing argument until December 10, 1980. Final certification of the record was completed on December 17, 1980, by Administrative Law Judge Feirtag.

On January 19, 1981, OSHA filed its Supplemental Statement of Reasons with the Court of Appeals (46 FR 6134, January 21,1981). Thereafter, OSHA joined industry and requested that the Court defer further judicial proceedings on remand until the Agency had considered and decided petitions for administrative reconsideration of the Supplemental Statement. The Court has granted OSHA until December 10, 1981, to respond to the petitions for reconsideration; five such petitions were received requesting relief in eleven industry segments.

Concurrent with the remand proceedings, industry sought and obtained a stay of the lead standard from the United States Supreme Court pending the filing and disposition of petitions for *certiorari*, which paralleled the stay originally issued by the District of Columbia Circuit on March 1, 1979. On June 29, 1981, the Supreme Court refused to consider further challenges to the lead standard, thus leaving intact the Court of Appeals decision upholding the regulation and dissolving its previously issued stay of the lead standard.

The lead standard, including the requirement that the permissible exposure limit (PEL) be achieved by the use of engineering and work practice controls, is now fully effective in the following industries: Primary lead smelting; secondary lead smelting; battery manufacturing; electronics; gray iron foundries; ink manufacturing; paints & coating manufacturing; wallpaper manufacturing; can manufacturing; and printing. In the remaining industries every provision of the standard except paragraph (e)(1) is in effect. For these industries, however, the obligation to achieve the 200 $\mu g/m^3$ level remains in effect.

2. Conclusions

After receiving the petitions for reconsideration, OSHA recognized the need to reevaluate the remand findings; accordingly, the Agency administratively stayed the effective date of the Supplemental Statement of Reasons until December 10, 1981. Based upon a thorough review of the course of the lead proceedings and the entire remand record, OSHA reaffirms its

previous conclusion that for most of the 46 industries,[1] the supplemental record again demonstrates that the standard is feasible either because exposure levels do not generally exceed the PEL, thus requiring minimal or no compliance actions, or because exposure levels above the PEL can be controlled by available and affordable engineering controls or work practices well within the extended time period of two and one half years permitted for compliance. The Agency has also concluded that further proceedings are necesssary to determine the feasibility of achieving the PEL with engineering controls and work practices in the following industries: Manufacture of lead pigments and lead chemicals; shipbuilding and ship repair; leaded steel manufacture; nonferrous foundries and lead casting; battery breaking in the collection and processing of scrap (excluding collection and processing of scrap which is part of a secondary lead smelting operation); and secondary smelting of copper. In addition, OSHA has proposed to administratively stay the application of the entire standard in the stevedoring industry and has initiated rulemaking to evaluate the unique problems posed by application of the lead standard in this industry. Accordingly, OSHA will ask the Court of Appeals to return the record to the Agency with respect to these industries so that supplementary proceedings may be initiated. During this period of review all provisions of the lead standard will remain in effect for these industries, except paragraph (e)(1). Again, the 200 $\mu g/m^3$ level of the prior standard must be achieved through primary reliance on engineering controls during this period of review.

The conclusions which follow are intended to supersede those in the Supplemental Statement of Reasons published on January 21, 1981 (46 FR 6134), where the conclusions herein differ from those reached in January. OSHA has amended paragraph (e) in three respects. First, the language of paragraph (e)(1) has been changed by substituting the language of OSHA's traditional compliance hierarchy with respect to the use of engineering controls and other means of protection; this change merely conforms the standard to the Court of Appeals decision. Second, a limited exclusion from the requirement that *all* exposures in excess of the PEL be reduced with engineering controls has been incorporated into the lead standard to ease the compliance problems faced by industries with intermittent exposures. Third, the compliance schedule for all the remand industries has been extended to two and one half years. Finally, the Agency will request that the Court of Appeals return the record for eight industries.

In reaching these decisions, OSHA relied on the definitions of "feasible" and "reasonably necessary or appropriate", and the decisional methodology employed during the original promulgation of the lead standard, *i.e.*, engineering controls are "feasible" where they are affordable and capable of reducing lead exposures, and "reasonably necessary or appropriate" where the controls are cost-effective. Thus, OSHA's feasibility findings here are fully consistent with those which were affirmed by the Court of Appeals on August 15, 1980. OSHA has reservations, however, about applying this methodology to the eight industries on which decision is being withheld because of potentially significant inaccuracies in the Agency's understanding of the feasibility problems faced therein. It should also be noted that a separate reconsideration of the entire standard is planned to address the possible application of alternative methodologies to determine the cost-effectiveness of the lead standard (45 FR 22764). OSHA's general response to the pending petitions for reconsideration is described below.

I. Amendments to the Standard

A. Means of Compliance

The lead standard provides:

> (e) Methods of compliance—(1) Engineering and work practice controls. The employer shall implement engineering and work practice controls (including administrative controls) to reduce and maintain employee exposure to lead in accordance with the implementation schedule in Table I below. Failure to achieve exposure levels without regard to respirators is sufficient to establish a violation of this provision.

29 CFR 1910.1025(e)(1). Earlier health standards, such as arsenic and cotton dust, on the other hand, explicitly incorporated the concept of feasibility into the methods of compliance section. *See, e.g.*, 29 CFR 1910.1018(g) (arsenic); 29 CFR 1910.1043(e) (cotton dust); 29 CFR 1910.1029(f) (coke oven emissions). The change of language in the lead standard, Lead Industries Association (LIA) contended, attempted "to declare the standard feasible without regard to respirators, and thus announces any failure to meet the PEL by engineering and work practice controls alone a violation of the standard." *United Steelworkers, supra*, 647 F.2d at 1270.

In reviewing the difference between the phraseology of OSHA's various "means of compliance" sections in health standards, the Court of Appeals explained:

> The cases have apparently treated these standards as creating a general presumption of feasibility for an industry. A company could not simply refuse to pursue engineering or work practice controls by asserting their infeasibility. Rather, it would have to attempt to install controls to the limits of contemporary technical knowledge and of its own financial resources.

Id. at 1271. Past OSHA policy, then, as reflected in general and specific air contaminant standards, has permitted employer use of respirators where engineering controls are technologically infeasible. The Court of Appeals interpreted the lead standard's compliance language to have the same meaning. *Ibid.*

Nevertheless, several remand participants claim that while substantial reductions in air lead levels can be achieved with engineering controls, there is no guarantee that the PEL will be reached (*e.g.*, Ex. 475–32). OSHA does not expect such a guarantee from employers, and the language of the standard, which leaves room for misinterpretation, has therefore been amended.

OSHA has previously assured the Court of Appeals that the lead standard did not in substance change the Agency's usual position concerning means of compliance. *See United Steelworkers, supra*, 647 F.2d at 1271. To clear up any remaining confusion, OSHA has amended paragraph (e)(1) so that the lead standard will reflect past compliance policy in form as well as substance. By explicitly incorporating the concept of feasibility directly into the standard, OSHA seeks to reassure concerned parties that it recognizes that engineering controls, even when coupled with effective work practices and administrative rotation, will not, in all cases, assure compliance with the regulation's PEL. Therefore, employers may use effective respiratory equipment to achieve compliance with the standard once they have demonstrated the infeasibility of alternative controls.

B. Intermittent Exposures.

In response to several petitions for reconsideration (Bell Pet.; LIA Pet. at 52, 58; SBC Pet. at 19) and instructions from the Court of Appeals (647 F.2d at n. 168), OSHA has determined that relief to industries with intermittent lead exposures is warranted. Accordingly,

[1] The Court's remand order listed thirty-eight industries. After recategorizing some industries and adding others to the list, OSHA's final conclusions apply to 46 industry categories.

paragraph (e) of the standard has been amended to provide that where employee exposure above the PEL does not exceed 30 days a year, the employer is exempt from the requirement that engineering controls be implemented to reduce lead exposure.

Previously, the lead standard required that all lead exposures which exceeded the PEL be reduced by implementing engineering and work practice controls regardless of the duration of exposure. Industries where lead exposures are intermittent have objected to this requirement in the lead standard for several reasons: (1) Engineering controls are inappropriate to control exposures which may be high but occur only briefly; (2) the exemption of the contruction industry from the lead standard, in part because of the intermittent nature of exposures, warrants a similar exemption for all intermittent exposure industries; and (3) OSHA failed to make significant risk findings applicable to their industries (Ex. 475–22; 475–28; 475–39).

OSHA rejects the contention that the exemption granted to the construction industry compels a similar exclusion for all intermittent industries, *see infra.* The Agency does agree, however, that the magnitude of the health problem posed by lead exposure in industries with intermittent exposures differs from the magnitude of the problem in the general lead industries and has fashioned a response which makes the regulatory obligations of the intermittent industries commensurate with the lead problem presented. OSHA believes that this action complies with the requirements of *Industrial Union Dept.* v. *American Petroleum Institute,* 448 U.S. 607 (1981) and meets the concerns of the intermittent industries.

Under paragraph (e) as amended, the requirement that engineering controls be implemented to reduce lead exposures will not apply until an employee has been exposed to lead above the PEL for more than thirty days per annum. This exclusion parallels that already contained in the medical surveillance program, *see* 29 CFR 1910.1025 (j)(1)(i), is administratively feasible for OSHA to monitor, and should assure that employee blood leads remain within acceptable limits. Where employers qualify for the exemption from the requirement that engineering controls be implemented, the PEL will remain applicable, but exposures may be reduced using any combination of controls. OSHA believes that this approach is a cost-effective means of providing an equivalent level of health protection to employees whose exposure to lead is only sporadic.

Thirty days has been selected because it represents the point at which OSHA can be assured that the lack of engineering controls will not adversely affect employee health. Contrary to the suggestion of some commenters, the fact that lead exposure may be intermittent does not assure that employee blood leads will remain low. Based on the air lead/blood lead correlations from which the new PEL was derived (*See* Ex. 439), OSHA predicts that absent the new lead standard, *i.e.*, assuming compliance with the prior 100 $\mu g/m^3$ standard, blood leads would be expected to peak at a mean value of 48.2 $\mu g/100$ ml if an employee were exposed to lead continuously for thirty days (assuming five years job tenure), and rise to a mean value of 32 $\mu g/100$ ml if an employee were exposed to lead for thirty days evenly distributed over the entire year (also assuming five years job tenure).[2] Because employees are unlikely to be constantly exposed for thirty days per year in any of the intermittent industries and are equally as unlikely to have their exposures evenly spaced throughout the year, OSHA presumes that blood leads can be expected to rise to a level somewhere between these two figures.

While the lead standard was designed to maintain mean blood lead levels at about 36 $\mu g/100$ ml, that figure was not viewed by the Agency as representing a level which will assure that no employee will suffer material impairment of health if he or she is exposed to the substance for their entire working life. 29 U.S.C. 655(b)(5). Rather, in order to achieve this statutory goal, OSHA previously found that blood leads could be harmful as low as 30 $\mu g/100$ ml, but concluded that this blood level would correlate to an air lead level lower than 50 $\mu g/m^3$, and that this lower air level would prove generally infeasible. *See* 43 FR 54358, 54388. *See also* 647 F.2d at 1308–1309. Thus, even thirty days exposure at the old PEL presents a risk of material impairment based on the existing air lead/blood lead correlation in the record.[3]

Accordingly, OSHA will require that all employee exposures which rise above the PEL be controlled to 50 $\mu g/m^3$, but will permit the employer to use any method of control if employees will not be exposed above the PEL for more than thirty days per year. Based upon the air lead/blood lead correlations, OSHA is satisfied that blood leads under this formula will remain within acceptable limits for the reasons which follow.

First, the air lead/blood lead correlation predicts that blood leads of workers exposed to an air lead level of 50 $\mu g/m^3$ (*i.e.*, where engineering controls have brought the employer fully into compliance) will peak at a mean value of 30.3 $\mu g/ml$ if an employee were exposed to lead continuously for thirty days (assuming five years job tenure); and rise to a level of 24 $\mu g/ml$ if an employee were exposed to lead evenly distributed over the entire year (also assuming five years job tenure). Because either scenario is unlikely, OSHA presumes that the mean value would peak at a level somewhere between these figures, and in all probability would remain well below 30 $\mu g/ml$.

Second, some commenters stated (*see* 543 FR 52992–93) that a primary detraction from respirator effectiveness is worker resistance to wearing the devices for prolonged periods. This resistance, it is claimed, decreases the likelihood that employees will scrupulously keep the respirator on while working in lead-exposed areas, which in turn diminishes the protection the respirator would otherwise give. However, it is clear to the Agency that wearing a respirator only 30 days per year, particularly when those days are spaced throughout the year, would significantly ease any such employee resistance.

Third, the 200 $\mu g/m^3$ PEL, which requires implementation of feasible engineering controls, remains in force. Therefore, even if an employee's respirator use during 30 days of lead exposure is less than meticulous, the lead levels he or she breathes during these short periods of negligence will not be inordinately high.

Consequently, OSHA has concluded that the 30 day exposure rule for engineering controls will not result in the mean value of employee blood leads rising significantly above the level it would be at assuming compliance with 50 $\mu g/m^3$ using engineering controls. OSHA notes, moreover, that it is unlikely that any such small rise in the mean value would exceed the Agency's biological goal of 30 $\mu g/ml$.

The thirty day trigger which OSHA has adopted has several benefits. First, because it parallels the thirty day exclusion for medical surveillance already incorporated into the standard, it will not diminish OSHA's ability to monitor compliance with the lead standard. Any other exclusion, *e.g.*, forty

[2] These figures can be expected to rise as job tenure, and hence lead body burden, increase.

[3] This correlation and the previous health findings may, however, be refined on reconsideration if the evidence warrants it.

days per year, or a PEL averaged over the 40 hour work week would seriously impede efforts to determine compliance with the standard. The selection of thirty days as the trigger for the requirement that engineering controls be implemented is thus within the "zone of reasonableness" granted by the courts to numerical determinations by administrative agencies. *See Hercules, Inc.* v. *Environmental Protection Agency*, 598 F.2d 91, 107 (D.C. Cir. 1978) and cases cites therein. Second, the establishment of an engineering control trigger should provide industry with added flexibility to use a combination of work practices and rotation to achieve the PEL and will allow many industries to avoid the installation of more costly engineering controls, and is, therefore, a cost-effective means of controlling intermittent exposures. For example, several parties have maintained that rotation is not a feasible method of controlling daily exposures (Ex. 528–13); this problem will be ameliorated where employees may be rotated on a monthly basis. In addition, OSHA believes this intermittent trigger will ease the burden of the lead standard for small businesses where lead's use is necessary but infrequent. For example, in many small pottery establishments, lead pigments are used to form glazes. These glazes are mixed infrequently due to low usage by such small establishment. Under the original lead standard, engineering controls would have been required regardless of how infrequently glazes were mixed. Under paragraph (e) as amended, such an establishment could avoid the requirement that engineering controls be implemented.

C. Compliance Schedule

During the remand, several industries maintained that compliance with the lead standard could not be achieved in one year. (*See, e.g.*, Ex. 498; 475–35; TR. 353–34). The petitions for reconsideration reiterate the claim that one year provides an inadequate planning horizon in which to analyze, design, purchase and install emission control equipment. After careful evaluation of the rulemaking record and in light of the Agency's experience in compelling abatement of occupational hazards,[4] OSHA agrees that the compliance schedule for achieving the PEL should be extended to two and a half years for all remand industries.[5] Although the engineering problems faced by the various remand industries differ, OSHA does not believe that varied compliance schedules based on the nature and extent of the lead exposure problem are warranted in this instance. For industries where lead exposure levels are generally below the PEL, the extended compliance schedule will have no impact because the standard does not require additional engineering controls. All other industries, regardless of the magnitude of the control problem, face essentially the same design and procurement problems; OSHA therefore concludes that no basis exists for distinguishing between the ability of different industries to obtain and install engineering controls.

An additional reason for extending the compliance schedule is OSHA's previously announced intention to conduct an indepth reevaluation of the technological and economic feasibility, as well as the reasonable necessity and appropriateness of compliance with all the provisions of the lead standard (46 FR 22764, April 21, 1981).[6] Reconsideration of the lead standard will accordingly include a reassessment of the cost-effectiveness of various means of reducing worker exposure to lead. If prior to such a reconsideration affected employers are required to implement the policies being reexamined, the purposes of any resulting agency action may be frustrated. Under the current one year compliance schedule, the Agency's reconsideration of whether primary reliance on engineering controls is the most cost-effective means of complying with the lead standard cannot be completed. The Agency believes that similar problems are unlikely to arise under a two and one-half year compliance schedule.

D. Return of the Rulemaking Record

After careful evaluation of the rulemaking record, OSHA has decided to ask the Court of Appeals to return the record to the Agency for the following industries: lead pigments and lead chemical manufacture; shipbuilding and ship repair; leaded steel manufacture; nonferrous foundries and lead casting; battery breaking in the collection and processing of scrap; and secondary smelting of copper. This action is based on OSHA's conclusions that the petitions for reconsideration filed on behalf of these industries raise significant questions concerning the accuracy of the January remand statement. During the interim period, these industries will be required to install engineering controls to reduce lead exposures to 200 $\mu g/m^3$ and also comply with all provisions of the lead standard except paragraph (e)(1).

OSHA is not satisfied at this time that application of conventional control technology is capable of reducing lead exposures in these industries, either because exposure levels are particularly high, *e.g.*, pigment manufacture, or because lead is encountered in unique circumstances, *e.g.*, shipbuilding. OSHA recognizes, however, that it has a duty to protect *all* workers, *United Steelworkers, supra*, 647 F.2d at 1309–10, and does not view this action as an exemption from paragraph (e)(1) for the affected industries. Rather, OSHA believes that the announced reconsideration of the lead standard is the appropriate forum for resolving the remaining questions concerning the technological feasibility of the standard.

The industries for which OSHA will request that the record be returned differ from those included in the "other industries" category for which OSHA has extended the compliance schedule because each industry may face significant technological or economic problems in achieving compliance, and hence most of these industries must expend far larger capital sums to install equipment which may not reduce exposures to below the PEL. Manufacturing segments in the "other industries" category do not face these technological difficulties, either because exposures are generally below the PEL or because compliance requires little more than upgrading existing control equipment or enhancing work practices. For example, OSHA's analysis of lead exposures in the foundry industry apparently was predicated on exposure data from establishments using metals with little or no lead, an atypical occurrence in the nonferrous foundry industry.[7] *See* LIA Pet. at 42. Similarly, OSHA's analysis of battery breaking operations in scrap yards presumed that the methods of compliance employed by secondary lead smelters during battery breaking would also control exposures in scrap yards. However, OSHA now recognizes that while automated materials handling systems are a viable control strategy for large scale industrial operations, they are unlikely to be adaptable to smaller scrap facilities. *See* NARI Pet. at 15. The shipbuilding

[4] *See, e.g., Secretary of Labor* v. *Bethlehem Steel Corporation* OSHRC Docket No. 78–1362. Settlement Entered—September 12, 1979.

[5] The compliance schedule will remain intact for the industries affirmed by the Court of Appeals.

[6] While the advance notice of proposed rulemaking indicated OSHA's intent to employ cost-benefit analysis during reconsideration, the Supreme Court's subsequent decision in *American Textile Manufacturers Institute* v. *Donovan* precludes reliance on this analysis.

[7] For the purposes of this discussion, the lead casting industry has been grouped with the nonferrous foundry industry because of the similarity between the processes. Likewise, the lead chemical manufacture industry has been grouped with the lead pigment industry.

industry has also criticized OSHA for not adequately accounting for the varied sites where lead exposure may result—most of the ship repair work involving lead exposure occurs in confined spaces where engineering controls are allegedly ineffective—and the mobility of the shipbuilding workforce. *See* SBC Pet. at 8–12. More information is needed on these factors. The secondary copper smelting industry has been declining; there were twenty secondary copper smelters in 1965 while there are only five currently operating (NARI Pet. at 17). OSHA needs more information on the cause of this decline and the lead standard's impact on this industry. Likewise, in the manufacture of pigments, employing separate production lines for different pigment color groups apparently reduces lead exposure significantly (Ex. 476–244); OSHA needs more information to determine the extent of the resultant exposure reduction and the ability of the entire industry to accomplish this production change. Finally, OSHA's discussion of the steel industry focused on that industry's planned modernization and concluded that it would effectively control lead exposures. LIA's petition for reconsideration has convinced OSHA that until the Agency obtains more information on modernization, *e.g.*, which facilities and pieces of equipment are included, how long will the process take to complete, no conclusion can be reached regarding the effect this program will have on lead exposure levels.

Since OSHA is not satisfied that the current record supports any conclusions concerning technological feasibility for these industries, and since the Agency has announced its intent to conduct an in-depth inquiry on feasibility and cost-effectiveness questions, OSHA is drawing no conclusions at this time regarding the ability of these eight industries to meet the PEL.

E. Stevedoring

OSHA has decided to propose administratively staying application of the lead standard to the stevedoring industry. (A separate proposal will be published shortly.) Careful examination of the record evidence, in light of the concerns raised by industry's petition for reconsideration have convinced the agency of the need to determine whether any OSHA lead standard should cover this industry and, if so, what form that standard should take. Several factors have prompted the agency to reach this conclusion. First, the operations and exposure problems in the stevedoring industry closely resemble those found in the construction industry. Both industries have only low intermittent exposure to lead, more importantly both have workforces that move from place to place on the worksite and both have transient workforces. This striking parallel between construction and stevedoring has compelled OSHA to consider whether the peculiar operational characteristics of the stevedoring industry warrants the drafting of a separate lead standard for stevedoring, as the agency has previously announced for construction.

In addition, a claimed total shutdown of the export-import trade in lead ore forces OSHA to examine the earlier claim advanced by ASARCO and St. Joe that the stevedoring industry should be exempt from this lead standard (46 FR 622 1/2). According to industry's petition, publication of the lead standard led to a decision by the stevedoring companies not to handle shipments of lead ore. That decision was based on the stevedores' belief that the standard's provisions requiring companies to alert their employees to the hazards of lead would trigger the filing of an extensive number of frivolous compensation claims by longshoremen (LIA Pet. at 53–56). ASARCO and St. Joe argued that this anticipated wave of claims would increase the cost of worker's compensation insurance so dramatically that handling lead shipments would become unprofitable (Tr. 721, 723). Presently, the agency does not possess the information to evaluate the veracity of the insurance compensation argument of ASARCO and St. Joe, nor does it have any evidence to assist it in measuring the economic impact of the termination of the lead ore carrying trade on the lead mining and smelting industries. This lack of information on such fundamental economic questions provided additional impetus to the agency's decision to reconsider the standard's application to this industry.

Accordingly, OSHA proposes to administratively stay implementation of the lead standard to the stevedoring industry and will provide interested parties until February 10, 1982 to comment on: (1) Whether the stevedoring industry should be subject to this, or any lead standard, and (2) if the industry should be subject to a different lead standard, what form should that standard take.

II. Industry-by-Industry Analysis

Based upon a thorough review of the remand findings, OSHA reaffirms its conclusion of January 21, 1981 that application of the lead standard in the industries listed below is feasible, particularly in light of the extended compliance schedule and thirty day exclusion from the requirement that engineering controls be installed, discussed above. OSHA expects that these two changes will reduce the economic impact of the standard for these industries, but cannot calculate the exact cost savings attributable to the amendments to paragraph (e)(1) due to a lack of information on the frequency of lead exposure in individual workplaces. The industries for which the feasibility findings are reaffirmed are:

Agricultural Pesticides
Artifical Pearl Processing
Book Binding
Brick Manufacture
Cable Coating
Cutlery
Diamond Processing
Electroplating
Explosives Manufacture
Jewelry Manufacture
Lamp Manufacture
Leather Manufacture
Machining
Nickel Smelting
Soldering
Textiles
Glass Manufacture
Primary and Secondary Smelting of Gold, Silver, and Platinum
Pipe Galvanizing
Plastics and Rubber Manufacture
Ammunition Manufacture
Pottery & Ceramics
Solder Manufacture
Terne Metal
Miscellaneous Lead Products
Auto Manufacturing/Solder Grinding
Gasoline Additive Manufacture
Sheet Metal Manufacture
Tin Rolling & Plating
Plumbing
Lead Burning

For the industries listed below, OSHA has also concluded that its remand findings demonstrate the feasibility of the lead standard, but they are being discussed separately so as to provide an opportunity to respond to issues raised in the petitions for reconsideration. These industries differ from the eight industries for which decision has been withheld because the petitions for reconsideration either raise insubstantial criticisms to the supplemental statement or because those criticisms are adequately addressed in the record. Accordingly, the following discussion for these industries focuses on points that the Supplemental Statement of Reasons did not address or modifies specific conclusions set forth in the Supplemental Statement. Each section, as supplemented, has been reproduced for these industries, for the convenience of the reader. The industries for which

the feasibility findings are reaffirmed are:

Aluminum Smelting
Collection and Processing of Scrap (Excluding Battery Breaking)
Primary Copper Smelting
Glass Manufacture
Spray Painting
Steel Manufacture (Excluding Leaded Steel Manufacture)
Telecommunictions
Zinc Smelting

Aluminum Smelting

Substitute the following for the discussion entitled "2. *Aluminum Smelting*" appearing at 46 FR 6144:

Aluminum Smelting

(a) *Uses.* Aluminum is used in the manufacture of chemical vessels; kitchenware, electrical transmission lines, and other products. It has architectual applications and is used extensively in the land, sea, and air transportation industries. (Ex. 476–5G).

(b) *Process Description and Exposure Areas.* Although aluminum ores are widely distributed in the earth's crust, only bauxite has proven to be economical as an ore from which the metal can be smelted (Ex. 476–5G). Bauxite is usually mined through the open-pit method, crushed, sometimes washed to remove clay, and dried. It is then refined through the Bayer process into aluminum oxide or "alumina." In this process, dried, finely ground bauxite is charged into a digester where it is treated, under elevated pressure and temperatures, with caustic NaOH solution to form sodium aluminate. (Ex. 476–5K).

After the digestion process is completed, the residue (containing impurities) is forced out of the digester through filter presses and discarded. The liquid, which contains extracted aluminum in the form of sodium aluminate, is pumped to precipitator tanks where seed crystals are added to aid in separating aluminum hydroxide from the solution. The aluminum hydroxide that settles out from the liquid is filtered and then calcined in kilns which convert the alumina to a form suitable for smelting (*id.*).

Metalic aluminum is produced by an electrolytic process that reduces the alumina into oxygen and aluminum. In this process, pure alumina is dissolved in a batch of molten cryolite (sodium aluminum fluoride) in large electrolytic furnaces called reduction cells or "pots." An electric current is passed through a carbon anode suspended in the bath mixture, causing metallic aluminum to be deposited on the carbon cathode at the bottom of the cell. The heat generated by passage of this electric current keeps the bath molten so that alumina can be added as necessary to make the process a continuous one. At intervals, aluminum is siphoned from the pots and the molten metal is transferred to holding furnaces either for alloying or impurity removal. It is then cast into ingots of various sizes for further fabrication.(*id.*).

Exposure to lead arises from trace amounts in the ore. Exposures may occur at materials handling equipment or during pyrometallurgical processing (Ex. 481). Since most of the bauxite processed in this country comes primarily from Jamaica, Brazil, Surinam, Australia, and Ghana and contains only traces of lead (Ex. 476–56), very little exposure occurs during the handling of raw ore. In fact, the principal source of lead exposure during ore handling is not from the ore itself but rather from acid leach (the process by which the impurities are separated from the ore) which contains traces of lead (0.004) percent lead sulfite) (Ex. 476–57).

The primary exposure problems in the pyrometallurgical process occur when ores containing lead undergo smelting, thereby releasing fugitive emissions, such as lead oxide, or from emissions resulting from impurities which rise to the top of the molten aluminum and must be periodically skimmed off as dross from the melting and holding furnaces. This dross is transferred to a floor area known as a dross pad where it is dumped and raked out to cool. After cooling, the dross is mixed with salts and charged into a rotary melting furnace, where more of the aluminum is recovered.

Secondary smelting of aluminum differs only slightly from primary aluminum smelting. The process begins with scrap aluminum that arrives at the plant by rail car from a wide variety of sources. A quantity of the scrap plus additives such as chromium, magnesium, iron, copper and manganese are weighed and charged into melting furnaces. The molten metal is transferred to holding furnaces where it is fluxed with chlorine or sometimes a mixture of chlorine and nitrogen. Ingots of aluminum ranging from 15,000 to 20,000 pounds are formed by a process known as direct cooling where fine streams of cold water actually form the sides of the ignots. (Ex. 476–58). Thereafter, the secondary process do not significantly differ from the primary process.

(c) *Controls Currently Used.* (i) Materials handling controls include: Pneumatic conveyance; elimination, by redesign or use of dead drops or long material drops; belt wipes; conveyor curtains and skirts; ventilation hoods at transfer points; complete enclosure of conveyors; liquid sprays to suppress dust; chemical dust suppressants; vacuuming (preferably wet vacuuming) instead of dry sweeping of spilled or otherwise deposited materials; and clean air pulpits (Ex. 481).

The selection of the appropriate control strategy depends upon the material being handled, the extent of the exposure problem, the process involved, and the extent to which engineering controls are already in place.

(ii) Pyrometallurgical controls include: Exhaust hoods for tapping and skimming ports; exhaust hoods for ladles, pots and kettles; covers and hoods for launders; maintaining the unit at negative pressure; enclosure of the entire unit or pertinent parts of the unit; ventilation to capture fugitive emissions which cannot be otherwise contained; enclosed control rooms supplied with clean air; and controlled air pulpits (Ex. 481).

Secondary aluminum operations are also well untilated. The reverberatory furnace usually has primary hooding which effectively eliminates particulate emissions (Ex. 476–133 at 41, 65).

(d) *Exposure Levels.* During aluminum smelting, lead is present as lead sulfide in bauxite ores. Bauxite containing .04% lead would produce an air lead concentration of 4 $\mu g/m^3$ when bauxite concentrations are 10 mg/m^3. Therefore, lead exposure would be well below existing or proposed limits." (Ex. 491). Kaiser and Alco Aluminum also indicated that lead exposure is not a problem in aluminum smelting (Ex. 476–56, 47). Similarly, lead exposures in secondary aluminum smelting are not problematic.

Sampling data in a NIOSH report on the Martin Marietta Aluminum Company in Lewisport, Kentucky (Ex. 476–58) revealed nondetectable lead exposure levels, in most instances, although one sample showed 7.5 $\mu g/m^3$ of inorganic lead (*Id.*). These figures indicate that exposure levels are well below the OSHA permissible exposure limit of 50 $\mu g/m^3$ and the 30 $\mu g/m^3$ action level. An indepth study of the secondary nonferrous smelting industry indicated that lead exposures were insignificant during secondary aluminum smelting (Ex. 476–133 at 42, 43, 46, 150).

(e) *Additional Controls.* The exposure data indicate that lead levels in aluminum smelting are well below 30 $\mu g/m^3$. Control technology already in use has been effective in maintaining lead exposure levels below the PEL. Additional engineering controls, work practices, housekeeping and worker

rotation are not needed. Compliance with the PEL has been achieved (481).

(f) *Conclusion: Technological Feasibility.* The record shows that bauxite ores processed in the United States contain only trace quantities of lead and that alumina (aluminum oxide), from which aluminum is reduced, contains virtually no lead (Ex. 476–56, 57; Ex. 22). Exposures to lead above the PEL are unlikely to occur, as representatives from both Kaiser and Alcoa Aluminum have acknowledged (Ex. 476–56, 57).

Control technologies already in use will be sufficient to control any exposure to lead which may occur.

(g) *Economic Feasibility.* Because the exposure levels are so low, the industry need not enhance existing ventilation systems, establish additional work practice programs, enhance housekeeping practices or rotate workers as a result of this regulation. Therefore, there will be no costs of compliance nor any economic impact incurred as a result of the lead standard.

Collection and Processing of Lead Scrap

Substitute the following for the discussion entitled "9. *Collection and Processing of Lead Scrap* appearing at 46 FR 6151/2:

Collection and Processing of Lead Scrap

(a) *Uses.* The lead scrap from radiators, solder, telecommunications parts, cables, sheet lead, batteries, lead bearing dross, etc., is received by scrap metal recyclers who sort, pack and ship the scrap lead to secondary lead smelters (Tr. 245–246). Some recyclers melt the scrap prior to shipment in an effort to handle the scrap more efficiently (*Id.*). However, Mr. Ness of the National Association of Recycling Industries indicated that waste recyclers usually do not melt scrap (Ex. 476–103), and the record indicates that only 200 scrap dealers remelt metals (Ex. 480). While many scrap dealers process lead-acid batteries for secondary lead smelters, those activities are beyond the scope of this discussion.

(b) *Processing Scrap Metal.*—(i) *Process Description and Exposure Areas.* Scrap may be merely cut, bundled and shipped to secondary smelters or may be melted, cut, bundled and shipped. Processors of scrap fall into two broad categories: melters and non-melters (Tr. 245–246).

Non-melters may be scrap processors who handle dross and flue dust. They must ship, transfer, load, unload, weigh and store the scrap. Where lead is present in the scrap metal, the potential for lead exposure occurs at all handling operations and in mechanized processes at transfer points (Ex. 22, pg. 143).

The Metal Salvage Company of Salt Lake City, Utah, is another type of non-melting scrap processor. It receives scrap lead sheets, radiators, etc., and sorts, chops or cuts, and bales or bundles the lead scrap to be sold to secondary smelters (Ex. 476–102). It does not melt lead scrap, nor does it process dross or flue dust (Ex. 476–102).

NARI testified, however, that "many of these companies do *not* handle any lead bearing scrap materials, or they handle only a very small volume of lead bearing on an irregular, sporadic basis. Most of these small concerns operate open scrap yards, wherein employees regularly move about in the open air and thus are not usually confined to any one work station, and they are not regularly, continuously exposed to lead in their work activities" (Ex. 498 at 35).

(ii) *Controls Currently Used.* The technology available and currently being used by these scrap processors includes water sprays to suppress dusts and local exhaust or portable ventilation (Ex. 476–101). Melting pots are provided with exhaust ventilation (Ex. 476–112).

(iii) *Exposure Levels.* Little exposure data was provided to OSHA (Ex 476–94, 96, 101, 102). Some companies, however, did indicate that controlling lead exposure presents no problem (Ex. 476–101, 102). These firms represent both melters and non-melters. One company stated that it is very close to compliance with the 50 $\mu g/m^3$ standard (Ex. 476–112). Base on NARI's comments, airborne lead exposures are apparently directly related to the amount of lead contained in the scrap metal (Ex. 498).

(iv) *Population Exposed.* No data were available on the number of workers exposed. The number of workers employed by scrap processors appears to range between 6 and 25 (Ex. 476–93–117). Since available data indicate that many of these companies may be nearly in compliance with the standard, OSHA estimates that the number of employees exposed above 50 $\mu g/m^3$ is probably very small.

(v) *Additional Controls.* Based on the data available, controls other than those existing and already applied in some cases, are probably not necessary (Ex. 476–101, 112). One melting scrap processor, which indicated that it was in compliance used both wet suppression and local exhaust ventilation (Ex. 476–101). Another processor that used only exhaust ventilation was very nearly in compliance (Ex. 476–112). A third processor that did no melting indicated that no controls were necessary and mentioned no compliance problems (Ex. 476–101). Thus the application of controls already existing within the industry seems sufficient to achieve compliance (Ex. 476–102, 112). If particularly large amounts of lead are contained in the scrap metal, portable ventilation should be adequate to reduce exposures.

(c) *Conclusion: Technological Feasibility.* The National Association of Recycling Industries argued extensively regarding the infeasibility of the standard for collectors and processors as well as secondary smelters and refiners in achieving compliance with the 50 $\mu g/m^3$ limit. Basically, the Association contends that collectors and processors should have the same 5 to 10 years compliance period as do secondary smelters and refiners. They also stated that these small collectors and processors could not comply within one year, particularly through the use of engineering controls alone. (Ex. 477–17). In its post-hearing submission, the Association argued that it is "technologically infeasible for these additional scrap collectors and processors to comply with the OSHA lead standard—without the continued use of respirators in most of their operations." (Ex. 498, p. 37). OSHA requested the NARI provide data on exposure, on controls being used, and on controls to be implemented. However, the Agency has not received compelling data indicating that compliance is not technologically or economically feasible for the industry. OSHA therefore concludes on the basis of record evidence that the controls discussed in the general feasibility section of this document could also be used to reduce exposures in the recycling industry.

NARI contends that most scrap handlers only handle lead scrap occasionally and also that they are small businesses that lack the resources to implement costly controls. As a result of these factors, NARI believes OSHA should designate collectors and processors of scrap as part of the construction industry and thus relieve them of the burdens of complying with the standard (Ex. 498, p. 37). For the reasons detailed below, OSHA has decided that the exemption for the construction industry should not be extended to scrap processors. However, The 30 day exemption from the requirement that engineering controls be installed should ease compliance obligations where on an "irregular and sporadic" basis lead content of scrap is higher than usual.

Also, based on the data submitted to the record, it appears that in processing scrap, other than batteries, the simplest control technologies are being used.

including wet suppression and local exhaust ventilation (Ex. 476–101), with substantial success. Many of the companies that supplied data to OSHA were small businesses (less than 10 employees) who indicated that lead exposure posed no problem (Ex. 476–101, 102).

Melting operations may require somewhat more effort for exposure control. However, as one commenter contended, melting pots are provided with exhaust ventilation (Ex. 476–112). Containment of fugitive emissions from melting pots is standard practice in many different industries using general ventilation, local ventilation at emission points, negative pressures, maintenance of seals, etc., to achieve compliance with many standards, in addition to lead. These controls are "tried and true" and used by industry as a whole, as noted by Billings and First (Ex. 487, 104).

(d) *Cost of Compliance.* The record contains some industry estimates of costs of compliance in several scrap facilities. One recycler of lead scrap reported that the installation of $6,000 a water spray system and the use of administrative controls were effective in achieving compliance with the standard (Ex. 476–100). Another recycler had a 20 ton remelting operation in which all pots were equipped with exhaust hoods. These hoods were installed at a cost of $15,000 and the firm was reported to be very close to compliance with the standard. With increased attention to personal hygiene, the firm expected to achieve full compliance (Ex. 476–112).

The majority of scrap recyclers are not remelters; therefore, potential compliance costs for most firms will be low. Remelters may require more equipment. A multifaceted approach to reducing air lead levels can result in cost-effective compliance with the lead standard, while simultaneously controlling exposures to other toxic substances present in scrap.

(e) *Industry Profile.* There are an estimated 7428 establishments in SIC 5093, Scrap and Waste Materials (Ex. 476–109). These establishments are primarily engaged in collecting, cleaning, breaking, sorting, chopping, baling, and distributing all types of scrap for delivery to remelters and secondary smelters (Ex. 476–103). The public record indicates that approximately 4,000 to 5,000 of these establishments employ a total of 40,000 workers to potentially handle lead scrap (Tr. 246). These scrap processors, however, do not ordinarily melt lead (Ex. 476–103) and, in fact, it is estimated that only 200 of these establishments may perform remelting operations (Tr. 246).

The continuing national emphasis on the recovery and reuse of natural resources supports positive prospects for the scrap industry in the future (Ex. 476–106). In addition, current deposits of lead bearing ores are diminishing (Ex. 476–108).

Firms within the industry are widely distributed across the nation with concentrations in California, New York, Pennsylvania, Illinois, and Texas (Ex. 476–109). Because of the high cost of transportation, it is unlikely that potential increases in price as a result of compliance would cause major changes in market structure or increased concentration. During ebbs in the business cycle, scrap dealers may be forced to cut prices if their customers, also complying with the lead standard, attempt to shift costs back to them. However, on balance the potential economic impact on the industry should be negligible, since the firms that engage in remelting operations are generally the larger firms that will be able to afford any required additional capital investment. The smaller firms do not ordinarily melt lead and, therefore, will face few new compliance costs.

(f) *Conclusion: Economic Feasibility.* In its petition for reconsideration NARI argued that OSHA "must clearly prescribe the least costly compliance alternative" for scrap collectors and processors, because the great majority of these companies are small businesses (NARI Pet. at 14). The Agency has established precisely such a compliance alternative. OSHA will now permit those scrap collectors and processors whose employees are exposed above the PEL for less than thirty days to be exempt from the requirement that engineering controls be implemented to reduce lead exposure. This measure will substantially reduce the cost of compliance for those small businesses whose lead exposures are generally low, but who on occasion experience exposures above the PEL. Additionally, the change in language in paragraph (e)(1) of the standard clarifies the fact that employers need only install engineering controls up to the point where they are technologically feasible, so that a collector or processor may be able to avoid or limit the expense associated with engineering controls, if he can demonstrate that they are not technologically feasible past a certain point. The standard would then allow the employer to supplement engineering controls with the use of respirators. Finally, OSHA has provided this industry with an extended compliance period of two and one-half years, so the costs of complying with the standard can be amortized over a longer period of time.

Copper Smelting

(a) *Primary Copper Smelting.* Substitute the following for the discussion entitled "(vii) *Conclusion: Technological Feasibility.*" appearing at 46 FR 6156/2.

(vii) *Conclusion: Technological Feasibility.* ASARCO submitted comments during the hearing stating that the technology for controlling lead exposure in copper smelters does not exist (Ex. 475–28). The company's position was premised on the notion tht processes involved in the primary production of copper and zinc are similar to those involved in primary lead production, and that similar technology is necessary to control exposures to lead in zinc and copper operations. ASARCO also argued that primary lead smelters were given extended periods to comply because innovation was necessary (Ex. 475–28) and that allowing copper smelters one year to comply was inconsistent with the number of years allowed for primary lead smelting (10 years) and secondary lead smelting (5 years).

While there may be similarities in processes, the underlying problems associated with control of lead exposure depend on the percentage of lead in the ore. Wagner testified that this percentage was extremely variable and that copper ore lead content ranges from less than .01 to 1.3 percent lead (Ex. 481). Smelters using ores containing a higher percentage of lead may have more difficulty in controlling lead exposures and may require additional time to come into compliance than those using ores with lead concentrations at the lower end of the range. (Tr. 353–354). This is one factor which led OSHA to extend the schedule for compliance.

However, the comparison to primary lead smelting is not completely accurate. Both primary and secondary lead smelters process sulfide ores with lead content far greater than 1 percent and, therefore, have much higher lead exposures. The technology necessary to reduce these exposures is not the same; it requires a much greater degree of control, and sometimes equipment modifications. Upgrading and modifying existing controls is all that is required for most copper smelters in the United States and two and one-half years is an appropriate time limit for these smelters. ASARCO has also claimed that lead emissions from copper smelting at El Paso cannot be effectively controlled independently of the adjoining primary lead smelter. More information is

necessary for OSHA to determine whether El Paso's copper operations should be viewed as an integrated part of the lead smelting operations.

Many of these copper smelters must also comply with the OSHA arsenic standard (29 CFR 1910.1018). The control technology necessary to comply with that standard will also serve to control lead concentrations and achieve compliance with this standard (Ex. 481). In addition, OSHA has established a joint technical group composed of industry, union, and government engineers to explore further the feasibility and propriety of the various available means for controlling occupational arsenic exposures on a plant by plant basis. Asarco, Kennecott Copper, and the United Steelworkers of America have agreed to participate in this experimental effort toward cooperative compliance with occupational health standards. The joint committees have been asked to expand the scope of their discussions to include lead controls, thus providing a forum where the parties may agree on an integrated control strategy to reduce lead and arsenic exposures.

(b) *Secondary Copper Smelting.* Delete the discussion entitled "(b) *Secondary Copper Smelting*" appearing at 46 FR 6156/3.

Economic Feasibility

Substitute the following for the discussion entitled "(c) *Economic Feasibility: Primary and Secondary Copper Smelting*" appearing at 46 FR 6157/3:

(c) *Economic Feasibility: Primary Copper Smelting.*—(i) *Cost of Compliance.* ASARCO has submitted data on the cost of compliance with the lead standard in primary copper smelters (Ex. 475–28). The following compliance expenditures have been estimated for ASARCO's four facilities: Hayden, Arizona, $16,628,000; Tacoma, Washington, $20,941,000; Amarillo, Texas, $667,000; and El Paso, Texas, $18,504,500. These calculations are based on the cubic feet of air per minute necessary to ventilate specffic areas of the plants and on the costs of vacuum systems. Costs of associated devices designed and installed to prevent the emission of pollutants into the general atmosphere also appear to be included in these estimates. For instance, wet scrubbers and wet scrubber gas cleaning systems, costing a total of $1,540,000 have been included in three of the estimates. Thus, ASARCO claims that total expenditures of $56,740,000 would be required and also claims that this amount would not guarantee compliance with the standard.

For several reasons, OSHA believes that the standard can be complied with less expensively by copper smelters. First, industry estimates focus on the mechanical ventilation approach to the control of lead when, in fact, housekeeping, work practices, and administrative controls in combination with ventilation should be both less expensive and more effective in achieving compliance (Ex. 481). Therefore, OSHA believes that the proper approach to reducing exposure levels is through an effective, multi-faceted approach to the problem. In this way, industry can minimize the resources spent on achieving a given level of lead in the workplace. Second, industry estimates are not offset by the value obtained from the reclamation of copper and other metals that are captured by control systems. However, industry has not presented data indicating the magnitude of the offset. Third, primary copper smelters have simultaneous legal obligations to comply with other regulations, such as the arsenic regulation. To the extent that actions taken to reduce arsenic levels also reduce lead levels, these expenditures are not attributable solely to the lead standard. In addition, costs attributable to EPA regulations are sometimes mistakenly included in the estimates. Since compliance with different regulations and different agencies is a cumbersome process, OSHA has established tripartite committees to work together in seeking cost-effective compliance strategies.

Considering the above factors, OSHA concludes that Wagner's estimates of the total costs for all potentially affected copper smelters are reasonable counterestimates to the compliance costs submitted by industry. However, because Wagner did not have definitive data on the compliance status of all firms in the industry, he placed caveats on his estimate. Wagner stated that he could have underestimated the costs by as much as 200 percent. Assuming an underestimate of this magnitude, the upper bound on capital costs for the primary copper producers would be only $18 million. Annualized over the useful life of the equipment, primary copper producers will incur $3.2 million in total annual costs.

(ii) *Industry Profile.* The primary copper industry consists of establishments engaged in smelting copper from ore and in refining copper by electrolytic or other processes. Total value of shipments cycled over the last available five years of data and amounted to $3.9 billion in 1977. (Ex. 476–20). Historical statistics show that, since 1967, the number of companies in the industry declined from 15 firms, operating 32 establishments, to 11 firms, with 31 establishments in 1972, and 9 firms, with 27 establishments in 1977.

More recent Bureau of Mine data list the primary producers ranked in order of output as: (1) Phelps Dodge, (2) Kennecott, (3) ASARCO, (4) Magma Copper, (5) Copper Range, (6) Inspiration Consolidated Copper, and (7) Cities Services. These companies operate smelters and/or refineries. Several domestic producers, through subsidiaries or stock holdings, have interests in foreign copper-producing facilities in Australia, Canada, Peru, Mexico, South Africa, and Namibia (Ex. 476–122).

Prior to the exit of Anaconda from the market in October 1980, the top three companies produced about 60 percent of the total industry output (Ex. 476–119). The net profit margins in 1979 for Phelps-Dodge, Kennecott, and ASARCO were 8.7 percent, 5.4 percent, and 15 percent, respectively, with estimated net profit margins in 1982 through 1984 of 11 percent, 7.2 percent, and 15.9 percent (Ex. 476–130, 476–131, 476–132). Kennecott's lower profits were attributed to its relatively high and rising cost structure, which results from "ancient and outdated equipment" (Ex. 476–131).

Although the market shares and profitability of the top three producers indicate that the domestic market is moderately concentrated, the copper market is internationally competitive. Hence, the ability of the primary producers, regardless of individual market share, to raise prices is limited. Although it appears that the domestic market is not currently threatened by foreign copper imports, forward shifting of costs to customers is to some extent constrained. Producers largely eliminated foreign price advantages by basing domestic prices on the New York Commodity Exchange (COMEX) in 1978 (Ex. 476–26). Proximity to markets, a stable political situation, the existence of an advanced infrastructure, and scale of operations should maintain a viable domestic copper industry even in the face of a potentially worsened position vis-a-vis foreign competition (Ex. 476–122).

The ability to pass costs on is also limited by potential substitutes for copper. For instance, in electrical applications, aluminum, cryogenic power transmission techniques, microminiaturization circuitry, and use of statellites may impede the growth in demand for copper. In construction, the trend toward multiple housing units (which reduces the materials needed per

unit), and the substitution of plastic pipes may curtail the demand for copper. Uses of copper in transportation vehicles is expected to continue to decline. In 1975, 34 pounds of copper per automobile were used, and in 1979, this was reduced to 29 pounds. The use of only 25 pounds of copper per automobile is forecast for 1985 (Ex. 467–33). However, growth in armaments production may increase the demand for copper. On balance, total U.S. demand for copper is forecast to rise by the year 2000 to 5.1 million tons, representing an annual growth rate of 3.6 percent (Ex. 476–122). This demand is expected to strain supply sources as growth in demand for electrical equipment, computers, and underground power distribution systems rises.

Because the demand for copper parallels the demand for durable goods, the market is volatile and quite sensitive to national economic business cycles. The demand for copper also increases with growing military activity because of its use in ammunition and military equipment. Typically, the industry expands to meet military demand and suffers from overcapacity during times of peace (Ex. 476–118).

In 1978, the International Trade Commission recommended that an import quota be imposed through 1982 to protect domestic copper producers. However, the petition was rejected, largely because the action carried an unacceptable risk of accelerating inflation, but also because the copper market was in the process of recovering from its depressed condition (Ex. 476–122).

At least two factors have contributed to increasing costs in the copper industry. First, fuel costs, which account for a major portion of production costs in smelting and refining, rose significantly between 1974 and 1978. The second major factor affecting production costs is the long-term declining yield of copper from ores. From 1950 to 1977, average yield has dropped from 18 pounds of copper per ton of ore to 10 pounds, with some deposits containing only 8 pounds of copper per ton of ore. (The cutoff grade is 4 pounds.) In addition, surface mines, which now account for 82 percent of domestic output, have large ratios of overburden (earth that must be removed during mining operations) to ore (Ex. 476–122).

However, a new process has been developed to recover copper from low ore concentrates (Ex. 476–124). The new hydrometallurgical process is pollution-free. Initial testing demonstrates that it is competitive with conventional smelting techniques. Diffusion of this new process throughout the industry may result in significant changes since costs of producing copper are both currently variable and highly dependent on location and physical composition of ore deposits.

Capital expenditures for new buildings, plant, and equipment in 1977 in the copper industry were withheld by the Commerce Department to avoid disclosing operations of individual companies. However, expenditures rose steadily from 1963 to 1975 from $13.1 million to $164.6 million. In 1976, the industry's investments dropped to $52.4 million, reflecting the depressed state of the market beginning in 1974 (Ex. 476–20).

Copper production is considered to be a capital intensive industry. On average, $7,000 per annual ton of new capacity for facilities is required for a totally integrated facility. Expansion of existing facilities requires about $5,000 per annual ton in capital costs (Ex. 476–122).

The primary copper industry employs about 10,000 production workers at smelters and refineries. The ratio of skilled to unskilled laborers has risen with increasing mechanization, and large-scale operations have generated demand for mechanics, technicians, and machine operators. In 1971, employee hours per ton of copper averaged 20.3 hours; whereas in 1977, there were 18.2 employee hours per ton of copper (Ex. 476–122), indicating a slight increase in productivity.

Conclusion: Economic Feasibility

The copper market has demonstrated past volatility and remains sensitive to the demand for durable goods. Thus, the demand for copper will fluctuate with swings in the national economy. However, on balance, the demand for copper is expected to grow at an annual rate of 3.6 percent.

Copper is produced and sold in a world market. The domestic industry has a demonstrated ability to compete successfully in this world market. Foreign price advantages no longer pose a threat to the domestic industry, and the stable political situation in the U.S., the existence of an advanced infrastructure, and the domestic scale of operations are expected to contribute to the continued viability of the domestic producers.

The primary copper industry, which produced shipments valued at almost $4 billion in 1977 (Ex. 467–20), will be required to spend a maximum of $3.2 million in annualized compliance costs. Therefore, OSHA concludes that the domestic copper industry will be able to comply with the lead standard within two and one-half years, and that compliance will not adversely affect the economic viability of the industry.

Glass Manufacture

Substitute the following for the discussion entitled *"(c) Conclusion: Technological Feasibility (Primary and Secondary Processes)"* appearing at 46 FR. 6165/1.

(c) *Conclusion: Technological Feasibility (Primary and Secondary Processes).* Primary and secondary glass operations can achieve the 50 $\mu g/m^3$ PEL. Primary operations will have to make use of engineering controls, to the extent feasible, and supplement them with worker rotation (as the industry is currently doing) to bring areas of high or intermittent peak exposures into compliance with the standard. In addition, improved housekeeping and maintenance operations will be necessary. Compliance with the lead standard will probably also bring about a significant reduction in employee exposure to silica.

Secondary glass operations appear to require minimal controls such as local exhaust ventilation (movable or stationary). Extensive control technology does not appear to be necessary and only in a few instances will worker rotation be necessary.

Representatives of the glass industry emphasized in their submissions that compliance with the 50 $\mu g/m^3$ standard was not possible through engineering controls alone. Based on the evidence submitted, OSHA agrees that the success experienced by this industry in meeting the 50 $\mu g/m^3$ limit has been based on multi-faceted control strategies that include enhancement of existing controls, automation of many processes, stringent work practice programs, improved housekeeping and maintenance and worker rotation. This approach avoids the more costly strategy of relying solely upon engineering controls to achieve compliance. OSHA believes that the use of such balanced controls strategies, rather than reliance upon a single method of control, is perfectly consistent with the lead standard, since the Agency's ultimate goal in regulating worker exposure to lead is to reduce workers' exposures through the combined use of engineering controls, work practices, housekeeping, and some worker rotation. The industry did not dispute the feasibility of achieving compliance using this combination of controls. Owens-Illinois has requested reconsideration of OSHA's finding that the lead standard is technologically feasible because: (1) Administrative controls are unworkable; and (2)

maintenance personnel are exposed to lead levels in excess of the PEL (Ex 528–13). Neither problem would justify a finding of infeasibility.

Owens-Illinois has installed an enclosed, automated materials handling system which has reduced batch house employees' exposure to lead below the PEL. *Id.* The feasibility of worker rotation under these circumstances is virtually irrelevant since further reductions in airborne lead levels are not required. Moreover, OSHA recognizes that the PEL may be exceeded during maintenance operations, *see infra.* The fact that these repair or maintenance operations may result in exposures exceeding the PEL does not detract from OSHA's general finding that the lead standard is feasible for most glass manufacturing firms during most operations.

Lead Casting

Delete the discussion entitled "21. *Lead Casting*" appearing at 46 FR 6174/3.

Lead Chemical Manufacture

Delete the discussion entitled "22. *Lead Chemical Manufacture*" appearing at 46 FR 6175/2.

Lead Pigments Manufacture

Delete the discussion entitled "23. *Lead Pigments Manufacture*" appearing at 46 FR 6176/2.

Nonferrous Foundries

Delete the discussion entitled "29. *Nonferrous Foundries*" appearing at 46 FR 6184/3.

Shipbuilding

Delete the discussion entitled "35. *Shipbuilding*" appearing at 46 FR 6200/1.

Spray Painting

Substitute the following for the discussion entitled "(g) *Conclusion: Technological Feasibility*" appearing at 46 FR 6214/2.

(g) *Conclusion: Technological Feasibility.* OSHA has determined that substitution of non-lead based paints is one feasible alternative for the industry during some applications. Lead and other toxic metal pigments should be eliminated where possible.

Spray booths can be used which maximize the enclosure of the painting operation. The choice of a downdraft or sidedraft booth depends largely on the configuration of the object that is to be painted. Air flow must be in a direction which will carry contaminated air away from the breathing zone of the painter. If necessary, work platforms, product rotators, or other means must be provided in order that the proper orientation of air flow can be maintained.

Application equipment is available which minimizes the energy expended in the atomization process, thus reducing the amount of stray mist that is generated. The recommendations of the paint formulator concerning the method of application and the atomization parameters should be strictly followed.

Several commenters discussed the problems associated with applying lead paint to surfaces. Billings noted problems encountered with "bounce back" and suggested that application be automated or be done by brush or roller in these instances where possible (Ex. 487). However, it appears that in some cases, depending on the number of spray painters, the size of the object, and numerous other environmental factors, the PEL in spray painting can be achieved through the use of currently acceptable control technologies and without reliance on a respirator, as OSHA's compliance activities demonstrate (Ex. 476–16). Even in industries such as the automobile industry which were previously felt to be at the state-of-the-art, new techniques are achieving consistently lower air lead levels. Certain operations, such as painting deep recesses or confined spaces cannot be effectively controlled by ventilation. In some instances, airless application methods can be used for these operations.

LIA's interpretation that engineering controls are absolutely prohibited during spray paint operations is incorrect. As noted in the Supplemental Statement of January 21, 1981, OSHA recognizes that in some spray painting operations engineering controls alone will not be adequate to achieve the PEL, and that respirators may have to be used in addition to currently available controls. *See* 46 6214/3. This position does not differ from that taken by the National Paint and Coatings Association, Inc., (NPCA):

> The NPCA urges that personal protective devices, namely respirators, not be eliminated where engineering and work practice controls are not feasible as a means of protecting the worker potentially exposed to lead. NPCA agrees that engineering and work practice controls should be the first line of defense, but that respirators should be permitted in the future compliance programs where feasible technology has not been developed to perfect engineering and work practice controls.

Ex. 475–9. NPCA's statement regarding primary reliance on engineering controls and supplemental use of respirators in instances where such controls are not technologically feasible precisely parallels OSHA's traditional compliance policy. To remove any remaining doubts concerning methods of compliance the Agency has amended the wording of paragraph (e)(1) of the lead standard so that it parallels the compliance language of other OSHA health standards. Moreover, the adoption of a thirty day trigger for the requirement that engineering controls be implemented should further reduce the number of painting establishments facing substantial compliance obligations. This change allows an employer to use respirators when the employer can demonstrate that engineering controls are not feasible. Therefore, this explicit change in regulatory language grants NPCA the flexibility it sought in the remand hearings and should additionally eliminate any lingering problems of interpretation.

Steel Manufacture

Substitute the following material for the discussion entitled "39. *Steel Manufacture* (a) *Primary Steel Production*" appearing at 46 FR 6214/3.

Steel Manufacture

(a) *Steel Production.* This discussion does not apply to the production of leaded steel which is still under consideration by OSHA.

(i) *Process Description and Exposure Areas.* The basic oxygen steelmaking process uses as its principal raw material molten pig iron from a blast furnace. The other source of metal is scrap. Scrap is processed similar to the methods used in scrap processing and collection; hydraulic scrap cutters may be used. Only the processing of lead scrap poses a problem. Lime, rather than limestone, is the fluxing agent. As the name implies, heat is provided by the use of oxygen.

The basic oxygen furnace (BOF) is a steel shell lined with refractory materials which is supported on horizontal trunnions so that it can be tilted. Usually these furnaces are installed in pairs so that while one is making steel the other can be filled with raw materials.

The first step for making a heat of steel in a BOF is to tilt the furnace and charge it by larry car with steel scrap. Immediately following the scrap charge, an overhead crane presents a ladle of molten iron from a blast furnace or from a holding device called a mixer.

As soon as the furnace is charged, and set uprighted the oxygen lance is lowered and the oxygen is turned on. In a very short time the heat increases and lime, fluorspar are added via a

retractable chute to the metallic charge. From that point on, the blowing procedure is uninterrupted. Oxygen combines with carbon and other unwanted elements eliminating those impurities from the molten charge and converting it to steel. The lime and fluorspar help to carry off the impurities as a flowing layer of slag on top of the metal which is now entirely molten.

When the batch of steel is complete, the oxygen is shut off, the clamps on the lance are released, and the lance is retraced through the hood. The furnace is then tilted in the direction opposite to that in which it is charged, and molten steel flows through a tap hole that is located near the top of the furnace. A ladle receives the molten steel. The slag, which floats on top of the steel, stays above the taphole by the progressive tilt of the furnace.

Electric arc furnaces are used for producing alloy, stainless, tool and other specialty steels. More recently operators have also learned to make larger heats of carbon steels in these furnaces. Therefore, the electric steel making process is becoming a high-tonnage producer.

Electric arc furnaces are shallow steel cylinders lined with the refractory brick. They are charged in one operation from buckets or other containers brought in by overhead cranes. The roof of an electric furnace is pierced so that three carbon or graphite electrodes can be lowered into the furnace. These electrodes provide the current arcs from one electrode to the metallic charge and then from the charge to the next electrode, causing intense heat.

In each process the end product is molten steel in a ladle. Generally, the molten steel is solidified into forms that are suitable for further shaping by the steel industry's rolling mills and other finishing facilities. Molten steel direct from furnaces is rarely cast into finished products.

The traditional method of handling raw steel from a furnace is to "teem" it from the ladle into ingot molds of various sizes and shapes. Alloys are added to the ladle of steel often by chutes extended from above the teeming floor. However, injection may be by gun.

The ladle into which the molten steel from the furnace has been tapped is usually mounted on a railcar which is moved to a position where an overhead crane can lift it. The overhead crane lifts the ladle of molten steel to a position where it can be poured into ingot molds, (or into a strand or continuous casting machine) for a solidification.

The size and shape of an ingot is determined by the desired product. Roughing mills produce semifinished forms of steel such as blooms, which are roughly square in cross section; slabs, which are rectangular in cross section; and billets which are smaller than bloom in cross section and usually much longer.

A more modern technique than the traditional ingot procedure is the use of a strand casting machine to receive molten steel and produce such semifinished solid products or slabs or billets. In so doing, they bypass ingot teeming, stripping, soaking and rolling.

There are several kinds of strand casting machines, but the principles of their operation are similar. Molten steel from a furnace is carried in a ladle to the top of the strand caster. A stopper in the bottom of the furnace ladle is lifted so that molten metal drops into the tundish (which provides an even pool of molten metal to be fed into the casting machine), which also acts as a reservoir allowing an empty ladle to be removed and a full ladle to be positioned and to start pouring without interrupting the flow of metal to the casting machine. In some strand casters the descending column of steel is cut to desired lengths while still in a vertical position. This is done by traveling cutting torches.

Molten metal is often received from conventional steelmaking furnaces and refined to remove impurities quickly before the steel solidifies. Among the vessels and other facilities used in this operation are those for vacuum stream degassing, vacuum/ladle degassing, argon-oxygen decarburization and vacuum/oxygen decarburization. Electron beam processing generally begins with carefully selected and prepared cold raw materials. These remelting processes are used mostly in the production of sophisticated alloys and specialty steels.

Generally speaking, lead exposure only occurs after lead has been added to molten steel to produce leaded steel and in subsequent working of leaded steel. Neither process is included in the scope of this discussion. Otherwise the use of scrap steel, which can contain lead solder or may be covered with lead-based paint, may produce lead emissions earlier in the process at the steelmaking furnace as fugitive emissions and in the scrapyard, where the scrap is cut (sized) to fit the furnace. AISI characterized exposures resulting from lead in scrap metal as intermittent and sporadic (Ex. 475–39A at 8). The fugitive lead emissions from the furnace are a function of the amount of scrap lead added to the furnace.

(iv) *Controls Currently Used.* Materials handling is often done mechanically. In the scrapyard, processing for steel making is comparable to general scrap processing and requires sorting, chopping and cutting. Scrap is processed by using hydraulic cutters (Ex. 500, p. 5) or by using torches to reduce its size prior to charging furnaces. Local exhaust ventilation of furnace areas, ladles carrying molten melts and casting areas are also used.

(ii) *Population Exposed.* The precise number of employees exposed to lead in the steel industry is unknown. The Short report estimates 4000 potentially exposed employees, 500 of whom are directly involved in lead processing in 16 plants. AISI, on the other hand, estimates 7234 potentially exposed employees, 1673 of whom are potentially exposed above the PEL (Ex. 475–39A). These figures include employees whose sole source of exposure is leaded steel production.

(iii) *Exposure Levels.* Exposure data is fragmentary and may not be representative of employees' time weighted exposures. Some samples were run over a full-shift (7 hours); others for only 2 to 3 hours. Moreover, because of the intermittent and varied nature of lead exposure in steel making, determining the average and peak exposures at a particular operation is much more difficult than with continuous exposures.

Available exposure data indicate that notwithstanding high air lead levels during the production of leaded steel, industry-wide exposures generally are less than 100 $\mu g/m^3$, and may be less than 50 $\mu g/m^3$.

Specifically, in the scrap yard, out of 31 samples taken at CF & I all but 3 were below 50 $\mu g/m^3$; these three, however, were quite high (180, 190 and 790 $\mu g/m^3$) (Ex. 476–457).

No data were received showing furnace exposures, however, because of the fugitive and unpredictable nature of lead emissions at the steelmaking furnace, and because of the relatively low quantity of lead present at this stage of steel production. OSHA believes most exposures are insignificant.

(iv) *Additional Controls.* Materials handling operations should include more local exhausting of emissions sources. No additional controls appear necessary.

(v) *Conclusion: Technological Feasibility.* AISI has described lead emissions from scrap handling and furnace emissions as intermittent because "the scrap steel does not always contain significant amounts of lead;" emissions were characterized as fugitive and random. (Ex. 475–39A) On a time weighted basis these exposures are unlikely to exceed the PEL. If exposures

nevertheless do exceed the PEL, rotation of employees on a monthly basis should assure that few if any capital controls will be required of the industry to comply. Thus, the adoption of a thirty day exemption from the requirement that engineering controls be installed should solve the steel industry's compliance problem.

(b) *Secondary Steel Manufacture.* Delete the discussion entitled "(b) *Secondary Steel Manufacture*" appearing at 46 FR 6216/2.

Substitute the following material for the discussion entitled "(e" *Economic Feasibility*" appearing at 46 FR 6218/1.

(e) *Economic Feasibility.* (i) *Cost of Compliance.* There are several potential sources of lead exposure in the steel industry. These include relatively low fugitive emissions at the steelmaking furnace and during scrap handling, and higher exposures during the production of leaded steel and terne metal (a lead-tin alloy), and in processes such as annealing, patenting, grinding and scarfing leaded steel products (USWA, Ex. 477–5). The scope of this discussion includes only fugitive emissions at the furnace, and in wire patenting and terne metal. No cost data were submitted with respect to control of fugitive lead emissions at the furnace.

Estimates for substitution of two salt baths, which have been substituted for lead baths in wire patenting processes, were $85,000 to $115,000 where existing controls were in place. Replacement of existing controls with a fluidized bed system was estimated to cost $750,000. The Stelmor process, which reduces but does not eliminate the need for patenting operations in the production of wire or rod (EX. 475–500), requires capital investment of about $100,000,000 for new plant construction (Ex. 476–482). However, about 25 steel works in the steel industry have already switched to the Stelmor process (Ex. 474–22), and some steel plants have substituted salt baths for lead baths in annealing and patenting operations (Ex. 476–486). Bethlehem Steel has instituted a process change in wire patenting operations that enables it to achieve compliance, but neither the details of the process nor the costs were specified (Ex. 476–481). According to the International Wire Association, the use of the lead in wire patenting is being phased out by replacement with other processes (Ex. 476–484).

OSHA estimates, based on the data of DBA (Ex. 474–65B) capital costs for the wire patenting firms would range between $7 million to $14 million, with annualized capital costs ranging between $1.25 million and $2.5 million. In addition, firms may also need to spend $3 million in annual operating costs. AISI did not submit cost data on control of lead for terne metal producers.

(ii) *Industry Profile.* Within the steel industry there are an estimated 58 companies in SIC 33122 producing steel ingot and semifinished shapes, 85 companies in SIC 33124 producing hot rolled bars, bar shapes, and plate, and 24 companies in SIC 33125 producing steel wire as part of steel mill operations. Steel wire, some of which is produced by lead patenting or annealing, manufactured in steel mills was valued at $606,300,000 in 1977. The quantity and value of long ternes (SIC 3312317) and short ternes (SIC 3312329) were not disaggregated from other tin mill products in the published data (EX. 476–438), but represent a relatively small portion of steel mill production (Ex. 476–475). All processes that potentially involve exposure to lead in steel production are included in the industrial classification above.

Very few companies produce terne metal products (Ex. 476–475). Long ternes (sheet steel that has been coated with a tin-lead alloy) can be produced in continuous and single-sheet coating processes. The latter is less efficient than the continuous process which eliminates some intermittent operations associated with sheet pots and produces a higher quality product since the coating is more uniform. All long terne production processes at U.S. Steel facilities are continuous, but other companies may still use single-sheet coating, which has the advantage of being more adaptable to small, varied orders, especially with respect to the size of sheets needed. Gasoline tanks for tractors, trucks, and automobiles are the major end use of long ternes (Ex. 476–475). Terne plate, occasionally known as short terne, is produced in very small quantities today. It is no longer used at all for roofing material, firedoor plates, or other former uses (476–475).

An estimated 100 plants produce wire by using lead patenting operations (Ex. 474–22). Not all patented wire is produced by steel companies, however, and those steel companies that do produce wire usually have separate purposes. At least two of these producers have used substitution or other controls to comply with the lead standards. CF&I has switched to a sodium bath (Ex. 476–435), and Bethlehem Steel has controlled lead exposures by improving local exhaust ventilation and adding a surface active agent to the molten lead (Ex. 476–454).

Another producer, who produces lead patented wire only when orders are received from customers, considers the operation "marginal." Exposures, which occur intermittently, are not controlled by ventillation at all. However, housekeeping, including vacuuming of dust created in scale from the dragout operation, is performed (Ex. 476–431).

OSHA recognizes that data specific to the producers of lead patented wire and terne metal within the steel industry would be preferable to data for the steel industry in general. However, neither the published data nor the submission of AISI are disaggregated in this manner. Therefore, the following discussion of economic conditions in the steel industry is assumed to be applicable to those firms within the steel industry that are affected by the lead standard.

The steel-related operations of wire patenting and terne metal production will be required to comply with the lead standard within two and one-half years. In these operations, compliance can be achieved through simple modifications of existing equipment; redesign or extensive retrofitting is not required.

To determine the economic feasibility for wire patenting firms to comply with this standard, estimates of the capital and operating costs of compliance are needed. These were provided by DBA and presented in the cost of compliance section above. Using those estimates and assuming a 12 percent rate of interest and a life expectancy of ten years for the required capital equipment, OSHA estimates that the annualized capital costs to this industry will range between $1.25 million and $2.5 million. (Ex. 65(B)). New capital expenditures for this industry in 1977 were $79.4 million. (Ex. 476–20). Thus, as these annualized capital costs represent, at most, only 3.1 percent of the total new capital expenditures in this industry, the rate of return of these firms' investments will not be appreciably lowered by compliance with this standard. DBA further supplies estimates of the annual operating costs of complying with this standard which ranged between $3 million and $5 million. Total 1977 shipments in this industry were $2,258.6 million. Thus, the annual operating costs represent only 0.4% of the total shipments. Therefore, on the basis of the available data, OSHA concludes that this standard would impose very small costs upon the wire patenting industry. That conclusion, in turn, implies that this standard will have a minimal impact upon the price of lead coated wire, the prices of goods and services produced by industries using lead coated wire, the output and employment of firms producing lead coated wire, and the profitability of wire patenting operations, and, hence, the economic

viability and health of small businesses, would not be altered by the costs of complying with this standard.

DBA estimated that the total annual costs of compliance constituted approximately zero percent of value of shipments for terne metal producers (Ex. 26). The available data indicate that as few as three companies manufacture long terne metal plate (Ex. 22) and that technological and economic efficiency dictates the use of large scale production technology. Furthermore, this product has no substitute (within the feasible price range) for automobile gas tanks and in gasoline truck tanks. Thus, this industry's costs of complying with the standard are likely to be passed on to the industrial purchaser of long terne metal plate. The effect which this passed on cost will have upon the prices of the final goods using long terne metal plate (automobiles and gasoline tanker trucks) will be very small because the cost of the long terne metal products is only a minor component of the price of the final goods. Thus, the costs of complying with this standard will not measurably effect the prices of goods produced by industries using long terne metal plate, the output and employment of firms producing long terne metal plate, and the profitability of long terne metal plate operations.

Stevedoring

Discussion entitled "40. *Stevedoring*" appearing at 46 FR 6220/2.

Telecommunications

Substitute the following for the discussion entitled "(g) *Conclusion: Technological Feasibility*" appearing at 46 FR 6221.

(g) *Conclusion: Technological Feasibility*

The industry maintained that its difficulties in complying with the lead standard were comparable to the difficulties associated with the construction industry, and that OSHA should exempt the telecommunications industry from the standard's coverage (Ex. 475–22 and 22(a)). OSHA does not agree that the similarities warrant an exemption. While workers may be required to move from site to site, the sites themselves are stationary and the company has been able to determine representative exposure levels for lead related tasks. Furthermore, the work force is highly specialized and not transient in nature, as it is in the construction industry. Thus, the same employees continue to have potential lead exposures. The fact that telecommunications repairmen move site to site and that sites infrequently have leaded cable, tends to aid employer compliance by naturally eliminating continuous worker exposure to lead. In addition, the general discussion concerning the breadth of the construction exemption, *infra*, applies with equal force here.

Contrary to AT & T's claims (Bell Pet. at 20–23), the record demonstrates that the PEL is technologically feasible because it can be met by application of work practices coupled with minimal rotation. As the Court of Appeals has previously recognized:

> * * * the ease with which this industry can adapt to the standard technologically essentially moots the economic question.

United Steelworkers, supra, 647 F.2d at 1302. Besides, the adoption of an engineering control trigger to ease the burden of the lead standard where exposures are intermittent will further ensure that no obligation to install engineering controls will ever arise in the telecommunications industry.

AT & T further maintains that application of environmental monitoring provisions of the lead standard is impractical in the telecommunications industry and no sound reason exists for differentiating between monitoring requirements in the construction and telecommunications industry. OSHA disagrees. Several factors support the requirement that environmental monitoring should be performed.

First, contrary to AT & T's suggestion, OSHA did not exempt the construction industry from the air sampling requirements of the standard solely because lead exposure within the industry was intermittent, but among other factors because the length of time necessary to obtain the monitoring results would usually exceed the duration of the construction job and the next job was not likely to have the same source of exposure. 43 FR 52986. While OSHA recognizes that AT & T's employees encounter lead exposures at varying locations, these workers are exposed to lead during the same operations, *i.e.*, lead cable splicing and repairing. Thus, air monitoring data showing the representative exposures of workers splicing lead cable are useful indicators of the nature and extent of lead exposure problem during these operations and may serve as the basis for the development of effective work practices which reduce those exposures.

Second, OSHA has resolved AT & T's concern over the monitoring provisions of the lead standard by issuing an interpretive letter which indicates that the requirement for "representative" monitoring may be fulfilled by monitoring the exposures of a typical cable splicer rather than by monitoring lead exposures at every manhole or telephone pole where lead may be encountered.

Industry has further maintained that compliance with the standard would require the installation of hygiene facilities at every location where lead cable may be found and that this requirement rendered the standard infeasible in the context of the telecommunications industry (Tr. 203, 206). This fear is unfounded because the standard requires hygiene facilities to be constructed only when employee exposures exceed the PEL. Since worker rotation and work practices will assure that no telecommunications employee's exposure to lead exceeds the PEL, no requirement to furnish hygiene facilities need ever arise.

Zinc Smelting

Substitute the following for the discussion entitled "46. *Zinc Smelting*" appearing at 46 FR 6224.

46. *Zinc Smelting.*—(a) *Uses.* Zinc metal is used for galvanizing, brass and bronze products, and metal casting. In addition to metallic applications, significant quantities of zinc are consumed in pigments or other chemicals (Ex. 476–491).

(b) *Process Description and Exposure Areas.* The processing of zinc from its ore begins with the milling of the ore to prepare a concentrate that can be treated to recover zinc and its associated byproduct and coproduct metals (Id.).

The mineralogy of zinc-containing ores determines the technology and economics of the milling practice. Heavy-media separation pretreatment prior to zinc flotation has been designed into newer mills. About one-half of the mill feed can be floated at relatively coarse size with the reject fraction assaying as low as 0.04 percent zinc (Ex. 476, 491).

Flotation is the basic mineral reduction process. The general scheme for the flotation of mixed sulfide ore is: (1) Flotation of the lead copper minerals and depression of the zinc and iron minerals; (2) separation, also by flotation, of the lead-copper concentrate into separate lead and copper concentrates; (3) activation and flotation of the sphalerite from the iron and gangue minerals; and (4) flotation of the pyrite if recovery is desired (Id.).

Reduction of the zinc ores and concentrates is accomplished by electrolytic deposition from a sulfate solution or by distillation retorts or furnaces. In either method, the zinc concentrate is roasted to eliminate most

of the sulfur to produce roasted concentrate or calcine (Id.).

At electrolytic zinc plants, the roasted zinc concentrate is leached with dilute sulfuric acid to form a zinc sulfate solution. The solution is then purified and piped to electrolytic cells, where the zinc is electrolytically deposited on aluminum cathodes (Ex. 476, 491). The cathodes are lifted from the tanks at intervals and stripped of the zinc, which is then melted in a furnace and cast into slabs (Ex. 476, 491).

There are three types of distillation retort plants—batch horizontal retorts, continuous vertical retorts heated by fuel, and continuous vertical retorts.

A blast furnace process for producing zinc, also known as the Imperial Smelting Process, was developed by Imperial Smelting Corporation, Ltd., of Avonmouth, England. This process is similar to the normal blast furnace practice of burning coke in intimate association with the ore to be reduced but, as in the retort process, the zinc is released as a vapor and must be condensed (Id.).

The Kivcet-CS process, developed in the U.S.S.R. and available for commercial distribution, combines the functions of sintering, blast furnacing, and slag fuming in one autogenous smelting unit. It offers the possibility of recovering, along with lead, either zinc metal or zinc oxide. The process is characterized by high metal recoverings, low environmental contamination, and low labor and capital costs compared with those of a conventional smelter (Ex. 476, 491).

Potential lead exposure occurs during the handling and storing of concentrates and charging of concentrates to the roaster. Typical operations involve the receipt of concentrates by railcar or dump truck, storage in the open or in storage buildings, moving of concentrates by front-end loader to open conveyors, drying in a rotary dryer, holding in storage bins, and charging by conveyor to the roaster. Exposures in this area are due largely to dust emissions from mechanical screens and conveying equipment, overflow from front-end loaders, and reentrainment by wind (Ex. 481).

Zinc may also be extracted from scrap metal or scrap zinc using a distilling process, during which trace amounts of lead may be present. However, even if lead is present in the metal, it remains in slag form during recovery, and no lead fumes or dust are generated (Ex. 22 at 237).

(c) *Controls Currently Used.* Undisputed evidence that the technology necessary to control lead is available. Mr. Wagner's analysis of available control technology is consistent with the practices which ASARCO, St. Joe, etc. current employ (Ex. 481). In some cases, such as the American Chemet Co., enhanced housekeeping practices are all that would be necessary to achieve compliance with the standard (Ex. 476–501). St. Joe also outlined control technologies consistent with the recommendations made by Mr. Wagner and others. (Ex. 475–36).

(d) *Exposure Levels.* The level of exposure to lead is dependent on the lead content of the concentrates. Lead concentrations in ore range from 0.3 percent (Ex. 481–35) to 1.5 percent (Ex. 481–19). For example, airborne lead exposures among concentrate handlers at National Zinc (Ex. 481–25) and Jersey-Miniere (Ex. 481–25) did not exceed 30 $\mu g/m^3$.

Other potential lead exposures occur in the roasting department: These exposures vary with the type of roaster. Levels at New Jersey Zinc were in the 150–200 $\mu g/m^3$ range where closed, multiple hearth roasters are employed (Ex. 481–20). At National Zinc, where a fluidized bed roaster is used, no lead levels in excess of 30 $\mu g/m^3$ were measured in the roasting department (Ex. 481–25).

In the electrolytic process, calcine and dilute sulfuric acid are introduced into a series of tanks for the leaching operation. Since the concentrates become wet and stay wet throughout the remaining processes, little potential lead exposure occurs (Ex. 481). In the recast process at National Zinc, lead exposure levels for the workers casting the anodes averaged 200 $\mu g/m^3$ (Ex. 481–25), with one exposure measured as high as 1200 $\mu g/m^3$. The cathode strippers have lead exposures that average slightly in excess of 50 $\mu g/m^3$ (Ex. 481–19, 25).

In the pyrometallurgical process, the sintering machine represents the last significant lead exposure area. Lead levels as high as 200 $\mu g/m^3$ have been measured in the fume equipment operator at New Jersey Zinc (Ex. 481–20) and in excess of 50 $\mu g/m^3$ for the other workers in this department. Most of the lead and cadmium is fumed off at this operation, thus little potential for significant lead exposure exists in remaining processes (Ex. 481). Approximately, 65 percent of employees are exposed below 30 $\mu g/m^3$ (Ex. 476–386) and 35 percent of all employees are exposed above 50 $\mu g/m^3$ (Ex. 476–386). Zinc fuming processes showed that most lead levels were below 50 $\mu g/m^3$ (Ex. 481).

In a NIOSH Health Hazard Evaluation survey at the American Chemet Co., of 8 samples taken at the zinc smelter (Ex. 476, American Chemet) 6 were below 50 $\mu g/m^3$. NIOSH recommended that housekeeping be used to reduce levels significantly. An OSHA inspection of the National Zinc Co. found that 360 workers were exposed below 30 $\mu g/m^3$ and only 17 above 50 $\mu g/m^3$ (Ex. 476–503). Based on these findings, OSHA believes exposure to lead is probably not a significant problem in most zinc smelting operations (Ex. 481).

(e) *Population Exposed.* There are an estimated 2,000 production workers potentially exposed to lead in the zinc smelting and refining industry, 70 percent of whom are exposed to less than 30 $\mu g/m^3$. Fifteen percent are exposed to between 30 $\mu g/m^3$ and 50 $\mu g/m^3$, and 15 percent are exposed to over 50 $\mu g/m^3$ (Ex. 481, p. 16).

(f) *Additional Controls.* To bring zinc smelters into compliance requires that some firms upgrade existing ventilation equipment so that it has an increased capture potential. Other firms may need to automate more processes or to rotate workers, while some need only enhance their housekeeping practices to achieve compliance with 50 $\mu g/m^3$.

(g) *Conclusion: Technological Feasibility.* The record evidence indicates that most operations within most zinc smelters are in compliance, and that in those which are not fully in compliance many of their processes are below 50 $\mu g/m^3$ and some are even below 30 $\mu g/m^3$. Thus, compliance for the industry, as a whole, appears feasible within two and one-half years.

(h) *Cost of Compliance.* Two primary producers of zinc—ASARCO and St. Joe Minerals—provided OSHA with written submissions on the feasibility of meeting the lead standard in their operations. Other primary producers and the secondary producers did not respond to OSHA's request for information.

ASARCO provided estimates of compliance costs in its Corpus Christi, Texas, primary zinc facility and its Sand Springs, Oklahoma, secondary zinc facility. In addition, costs for the zinc department of ASARCO's El Paso, Texas, primary copper facility were provided. (Zinc dust from this operation is transported to Corpus Christi for recovery.)

ASARCO claims that the total cost of compliance will be $13,308,000 for its zinc operations. These costs include ventilation and vacuum systems and are divided between primary production ($13,002,000) and secondard production ($306,000) (Ex. 475–28). The Corpus Christi plant estimates do not consider potential changes in work practices which are necessary to eliminate some

of their worst exposures resulting from power sweeping (Tr. 531). ASARCO also overlooks potentially less costly solutions by omitting stand-by pulpits with pressurized filtered air for intermittent operations, such as sampling (Tr. 532). ASARCO did not consider the use of pressurized cabs for mobile equipment (Tr. 532).

OSHA also suggests that other methods of control could be used, such as chemical dust suppressants, traveling ventilation systems, and secondary and tertiary hoods (which are currently used in Japan). These methods are available, effective, and economically attractive.

St. Joe Minerals submitted a compliance cost estimate of $13 million in capital costs and $400,000 in annual operating costs (both in 1978 dollars). This estimate reflects use of "conventional control techniques" (Ex. 475–36A). St. Joe stated that this estimate originated from its prior experience in meeting safety, health, and environmental regultions, and that derivation of the figure was available in its submission to the 1977 rulemaking proceedings (Tr. p. 770).

OSHA estimates that the costs of compliance with the lead standard will the range between OSHA's estimate of $10.5 million and industry's estimate of $26 million (Ex. 481 and Tr. 345; Ex. 475–28; Ex. 475–36A). The lower bound estimate factors in the use of a broad array of control technologies and work practices. Some of these work practices are very inexpensive or carry no costs at all (Tr. 349). In addition, other controls, such an air-lock entry anteroom systems and boot-washing facilities could be used at St. Joe's zinc smelter (Tr. 561). The record shows that some zinc smelters are currently in compliance or near compliance with the lead standard in most of their operations. Hence, not all smelters will incur significant costs. OSHA also recognizes but does not have data to measure the value of reclamation of other metals, which will offset compliance costs for some firms in the industry (Tr. 348). Furthermore, expenditures for compliance are considered business expenses, thereby reducing the after tax burden of these firms (Tr. 349).

In addition, zinc smelters are already under an obligation to control exposures to arsenic. OSHA estimated that the industry would spend $9.3 million in capital costs and $940,000 in annual costs to comply with the arsenic standard (Ex. 476–488). To the extent that resources have been allocated for this purpose, and that they will have reduced lead levels simultaneously, these costs should not be doubled-counted. In light of these considerations, OSHA concludes that the high estimate of $26,000,000 is a reasonable assessment of the upper bound of the potential costs for the zinc industry. Annualized capital costs, therefore, are not expected to exceed $4.6 million.

(i) *Industry Profile.* In 1976, there were 10 companies operating 18 establishments and employing 6,400 production workers in the primary zinc industry (SIC 3333). By 1977, there were 8 companies operating 8 facilities and employing 3,500 production workers. Value added per production worker rose from $8.65 to $16.03 per hour while average hourly earnings of production workers rose from $3.17 to $7.17 per hour (Ex. 476–20). Investments in new capital fell from $25.8 million to a low of $5.9 million in 1969, but have risen since then to $39.8 million in 1977 (Ex. 426–20). Total shipments were valued at $430.7 million in 1977 (Ex. 476–20).

Since 1969, there has been a continuous decline in the production of domestic zinc coinciding with the closure of 9 smelters (Ex. 476–490). Thus, although United States demand for zinc metal over the decade has remained relatively stable, smelting capacity has declined by almost 50 percent. Smelters closed for a variety of reasons, including obsolescence, failure to meet environmental standards, and an inability to obtain sufficient concentrate feed (Ex. 476–490).

ASARCO commented that several operations closed as a result of a downturn in demand lagging the recessionary period of 1974 to 1975 and the long-run trend in substitution away from zinc in the automotive industry (Ex. 475–28). However, the industry has made steady progress in developing and promoting the use of thin-wall zinc diecastings, which are lighter in weight. Thus, zinc has begun to recapture some of the market and currently is used in 150 automotive diecastings compared with 100 in 1978. In addition, the rising costs of substitute materials, such as plastic and aluminum, have increased the competitiveness of zinc in some markets (Ex. 472–26).

Historically, the demand for zinc correlates closely with economic activity (Ex. 476–490). The major use of zinc metal is in the construction industry, which is the major market for zinc-coated or galvanized products, such as structural steel, roofing, siding, guttering and duct material in air conditioning, ventilating and heating systems. Transportation accounts for the second major use of zinc metal. The largest use within this sector is diecastings for automobile components. Zinc is also used as a nonmetallic oxide in the rubber industry, production of photocopying chemicals, and paints. Zinc is most vulnerable to substitution in these nonmetallic uses (Ex. 476–490).

There are currently four domestic producers of primary zinc: AMAX, ASARCO, Jersey-Miniere, and National Zinc. (Ex. 476–489). In addition, St. Joe Minerals has reactivated at 25 percent of capacity its zinc smelting operation. This decision was made because of the discovery of a high-grade zinc deposit in New York (Tr. p. 762–763). Depletion of this deposit is expected to occur within 15 years (Tr. p. 764).

The tenor of zinc ores in the United States tends to be lower than that of foreign ores. Therefore, to ensure a continuing domestic supply and to foster development of domestic low-grade ores, incentives exist to develop and implement efficient mining and extraction processes (Ex. 476–490). However, major United States companies also have substantial interests in foreign zinc mining activities (Ex. 476–49B).

Also, foreign investment by a Belgian firm in the United States zinc industry supplied capital for a joint venture to build an electrolytic, highly automated facility in Tennessee and to develop four mines. In addition, several Japanese companies and a United States oil firm entered into a 3-year partnership to explore for zinc deposits in Tennessee (Ex. 476–49B).

Pilot research in the field of zinc recovery has shown that ores that were previously used to a limited extent or not at all as sources of zinc can become commercial sources of the metal. Specifically, the Kivet CS shaft furnace allows simultaneous smelting of lead and zinc and is ready for industrial scale application in the Soviet Union. Advantages of the process include reduced volumes of waste gas, high metal recovery, improved environmental control of emissions, and lower labor and capital costs compared with conventional smelters (Ex. 476–49B).

The construction of electrolytic plants and the development of hydrometallurgical processes, which will eliminate roasting, can also produce unintended benefits, such as reduced environmental pollution. The newest plant in the United States, a $97 million joint venture of New Jersey Zinc and Union Miniere, uses a highly automated electrolytic process. Some of the plants that closed between 1969 and the present were utilizing obsolete technology and could not meet environmental standards (Ex. 476–490).

Foreign producers with more modern technology and lower labor costs enjoy competitive advantages over domestic

producers. Foreign penetration into the domestic market is approaching 50 percent (Ex. 476–493), and may reach 63 percent by 1981 (Ex. 476–38(b)). However, even absent the OSHA lead regulation, this trend is expected to continue and in fact may be accelerated. Given the current depressed condition of zinc prices in spite of an international cartel active in supporting zinc prices since 1965 (Ex. 476–493), primary producers probably will continue to defer decisions concerning reinvestment in new plant and equipment and more modern technology. Perhaps the cost of such investments will induce a rise in the number of joint ventures to cover the risks of investing in the zinc industry until the development of new markets secures the future of zinc as an industrially important metal.

(j) *Conclusion: Economic Feasibility.* OSHA estimates that the annualized compliance costs in this industry will not exceed $4.6 million, which is only 1.1 percent of the industry's total value of shipments. Therefore the convergence of many factors more significant than the OSHA lead regulation will determine the future of the zinc industry. Current market conditions have resulted in depressed prices in the industry, and the strength of foreign competition is increasing as domestic producers retire obsolete, inefficient plants and deplete domestic ores. Developments of new zinc markets and modernization of technology in the industry may contribute to a brighter outlook for producers. However, if world producers ignore demand, excess supply could force prices down, resulting in lower profits. This might impel additional capacity reductions, which would reduce available supplies in the late 1980s.

OSHA recognizes that the zinc industry is operating is a depressed world market. However, the estimated annualized compliance costs ($4.6 million) are only 1.1 percent of the industry's total value of shipments based on the most recent available data (Ex. 476–20). In addition, most zinc smelters are currently in or close to compliance in most operations.

However, St. Joe contends that it cannot afford to comply with the lead standard at its Monaca smelter because of adverse conditions in the zinc market. This smelter was recently reopened at 25 percent capacity because of the discovery of an ore deposit, which will be depleted in about 15 years. The decision to reopen this smelter was made after promulgation of the lead standard. Therefore, OSHA assumes that St. Joe concluded that the venture would be profitable within the context of a 50 $\mu g/m_3$ lead standard. Operation of the Monaca Smelter at reduced capacity should result in lower air lead levels. However, if unforeseen compliance problems occur, the Agency is willing to discuss those problems with St. Joe.

III. Other Issues

A. *Scope of the Construction Exemption.* The construction industry was exempted from the new lead standard. Since the standard was issued, almost all industries where lead exposures are intermittent, *i.e.*, telecommunications, stevedoring, and shipbuilding, have claimed that this fact alone requires that the exemption be extended to cover their operations.

OSHA's exemption of the construction industry was based on the fact that:

> Construction is a diverse activity about which no valid generalizations can be drawn concerning the nature of lead exposure, the duration of a project, or the duration of an employer-employee relationship, and the record does not support drawing rational distinctions between groups that can feasibly be covered by the standard and groups that cannot.
>
> * * * * *
>
> Accordingly, OSHA intends to utilize the expertise of the Construction Advisory Committee and will request that it review the rulemaking record and make recommendations on the most appropriate way the lead standard can be applied to the construction industry. These recommendations will then become the basis for a proposed modification to part 1926.
>
> (43 FR 52986)

OSHA's exemption of the construction industry from the lead standard was subsequently challenged by labor and carefully scrutinized by the Court of Appeals, which:

> Agree[d] with the union that OSHA's decision to exclude the workers in one industry from the standard require[d] some explanation, since the statute requires OSHA to protect all workers.
>
> * * * * *
>
> Of course, OSHA would be shirking its statutory responsibilities if it made no effort to protect workers in the construction industry from lead exposure. But we construe OSHA's decision here as one only to exempt the construction industry from this particular standard, not from OSHA jurisdiction generally.
>
> * * * * *
>
> The agency has stated that it has requested its Construction Advisory Committee to review the rulemaking record and to recommend how the agency might fashion a scheme to give construction workers the protection they need. We have no reason to doubt OSHA's assurance that it will take reasonably prompt steps to fashion this protection. So long as it does so, OSHA has met its duty.
>
> *USWA* v. *Marshall, supra,* 647 F. 2d at 1309–10.

Applying these criteria, OSHA believes additional exemptions from the standard are appropriate only for similarly "diverse" industries about which no generalizations regarding the nature and source of lead exposures can be made. Because no other industry shares the characteristics which justify an exemption of the construction industry with the possible exception of stevedoring which has a highly transient workforce, all pending requests for such an exemption are denied.

No other industry except stevedoring can fairly be characterized as sharing the diverse traits of the construction industry. Where the tasks generating lead exposures are repetitive although not necessarily performed at the same location, monitoring results which reflect the levels occurring during lead operations can be obtained and engineering and work practice controls can be designed to contain those exposures; in construction work this would usually not be possible since the nature of exposure for each job differs. Similiarly, where intermittent lead exposures occur at a fixed site (or employees return to a fixed site) hygiene facilities can be constructed; in construction, these facilities would have to be moved with each new job. Finally, since the telecommunications and shipbuilding industries, unlike construction and stevedoring employ stable workforces, the medical surveillance and medical removal provisions of the standard remain applicable; indeed, the importance of these provisions is augmented in light of the 30 day trigger for engineering controls provided for intermittent exposure industries.

B. Maintenance and Repair

OSHA recognizes that workers involved in maintenance and repair operations are placed in circumstances where engineering controls often cannot be used to control lead exposure. Obviously, one of the functions of these workers is to repair the control devices designed to capture airborne lead. Since these devices would be idle during repair and maintenance operations, workers would have to be protected from lead exposure by means other than engineering controls. OSHA acknowledged this condition of industrial life in its discussion of maintenance operations for primary and secondary smelters. The agency conceded that respirators would be

necessary for the protection of maintenance workers in each of these industries. *See* 43 FR 54482/1–2, 54483/3; *United Steelworkers, supra,* 647 F.2d at 1281, n. 128, 1286. Accordingly, if maintenance workers in other industries operate under similar working conditions [8] it would be inconsistent for OSHA not to permit the use of respirators to protect them from lead exposure. In OSHA's view, the fact that respiratory protection may be required during maintenance and repair operations does not detract from a general finding of feasibility for an industry. *See United Steelworkers, supra,* 647 F.2d at 1281, n. 138. Therefore, if an employer can demonstrate that the engineering controls which normally control exposure cannot feasibly be used to control exposure for repair and maintenance operations, the employer may permissibly protect those workers with proper respiratory equipment.

C. Burden of Proof during OSHA Rulemaking

LIA's petition for reconsideration (Pet. at 10) also argues that the remand record must be reopened, *inter alia,* because OSHA failed to carry its burden of proof during the supplemental proceedings. LIA's argument presupposes that during 6(b) rulemaking OSHA must produce evidence supporting its position in a manner similar to that of a plaintiff in an adjudicatory hearing. LIA further implies that OSHA must introduce, by way of direct testimony, evidence supporting the feasibility of a standard, which industry must then be permitted to rebut. LIA continues to argue that if OSHA fails to carry this burden of proof during informal rulemaking proceedings, then the promulgated standard is invalid.

OSHA believes this argument misconstrues the nature of 6(b) proceedings and hereby denies all pending requests for relief from the remand findings which are based on OSHA's alleged evidentiary failures. This is not to say that OSHA has ignored claims for relief where the petitions for reconsideration have highlighted factual errors. The remand findings have been corrected or altered where they were based on inaccurate information.

The Court of Appeals has found that "an OSHA proceeding to set a safety and health standard is obviously rulemaking, not adjudication." *United Steelworkers, supra,* 647 F.2d at 1213 (citations omitted). Since informal agency proceedings are designed to elicit information, no party bears the burden of proof. Once the rulemaking record closes, the Agency then evaluates the evidence and reaches a decision. Should this final rule be challenged, OSHA must demonstrate to the Court of Appeals that its ultimate decisions are based upon "substantial evidence in the record considered as a whole." 29 U.S.C. 655(f). This informal nature of rulemaking proceedings under section 6(b) of the Act should not be altered simply because the proceedings are commenced pursuant to a court ordered remand.

D. Remaining Procedural Claims

The remaining procedural claims in the petitions for reconsideration were raised during the remand proceedings (e.g. Ex. 516) and rejected by OSHA as being "without merit" (46 FR 6136–37). OSHA again rejects these procedural challenges because the Agency believes the remand was conducted in accordance with the requirements of section 6(b) of the Act and the Administrative Procedure Act. No more is required. *See Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council,* 435 U.S. 519 (1978).

IV. EXECUTIVE ORDER 12291

A final regulatory impact analysis has been prepared for this action and is available for copying and inspection by interested persons in OSHA's Docket Office, Docket H–004E, Room S6212, U.S. Department of Labor, Washington, D.C. 20210.

Authority

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, pursuant to section 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599, 29 U.S.C. 655, 657), Secretary of Labor's Order No. 8–76 (41 FR 25059), and 29 CFR Part 1911, Part 1910 of Title 29, Code of Federal Regulations is hereby amended, for the reasons set forth in the preamble, by revising section 1910.1025 (e)(1) and Table I thereof as set forth below.

Signed at Washington, D.C., this 8th day of December 1981.

Thorne G. Auchter,

Assistant Secretary of Labor.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Part 1910 of Title 29 of the Code of Federal Regulations is hereby amended by revising § 1910.1025(e)(1) and Table I thereof to read as follows:

§ 1910.1025 Lead.

* * * * *

(e) *Methods of compliance.*—(1) *Engineering and work practice controls.* (i) Where any employee is exposed to lead above the permissible exposure limit for more than 30 days per year, the employer shall implement engineering and work practice controls (including administrative controls) to reduce and maintain employee exposure to lead in accordance with the implementation schedule in Table I below, except to the extent that the employer can demonstrate that such controls are not feasible. Wherever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposure to or below the permissible exposure limit, the employer shall nonetheless use them to reduce exposures to the lowest feasible level and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (f) of this section. (ii) Where any employee is exposed to lead above the permissible exposure limit, but for 30 days or less per year, the employer shall implement engineering controls to reduce exposures to 200 $\mu g/m^3$, but thereafter may implement any combination of engineering, work practice (including administrative controls), and respiratory controls to reduce and maintain employee exposure to lead to or below 50 $\mu g/m^3$.

TABLE I—IMPLEMENTATION SCHEDULE

Industry [1]	Compliance dates [2]		
	200 $\mu g/m^3$	100 $\mu g/m^3$	50 $\mu g/m^3$
Primary lead production	(3)	3	10
Secondary lead production	(3)	3	5
Lead acid battery manufacture	(3)	2	5
Automobile manufacture/solder grinding	(3)	N/A	7
Electronics, gray iron foundries, ink manufacture, paints and coatings manufacture, wall paper manufacture, can manufacture, and printing	(3)	N/A	1

[8] In its petition for reconsideration the Owens-Illinois Corporation reported that its maintenance workers will necessarily be exposed to air lead levels above 200 $\mu g/m^3$ (Ex. 528–13 at 2).

TABLE I—IMPLEMENTATION SCHEDULE—Continued

Industry [1]	Compliance dates [2]		
	200 µg/m³	100 µg/m³	50 µg/m³
Lead pigment manufacture, nonferrous foundries, leaded steel manufacture, lead chemical manufacture, shipbuilding and ship repair, battery breaking in the collection and processing of scrap (excluding collection and processing of scrap which is part of a secondary smelting operation), secondary lead smelting of copper, and lead casting	(3)	N/A	N/A
All other industries	(3)	N/A	2½

[1] Includes ancillary activities located on the same worksite.
[2] Expressed as the number of years from the effective date by which compliance with the given airborne exposure level, as an 8-hour TWA must be achieved.

3. On effective date. This continues an obligation from Table Z–2 of 29 CFR 1910.1000, which had been in effect since 1971 but which was deleted upon the effectiveness of this section.

* * * * *

(Secs. 6, 8, 84 Stat. 1599 (29 U.S.C. 655, 657); Secretary of Labor's Order 8–76 (41 FR 25059); 29 CFR Part 1911)

[FR Doc. 81–35472 Filed 12–10–81; 8:45 am]

BILLING CODE 4510–26–M

federal register

Friday
December 11, 1981

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Abandoned Mine Land Reclamation Program; Proposed Revision

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 870, 872, 874, 875, 877, 879, 882, 884, 886, and 888

Proposed Revision of the Abandoned Mine Land Reclamation Program Regulations

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rules.

SUMMARY: The Office of Surface Mining is seeking comment on its proposed revision of 30 CFR Chapter VII, Subchapter R, regarding the establishment and administration of the Abandoned Mine Land Reclamation Program (AML) by the States and Federal Government as required by the Surface Mining Control and Reclamation Act of 1977, (SMCRA), Pub. L. 95-87 (30 U.S.C. 1231-1273). In response to the Administration's request for regulatory review, the Director of the Office of Surface Mining reviewed and is revising existing AML regulations to clarify the relationships and the responsibilities of the States and Federal Government in implementing a coordinated Abandoned Mine Land Program. These proposed revisions to 30 CFR Chapter VII, Subchapter R, are the result of this review.

DATES: The comment period on the proposed rules will extend until 5:00 p.m., January 11, 1982. Comments received after that time will neither be considered nor included in the administrative record.

Public Hearing.—A public hearing will be held on January 8, 1982, from 9:00 a.m. to 12:00 noon at the following location: Main Auditorium, U.S. Department of the Interior, 18th and C Streets, N.W., Washington, D.C. The public hearing is discussed under "Supplementary Information" below.

ADDRESSES: Written comments must be mailed or hand delivered to the Office of Surface Mining, U.S. Department of the Interior, Room 153, South Interior Building, (AML-01), 1951 Constitution Avenue, N.W., Washington, D.C. 20240. All comments, notices of public meetings, and summaries of the meetings will be available for inspection in Room 153, South Interior Building.

For addresses where additional copies of these proposed regulations are available, see "AVAILABILITY OF COPIES" under "SUPPLEMENTARY INFORMATION."

FOR FURTHER INFORMATION CONTACT:

Don Willen, Chief, Division of Abandoned Mine Land Reclamation, Office of Surface Mining, U.S. Department of the Interior, South Interior Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240; Telephone (202) 343-7951.

SUPPLEMENTARY INFORMATION:

Public Hearing

Individual testimony at the hearing will be limited to 15 minutes. The hearing will be transcribed. Filing of a written statement at the time of giving oral testimony would be helpful and facilitiate the job of the court reporter. Submission of written statements to the person identified under "For Further Information Contact" in advance of the hearing date will assist the OSM officials by giving them an opportunity to consider appropriate questions which could be used to clarify the statement or elicit more specific information from persons testifying.

Those wishing to testify at the Washington, D.C. hearing should contact: Don Willen, Chief, Division of Abandoned Mine Land Reclamation, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, (202) 343-7951.

Persons in the audience who have not been scheduled to speak and wish to do so should register at the hearing and will be heard after the scheduled speakers. Persons not scheduled to testify assume the risk of having the hearing adjourned if they are not present when all scheduled speakers conclude.

Public Meetings

Representatives of OSM will be available to meet between December 11, 1981 and January 11, 1982 at the request of members of the public, State representatives, industry officials, labor representatives and environmental organizations to receive advice and recommendations concerning the content of the proposed regulations.

OSM representatives will be available for such meeting from 9:00 a.m. to noon and 1:00 p.m. to 4:00 p.m., local time, Monday through Friday, excluding holidays. Summaries of each meeting will be prepared and made available for public review in Room 153 of the South Interior Building.

Persons wishing to meet with representatives of OSM during this time period may request a meeting at the Washington Office or any of the five Regional offices. Persons to contact to schedule such meetings are as follows:

Washington—Don Willen, 202/343-7951
Charleston, W. Va.—Robert Biggi, 304/342-8125
Knoxville, Tennessee—Ralph Cox, 615/637-8060
Indianapolis, Indiana—Richard McNabb, 317-269-2646
Kansas City, Missouri—Dan Jones, 816/374-5162
Denver, Colorado—Wayne Oliver, 303/837-5918

Availability of Copies

Copies of these proposed regulations may be obtained from the U.S. Department of the Interior, Administrative Record Room, (AML-01), South Interior Building, Room 153, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone 202/343-4728 or any of OSM's regional offices.

Summary of Program

The Abandoned Mine Land Reclamation Program was established by the Surface Mining Control and Reclamation Act of 1977, (SMCRA) Pub. L. 95-87, 30 U.S.C. 1201 *et seq.* in response to concern over extensive environmental damage caused by past coal mining activities. The Abandoned Mine Reclamation Fund derives its financing from Title IV of SMCRA which establishes a fee on coal production for the purpose of financing specified Federal, State and Indian reclamation programs. Programs funded by congressional appropriation include grants to States and Indian Tribes to plan and carry out reclamation programs and projects; direct Federal reclamation projects carried out by the Secretary of the Interior through the Office of Surface Mining and other Interior agencies and the Rural Abandoned Mine Lands Program (RAMP) administered by the Secretary of Agriculture and carried out by the Soil Conservation Service.

On October 25, 1978, OSM published final regulations implementing an abandoned mine land reclamation program incorporating the provisions of Titile IV of the Act. The regulations established procedures and requirements for the preparation and implementation of State and Indian reclamation programs, consisting of reclamation plans, submission of annual projects and applications for annual grants. Additional parts of this subchapter include provisions for Federal, State and Indian Abandoned Mine Reclamation Funds, general reclamation objectives, rights-of-entry, liens, emergency reclamation acquisitions, disposition of lands and waters, reclamation on private lands, and Indian reclamation programs.

Regulations relating to the amount and collection of fees were promulgated

in 30 CFR Part 837 on December 31, 1977 (42 FR 62713). This part has since been redesignated as Part 870.

Information Collection and Recordkeeping Requirements

The information collection requirements in the existing AML rules were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507. Those approvals were identified in "notes" at the introductions to 30 CFR Parts 870, 872, 877, 879, 882, 884, and 886. OSM will delete those "notes" and codify the OMB approvals under new sections 10 in each of those Parts that contain information collection requirements. OSM is requesting OMB approval of the following new information collection requirements being proposed in this rulemaking: Sections 870.15, 870.16, 877.11, 877.12(b), 879.11(b)(2) and 879.12(a). OSM is also requesting OMB to reapprove the following existing information collection requirements being reproposed in this rulemaking: Sections 870.12, 870.17, 872.11(b), 872.12(a) & (b), 877.13(b) & (c), 879.13, 879.15, 882.12, 882.13(b), 882.14(b), 884.13, 884.15, 886.14, 886.15, 886.18(c)(2), and 886.24. The information is being collected to insure the adequate implementation of approved reclamation programs and to enforce the fee provisions of Pub. L. 95–87. OSM, States and Indian tribes will use the information.

The obligation to respond is required and will benefit the States and Tribes by enabling the allocation of funds for State/Indian reclamation plans and projects.

Introduction to Proposed Regulation Revisions

Pursuant to Executive Order 12291, the Agency is required, within applicable statutory constraints, to choose regulatory goals that maximize benefits to society and to select the most effective means to achieve these goals. In addition, one of the Secretary's goals is to eliminate regulations which are excessive, burdensome or counter-productive. To accomplish this deregulation and regulatory reform and to assure that the Executive Order is carried out, OSM with the assistance of the Secretary's Regulatory Reform Task Force, has reviewed its existing regulations concerning the implementation of the abandoned mine land program and is proposing revisions to 30 CFR Chapter VII, Subchapter R. The Office has sought to provide early and meaningful public participation during its regulatory review. It is willing to meet with any members of the public, State representatives, labor representatives and environmental organizations to receive recommendations concerning the content of the proposed regulations. To this end OSM has met with and has received recommendations from the Interstate Mining Compact Commission (IMCC), which includes representatives from 16 coal mining States. Comments and recommendations received as well as summaries of the meetings are available for inspection in the Administrative Record, Room 153, Interior South Building, Washington, D.C.

Organization

The regulatory revisions being proposed are intended to implement the requirements of the Act consistent with the purposes stated in Section 102(h), its legislative history and the Secretary's commitment to avoid excessive and burdensome regulations. The material is organized into Parts which comprise Subchapter R.

Part 870—Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting

Title IV of the Surface Mining and Reclamation Act of 1977 (SMCRA) directed the Secretary of the Interior to collect per-ton reclamation fees from coal mine operators to support the reclamation and other activities listed under this Title. OSM developed a Reclamation Fee Collection Program and published rules in the **Federal Register** to assist mine operators in meeting their fee obligations to specify management activities for fee collection, and to define a range of compliance activities that includes compliance investigations, audits, debt collection and litigation procedures.

The major components of the fee collection program are the fee collection system, the fee compliance system, and the litigation system.

Fee Collection System: The U.S. Bureau of Mines' (BOM) Finance Branch in Denver, Colorado is OSM's agent for the collection of fund revenues. BOM, through a reimbursable agreement with OSM, is responsible for providing accounting and data processing services to implement and maintain a reclamation fee collection system. These services include: (1) collecting and depositing reclamation fees into the Federal depository, (2) providing an automated information system for fee payments, delinquencies, and program management, and (3) reconciling procedures to make annual allocations of collections for appropriation and use by States and Indian tribes under approved reclamation programs.

Fee Compliance System: Fee Compliance Officers are located in the coal producing regions to insure that fees are collected through appropriate investigation, audit, and collection activities.

Litigation System: The Associate Solicitor, Division of Surface Mining, is responsible for the collection of delinquent fees. The Divison takes enforcement action to collect delinquent fees and provides legal assistance for fee related issues.

On December 13, 1977, OSM published final rules as Part 837 (42 FR 62713) setting forth procedures for payment of reclamation fees and recordkeeping requirements. On May 15, 1978, OSM published an amendment to these rules (43 FR 20793) to establish the interest rate on late payments. These rules were later renumbered in the *Code of Federal Regulations* as 30 CFR Part 870. Although the existing rules have been adequate for the implementation of OSM's Fee Collection Program and for compliance by the coal mining industry, this revision clarifies those regulations regarding the individual responsible for the fee payment; the point of initial sale, transfer of ownership, or use; and the method by which the fee liability is calculated. Furthermore, the current one percent per month interest charge was somewhat of an inducement for timely payments under Section 402(b) of SMCRA in 1978. However, the recent trend toward higher interest rates makes this rate too low. Thus, in § 870.15(c), OSM has proposed an annual rate of 20 percent, based on the average prime rate charged by banks for September 1981. Additionally, the Office proposes to adjust that rate accordingly each year if the average prime rate for September of any given year, rounded to the nearest full percent, varies more than one full percentage point from the interest rate in effect at that time. All definitions included in Subchapter R, AML, have been placed under this part.

Section 870.1 (Scope). The existing section has not been changed in the proposed rules.

Section 870.2 (Objectives). The existing section has been deleted in the proposed rules. The Office considers this section as extraneous to Part 870 because the objectives are clearly defined in SMCRA. The one comment received on this section agreed with the change.

Section 870.3 (Responsibility). The existing section has been deleted in the proposed rules for the same reason as § 870.2. Again, the one comment received on this section agreed with the change.

Section 870.5 (Definitions). All definitions used in Sections 870 through 888 have been moved to this section for clarity and ease of reference. Amended or new definitions are set forth below, along with a discussion of the comments received.

Abandoned Mine Reclamation Fund. In the existing rules and section 401 of the Act, this fund is described as a "trust fund." This has caused certain States to inquire whether trust fund moneys are deposited in interest bearings accounts. Consequently, the word, "Trust," has been replaced by the word, "special," to avoid confusion in the definition. The Treasury does not pay interest on moneys in special accounts unless Congress specifically provides for interest to be paid and makes appropriations for that purpose. Congress has not provided for interest payments in Title IV of SMCRA nor appropriated moneys for that purpose.

Eligible lands and water. This term has been included to clarify what lands and water qualify for reclamation expenditures under Section 404 of the Act.

Expended. This term has been changed in the proposed rules to provide greater flexibility and clarity for the States. The existing definition used the strict interpretation in Black's Law Dictionary: "to pay out or distribute." The new definition provides that expended means that moneys have been obligated, encumbered, or committed for work to be accomplished or services to be rendered. The proposed language was suggested by the States. One commenter believed that this change was unnecessary and that it would promote poor planning and misuse of fund moneys. The Office believes that there are sufficiently stringent financial control procedures required by OMB Circular A–102 to prevent misuse of funds. Furthermore, the Office believes that change will induce affected States to more actively participate in the Abandoned Mine Lands Reclamation Program.

Left or abandoned in either an unreclaimed or inadequately reclaimed condition. This definition has been modified to eliminate the confusion between the findings of "eligibility" and those related to "abandonment" and "inadequate reclamation." The Office recognizes that the findings of eligibility are the specific responsibility of the Office under a Federal program and of the State under an approved reclamation plan and that there is sufficient latitude within these findings for the Office or State to use its discretion on a case by case basis. For instance, the Office considers lands and water still eligible, assuming the other conditions in Section 404 of the Act are met, where all mining processes had ceased but a permit did exist as of August 3, 1977 but the permit has since lapsed and has not been renewed or superceded by a new permit as of the date of the request for reclamation assistance. Or, lands and water are still eligible where a permit has lapsed prior to August 3, 1977 but there have been subsequent reclamation attempts after that date to satisfy State regulatory or bond requirements. These two examples illustrate the complexity of the factual situations faced by the reclamation authorities and the need to consider each project on a case by case basis.

Lignite coal. The comma after the word, "moist," has been deleted from the definition in the existing rules to correspond with the sentence structure in Title VII, Section 701(30). The terms anthracite, bituminous, sub-bituminous, and lignite coal refer to a nationally accepted classification that reflects certain inherent characteristics of coal and not the grade or quality of such coal. Coal is classified according to its degree of alteration, from lignite to anthracite Such classification requires strict sampling techniques. Since lignite coal is subject to a lower fee than other coals, this definition was included in Title VII of the Act to prevent incorrect fee payment.

Operator. This term was included to provide greater clarification for determining reclamation fee liability. The statutory definition in Section 701(13) of the Act must be interpreted within the realities of the industry structure. While the basic fee authority in Section 402 of the Act states, "All operators of coal mining operations subject to the provisions of this Act shall pay * * *." Title V uses the terms "operator," "permittee," and "person" to describe the same entity. Even Section 507, Application Requirements, (Section 507(b)(1)(E)) acknowledges that the operator could be someone other than the permit applicant. To resolve this problem, the Office will look very closely at the business relationships to determine reclamation fee liability, and will pursue a policy of joint liability of involved parties when necessary to recover fees. The new definition provides clear direction for ascertaining reclamation fee liability and should eliminate the inconsistencies and problems raised by the present system.

Permanent facility. This is a new definition resulting from States' comments. It clarifies and provides a more flexible way to define "facility" as it relates to structures and any modification of the surface designed to remain after reclamation.

Project. This is a new definition which should provide the States and Indian tribes the opportunity to define the scope of their projects in concert with their individual abandoned mine land problems and planning efforts. A project may be limited to a single construction site to remedy a single problem, such as filling an open shaft, or it may include more than one construction site such as mine openings, high walls, and revegatating a denuded area. All of these situations might be contained in a single watershed or a soil conservation district. Since a State assumes exclusive responsibility for implementing its approved reclamation program, the Office has attempted to define this term to tive the States and Indian tribes the greatest flexibility in designing individual reclamation projects.

Reclaimed coal. The modification reinforces OSM's position that these operations are subject to the reclamation fee requirements. The authority of the Office to regulate operators involved in the mining and/or processing of refuse coal has been upheld by the U.S. District Court for the District of Columbia. See *IN RE: Permanent Surface Mining Regulations Litigation*, No. 79–1144 (May 16, 1980). Since Section 402(a) of SMCRA requires "all operators of coal mining operations subject to * * * the Act" to pay reclamation fees, and since the mining of coal from silt banks and refuse piles is considered a surface coal mining operation, the collection of the reclamation fee from these operations is proper.

Section 870.11 (Applicability). In § 870.11(b), the term "surface mining" has been changed to "surface coal mining operation" to clarify that both surface and underground mining operations are affected. Sections 870.11 (a) and (c) have not been changed. The phrase "extraction of coal as an incidental sort" in § 870.11(c) is defined in Part 707 of the regulations published in the Federal Register (44 FR 15322–15323 (March 13, 1979)). In § 870.11(d), the phrase, "in any twelve consecutive calendar months" has been added to establish a definite time frame.

The authority to recover coal during an approved AML project is provided in Section 412(a) of SMCRA. This section provides the Secretary or the States the authority to do all things necessary to achieve the goals of Title IV. This authority is separate from Title V provisions of SMCRA and § 870.11(c). Each project will be judged on its merits.

The reclamation fee provision may or may not be appropriate.

Section 870.12 (Reclamation fee). Section 870.12(a) has not been changed. Sections 870.12(b) (1), (2) and (3) have been added to clarify the point in time of fee determination, as well as the value and weight parameters for calculating reclamation fees. Section 870.12(b)(2) clarifies that the transportation cost from the mine site to a buyer location should not be considered when determining value, except in the case of captive operations. For such operations, the transportation costs are included in the value determination. The intent of § 870.12(b)(3) is to allow the fees to be based on coal to be sold, and to prevent any deduction for impurities that have not been removed. Section 870.12(d) has been deleted, since it was applicable only for the fourth quarter of 1977.

Section 870.13 (Fee computations). The examples in § 870.13 (a), (b), (c) and (d) were deleted and are provided here. Under § 870.13(a) *surface mining fees,* if the value of a ton of coal is *equal to or greater than* $3.50 per ton, multiply the number of tons produced in the calendar quarter by $0.35. For example, If the tonnage is 1,000 tons × $0.35 = $350, which is the fee. If the value of a ton of coal is *less than* $3.50 per ton multiply the value of a ton of coal by the total number of tons produced in the calendar quarter by 0.1. For example, If the value of a ton of coal is $2 and the tonnage is 1,000, then $2 × 1,000 tons × 0.1 = $200, which is the fee.

Under subsection 870.13(b), *underground mining fees,* if the value of a ton of coal is *equal to or greater than* $1.50 per ton, multiply the number of tons produced in the calendar quarter by $0.15. For example, If the tonnage is 1,000, then 1,000 tons × $0.15 = $1.50, which is the fee. If the value of a ton of coal is *less than* $1.50 per ton, multiply the value of a ton of coal by the total number of tons produced in the calendar quarter by 0.1. For example, If the value of a ton of coal is $1 and the tonnage is 1,000, then $1 × 1,000 tons × 0.1 = $100, which is the fee.

Under § 870.13(c), *surface and underground mining fees for lignite coal,* if the value of a ton of lignite is equal to or greater than $5 per ton, multiply the number of tons produced in a calendar quarter by $0.10. For example, if the tonnage is 1,000 tons × $0.10 = $100, which is the fee. If the value of a ton of lignite is *less than* $5 per ton, multiply the value of a ton lignite by the total number of tons produced in the calendar quarter by 0.02. For example, if the value is $4 and the tonnage is 1,000, then $4 × 1,000 tons × 0.02 = $80, which is the fee.

Under § 870.13(d), *in situ coal mining fees,* if the Btu value of the in situ coal is determined to be 23 million Btu's per ton, then for every 23 million Btu's of gas produced at the wellhead, one ton of coal will be deemed produced for the purposes of this Part. The Btu value of a ton of in place coal shall be determined by analyses, certified by an independent laboratory, of the coal seam that is effected for potential Btu value of a ton of in place of coal. For anthracite, bituminous, and subbituminous coal the fee shall be computed as follows: $F = (G/C) \times V_1$. For lignite coal the fee shall be computed as follows: $F = (G/L) \times V_2$.

Where:

F = Reclamation fee.

C = Million Btu's per ton of coal in place.

L = Million Btu's per ton of lignite in place.

G = Gas produced at the wellhead in million Btu's.

V_1 = $0.15/ton equivalent; or if the value of a ton of coal equivalent is less than $1.50, multiply the value by 0.1 and substitute the result for V_1, in the appropriate formula.

V_2 = 0.10/ton equivalent, or if the valaue of a ton of lignite equivalent is less than $5 multiply the value by 0.02 and substitute the result for V_2 in the appropriate formula. The phrase, "certified through analysis by an independent laboratory," has been added to § 870.13(d) to clarify who must conduct the analysis.

Section 870.15 (Reclamation fee payment). This section was changed to delete provisions no longer applicable (§ 870.15(b) and part of § 870.15(e)) and to reflect the change in the interest rate. The specific mine form notation has been deleted and replaced by language to specify forms approved by OSM.

A new § 870.15(e) has been proposed to required operators to submit negative reports for calendar quarters where no fee liability exists. Currently coal mine operators need only report if coal has been mined during the reporting period. Lack of positive reporting requirements has significantly hampered OSM's collection efforts; a great deal of effort is spent determining whether nonreporting operators had zero production or failed to report an amount of tonnage on which fees are payable. If operators were required to report when zero tonnage was involved, OSM would be able to determine efficiently which accounts are delinquent, to update the list of active mine operators and to update coal production and sales data for each mine.

The change to "forms approved by OSM" was supported by one commenter, and one commenter supported the change in the interest rate. Another commenter suggested that additional language be added to (b) for clarification purposes. This comment was accepted. In addition, the Office added language to (b) to specifically state that Section 402(c) requires an operator to have the applicable form notarized.

Section 870.17 (Compliance authority). This is a new section that provides authority for examination of the buyer's records for the initial sale or transfer of ownership and for situations where coal is sold to the operator.

Part 872—Abandoned Mine Reclamation Funds

The United States Department of the Treasury established an account on its books in accordance with Title IV provisions of Public Law 95–87 and Treasury's rules for a fund of the type. Section 401(a) creates the authority for the account:

> There is created on the books of the Treasury of the United States a trust fund to be known as the Abandoned Mine Reclamation Fund (hereinafter referred to as the "fund") which shall be administered by the Secretary of the Interior * * *

Section 401(d) delineates availability and purpose of account moneys:

> Moneys from the fund shall be available for the purposes of this title, only when appropriated therefore, and such appropriations shall be made without fiscal year limitations.

These provisions provide the authority for a fiduciary relationship whereby the Congress controls the use of fund moneys for Title IV purposes by the appropriation process, and the Treasury maintains the amounts collected in a special account. Treasury does not pay interest on funds in special accounts unless Congress has specifically provided for interest to be paid and made appropriations for that purpose. There are no such provisions in SMCRA for Title IV.

The United States Bureau of Mines' (BOM) Finance Branch in Denver, Colorado is OSM's agent for the collection of fund revenues. BOM, through a reimbursable agreement with OSM, is responsible for providing accounting and automatic data processing services to implement and maintain a reclamation fee collecting system. These services include: (1) collecting and depositing reclamation fees into a Federal depository, (2) providing an automated information system for fee payments, delinquencies, and program management, and (3) reconciling procedures to make annual allocations of collections for appropriation and use by States and Indian tribes under approved reclamation programs.

Fund revenues are derived from per-ton reclamation fees and late payment interest charges, sales of acquired lands, and donations. The fees and interest charges are paid by coal mine operators and submitted with production and reclamation fee reports for payment identification and credit to OSM's Fee Collection and Assessment Unit.

Funds collected are controlled by Deposit Tickets (prepared by the collection officer), Debit Vouchers issued by the Federal depository for uncollected checks, and Refund Schedules for overpayment (prepared by the Bureau of Mines Finance Branch). These transactions are identified by mine operators as well as by mine and geographic location. Data from OSM approved forms OSM 1.1.A submitted by mine operators with their payment are coded and stored in OSM's ADP system for compliance and disbursement purposes. Net collections (per deposit tickets, debit vouchers and refund schedules) are reconciled on a monthly basis with the amounts reported by mine operators on OSM's approved forms.

All accounts are closed at the end of business on September 30, the final day of the Federal fiscal year (FY). The System is reconciled and collections are identified by State and Indian Lands. Fifty percent of the FY collection is reserved for use by States and Indian tribes to carry out approved reclamations programs. The remainder may be expended by the Secretary of the Interior through the Director, OSM, to meet the objectives of Title IV. Any errors found in prior year allocations are corrected in current allocations. This financial information provides one of the bases for budget requests to support Title IV programs.

The part has been considerably shortened by deleting in their entirety § 872.2 (Objectives) and § 872.4 (Responsibilities), moving § 872.5 (Definitions) to Part 870, and combining §§ 872.12 and 872.13 (State and Indian Abandoned Mine Reclamation Funds) into one section. A major change to the existing rules is a new § 872.11(b)(2)(ii) that provides States with a commitment by the Office that will afford States every opportunity to use allocated moneys.

Section 872.1 (Scope). This section has been changed to reflect the deletions of this part.

Section 872.2 (Objectives). This section has been deleted since SMCRA provides an overview of the Abandoned Mine Land Reclamation Program, and the detailed procedures relative to program funds are covered in the proposed rules. The one comment received agreed with the deletion.

Section 872.4 (Responsibilities). This section has been deleted due to the Office's planned reorganization. If there is a need for this information in the future, the Office will consider amending its regulations.

Section 872.5 (Definitions). Definitions were moved to Part 870 in the July 17, 1981 draft of the proposed rules to provide easy reference for all definitions of Subchapter R.

Section 872.11 (Abandoned Mine Reclamation Fund). Except for the deletion of the reference to 30 CFR Part 822 in 872.11(a)(3), § 872.11(a) remains the same. Section 872.11(b)(1) remains the same. A new (ii) has been added under § 872.11(b)(2). This addition is the result of the following activities:

The Interstate Mining Compact Commission (IMCC), on behalf of member States, petitioned the Director, Office of Surface Mining (OSM) to initiate rulemaking procedures that would amend 30 CFR 872.11(b) to preserve States' 1978 and 1979 reclamation fee allocations for an additional three years. This amendment would prevent the Director, OSM, from using these funds during this period, while guaranteeing their availability for States' use under approved reclamation programs. The existing rule allows the Director to use States' allocations if they have not been granted within three years after allocations. Notice of the petition was published in the **Federal Register** (46 FR 20688), with a request for comments. Of the twenty-one comments received, all generally supported the proposed amendment. Despite this support, the Office believes that such actions might contravene the intent of Congress as set forth in section 402(g)(2) of the Act. This section provides the Secretary with discretionary authority to utilize in any section of the country funds allocated to the States but not expended within three years. Recognizing the merits of the petition, however, OSM modified the proposal to satisfy the States' concerns without jeopardizing the Secretary's authority.

Section 872.11(b)(3). The term "Indian Lands" was changed in error to "Indian Reservation" in the preproposed rules. This error has been corrected in the proposed rules. One commenter stated that this change was appropriate because the term "Reservation" is somewhat defined by law while a definition of "Indian Lands" is not available. Until this definition problem is resolved, the Office will take extra precautions to record the collection of fees on questionable areas thereby insuring that the States/Tribes receive their appropriate share.

Section 872.11(b)(5) has been changed to reference the applicable statutory provisions rather than cite specific uses. One commenter was concerned the deletion of these provisions would negate funding for the development of State reclamation plans. This change will not affect the availability of funds for these efforts. The Office will continue to provide the necessary funds to cover the initial cost of plan preparation.

Sections 872.12 and 872.13 (State and Indian Abandoned Mine Funds). These sections were combined into § 872.12 to eliminate duplication. Also, extraneous language has been deleted. The two comments received regarding this change were positive.

Part 874—General Reclamation Requirements

Part 874 sets forth requirements relating to eligibility and selection of reclamation projects that are applicable to the Rural Abandoned Mine Program administered by the Secretary of Agriculture under Title IV, and those reclamation activities to be carried out directly by the Office. All references to State and Indian Reclamation Programs have been deleted from Part 874 because Title IV of SMCRA clearly sets forth the reclamation requirements binding on these programs.

Section 874.1 (Scope) has been modified to reflect the removal of requirements for evaluation, which are discussed under § 874.14. Section 874.2 (Objectives) was deleted to avoid repetition of statutory language.

Section 874.11 (Applicability) has been modified to limit the scope of Part 874 to those programs administered by the Office and by the Rural Abandoned Mine Reclamation Program.

Section 874.12 (Eligible lands and water) has been modified to apply only to eligible coal lands and water and has been renumbered. One State commented that the language of § 874.12 should be changed to clarify that all three conditions for eligibility (paragrpahs (a), (b), and (c)) must be met. The Office agreed and made appropriate changes. Section 874.12(b) (Reclamation of non-coal mined lands and water) has been redesignated Part 875. See preamble discussion of Part 875 for the reasons for the redesignation.

One State commented that the August 3, 1977 date for determining eligibility in § 874.12(b) should be changed to May 8, 1978, since no Federal surface mining regulations were in effect until that date. The Office rejected this comment

because the language of § 404 of the Act (30 U.S.C. 1234) and the legislative history mandate August 3, 1977.

Section 874.13 (Reclamation objectives and priorities) has been modified to exclude State and Indian Reclamation Programs. Two State commentors agreed with this approach. One State commentor suggested that reference should be made to the Office's reclamation guidelines (45 FR 14812) to determine competing reclamation priorities. The Office accepted this comment because Part 874 now applys only to Federal reclamation programs. The States determine their own criteria for competing reclamation projects as long as the priorities are consistent with section 403 of the Act.

Section 874.14 (Reclamation project evaluation) has been deleted since the State primacy provisions of section 101(f) (30 U.S.C. 1201) and section 405(d) (30 U.S.C. 1235) of SMCRA give States responsibility for project evaluation under approved State Reclamation Programs. Three State commentors and one industry association agreed with the Office's decision to delete § 874.14 as unnecessary since section 405(i) and (j) (30 U.S.C. 1235) of the Act give direction for program and project evaluation. One public interest organization disagreed with this deletion on the grounds that regulation is needed to ensure that AML expenditures are consistent with the Congressional intent and are insulated from State political pressures. The Office rejected this comment since Congress intended the States to have primacy under Title IV and primacy does not relieve the Office of its responsibility to monitor expenditures to ensure that the intent of Congress is implemented.

Part 875—Non-Coal Reclamation

Section 874.12(b) has been redesignated as Part 875 to avoid confusion between the reclamation requirements for coal mined lands and water contained in Sections 403, 404 and 412 (30 U.S.C. 1233, 1234 and 1242) and from those for non-coal mined lands and water contained in section 409 (30 U.S.C. 1239). Part 875 establishes requirements for reclamation of non-coal mined lands and water conducted under Title IV by the Office, the Secretary of Agriculture, and State and Indian Reclamation Programs.

Section 875.1 establishes the scope of Part 875 to be the land and water eligibility requirements for non-coal reclamation.

Section 875.12 gives eligibility requirements for non-coal mined lands and water. The Office has reviewed the legislative history of section 409 and concluded that Congress intended that the eligibility requirements for non-coal reclamation be consistent with the statutory eligibility requirements contained in section 404 of SMCRA (30 U.S.C. 1234) for coal mined lands and waters. Since the source of funds for all reclamation conducted under Title IV of SMCRA comes from a fee collected from coal mine operators, less stringent requirements for non-coal reclamation cannot be logically justified in fairness to the coal mine operators. Moreover, there is no basis in the legislative history of section 409 (30 U.S.C. 1239) to justify a conclusion that Congress intended to allow funding for reclamation on non-coal mined lands and water abandoned after August 3, 1977.

Section 875.12(c) is necessary to clarify the meaning of the words "continuing responsibility" in section 404 (30 U.S.C. 1234) of SMCRA. Continuing responsibility will be determined by State statutes and not by common law. In addition, the language was broadened to allow lands to remain eligible if a forfeited bond is insufficient to conduct adequate reclamation.

Section 875.13 is included to clarify that the requirements for non-coal reclamation are limited to those contained in section 409 (30 U.S.C. 1239) of SMCRA.

Part 877—Rights of Entry

Part 877 establishes procedures for the Office to obtain entry on private lands for purposes of carrying out reclamation activities. The rules state a policy preference for entry under a written consent from the owner rather than under the police powers provided in Sections 407 (a) and (b) and 410(b) of the Act. Non-consensual entry will be undertaken only after due care and deliberation have exhausted all possibilities of obtaining written consent. Notice requirements and procedures for certain written findings are provided for those cases when written consent cannot be obtained.

Section 877.1 (Scope) was modified to remove the reference to States or Indian tribes. This part now only contains requirements for the Office to obtain rights of entry. States and Indian tribes will follow their own requirements, as outlined in their approved State or Indian reclamation Plans.

Section 877.11 (Written consent for entry) was modified at the suggestion of States to eliminate the use of the words, "police power." In either case, entry will be undertaken only after exhausting all possibilities of obtaining written consent.

Section 877.12 (Entry for studies or exploration) in the current regulations was eliminated because the language in § 877.11 is broad enough to cover studies and exploration as reclamation activities and need not be emphasized under a separate section.

Section 877.13 (Entry and consent to reclaim) was modified to eliminate the references to States and Indian tribes for the reason cited in § 877.1. Section 877.13 (a) and (b) were rephrased to emphasize the policy of obtaining consent of the owner as the desired means and itemizing the requirements to be met for non-consensual entry if consent cannot be obtained.

Section 877.14 (Entry for emergency reclamation) was retained as in the current rules except that detailed requirements provided in the Act and other requirements itemized in other sections of the rules were eliminated and replaced by a reference to the appropriate section of the Act or regulations. Section 877.14(d) was eliminated in its entirety, since it is contained in Section 410(b) of the Act and need not be repeated.

Four comments were directed to entry onto private lands to conduct reclamation activities. While all supported the preference for landowner consent as a prerequisite, two were concerned that the change would restrict the use of police power for entry and thereby delay abatement of threatening conditions, particularly for emergencies. It is their contention that the use of a broad exercise or police power is mandated by statute.

The broad use of police powers for entry on private lands, authorized in the statute, is not controverted by the rule change that states a preference for landowners' consent for entry on private lands. The Office has taken a judicious approach to police power entry in full recognition of the threatening conditions at hand. States or Tribes are free to use their police powers as broadly or as narrowly as their statutes permit.

Part 879—Acquisition, Management and Disposition of Lands and Water

Part 879 reflects several provisions of Title IV of the Act concerning the acquisition, use, and disposal of lands and water for emergency and reclamation purposes. States raised two general issues concerning this part of the current regulations. These were whether acquired land must serve recreation, historic, conservation and reclamation purposes or provide open space benefits exclusively and what constitutes permanent facilities as mentioned in § 879.11 of the rules.

The Act provides that reclamation can be done on private property. Land acquisition by the Office, States and Indian tribes will be restricted to those situations where reclamation cannot be done without acquiring the land. In those cases, the Act spells out certain requirements; i.e., the land will serve recreation, historic, conservation and recreation purposes or provide open-space benefits. This does not mean that the land must serve *all* these purposes or *only* these purposes. It is also not necessary that the total area continue to be used *exclusively* for reclamation purposes for an indefinite period of time. Lands can be acquired for a variety of future uses. Multiple use purposes should be encouraged, so long as such uses are not inconsistent with the reclamation objectives and as long as one of the uses meets one requirement of the Act.

The States asked that the Office provide a definition of "permanent facilities." This definition has been included in § 870.5. States and Indian tribes may adopt this definition as they deem appropriate.

Section 879.1 (Scope) has been modified to include emergency projects, and to insure that State and Indian tribe acquisition procedures are included in their reclamation plan.

Two comments were received that emphasized that States and Tribes should be required to use procedures consistent with the goals of the Act. This consistency is insured by the Office's mandated review of State and Tribal procedures.

Section 879.11 (Land eligible for acquisition) was changed to add § 879.11(b)(2). The Office felt that the awkward sentence structure beginning, "or that public ownership is desirable to meet an emergency situation and prevent a recurrence of adverse effects of past coal-mining practices," was not meant to apply to coal refuse piles in particular, but to emergency situations generally. This subpart provides the Secretary with the authority to acquire land in emergency situations where no other viable means are available to abate an immediate threat to human life. Examples of permanent facilities in § 879.11(a)(2) were deleted, since they are now included in § 870.5. Section 879.11(c) was changed to reference Section 407 of the Act rather than repeating such requirements in the rules. Section 879.11(d) was modified to change a reference from § 874.12(b) to Section 875, because reclamation on non-coal areas in now covered in this new section

Three comments were received relative to the changes in § 879.11(b)(2). One comment indicated that the change lengthened the time for obtaining funds for acquisitions in emergency situations. Two commenters felt that the change was an effort to tie the acquisition of coal refuse piles to emergency situation and thereby lessen citizen participation.

The changes made are: (1) States or Tribes have the responsibility to make written findings for acquisition of coal refuse disposal sites and (2) the Office expanded the Secretary's authority to acquire land in an emergency. The previous rules were incorrectly interpreted so as to limit the Secretary's authority to acquire coal refuse sites only. The change allows the Secretary to acquire land in any emergency where public ownership is necessary. Acquisition of coal refuse piles remains as before.

Section 879.2 (Procedures for acquisition) was changed to eliminate the phrase, "of the fair market value," at the beginning of § 879.12(a) and "professional" before "appraiser" in this same subsection. Appraisals of fair market value are required later in this subsection, and professional appraisers are required under the handbook reference. State comments suggested that the proposed change to § 879.12(a) would allow anyone to make an appraisal, and cites Pub. L. 95–87, Section 408(a) as requiring the services of an independent appraiser. The Office considers the language used in § 879.12(a) to be adequate, since these requirements are as set out in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646). Section 408(a) of SMCRA refers only to appraisals made in the case where a lien situation is pending or may occur as a result of the reclamation project improvements. The reference to the handbook for procedures and requirements of the Uniform Appraisal Standards for Federal Land Acquisition implies that competent, knowledgeable staff must be employed, by necessity, to develop appraisals as each need occurs.

Section 879.12(d) was changed to eliminate all references governing land acquisition except for the Uniform Relocation Assistance and Real Property Acquisition Policies Act. This is the one requirement that must be met for all federally assisted real property acquisitions. Other requirements for Federal, State and Indian acquisitions may be included in internal policy documents. Sections 879.12 (e), (f), (g), and (h) have been eliminated because requirements for federally assisted land acquisitions are standardized and need not be repeated in this subsection.

The Office emphasizes that there are basically two requirements for land acquisition: (1) compliance with Section 407(c) of the Act; and (2) compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act and Department of the Interior regulations implementing this Act. States and Tribes may use procedures already in place as long as they are in compliance with (1) and (2) above.

Sections 879.13 (Acceptance of gifts of land). Section 879.13 (a) and (b) were rewritten to eliminate Federal requirements governing acceptance of gifts of land. If the gift is to the Federal government, the donor must comply with existing Department of the Interior regulations. If the gift is to States or Indian tribes, the gift must be consistent with existing State or Tribal laws. Section 879.13(c) was deleted because these requirements are contained in existing Interior regulations or have been incorporated into §§ 879.13 (a) or (b).

Section 879.14 (Management of acquired lands) has been modified by incorporating §§ 879.14 (a), (b) and (c) into one section and referencing the requirements contained in Section 407(f) of the Act.

Section 879.15 (Disposition of reclaimed lands). Section 879.15(a) has been modified to eliminate restating requirements already contained in Section 407(g)(2) of the Act. Sections 879.15 (b) and (c) in the existing rules were combined into one § 879.15(b) and broadened to allow for transfer of title to land acquired by the Office to States, Tribes or their political subdivisions. The provision for transfer of administrative responsibility for land acquired by the Office to another Federal agency has been retained. Section 879.15(d) in the existing rules has been clarified and designated as § 879.15(c). Section 879.15(e) in the existing rules has been modified to eliminate restating requirements contained in Section 407(e) of the Act, and designated as § 879.15(d). Section 879.15(f) in the existing rules was broadened to enable States, public agencies or nonprofit organizations designated by States to receive grants to acquire land for housing. This subsection is now designated as § 879.15(e). Section 879.15(f) reflects this same change.

Section 879.15(g) has been rewritten to better structure the subsections and broadened to allow States to transfer title and administrative responsibility for land to cities, municipalities, or quasi-governmental bodies. Certain States requested that landowners be

given the right to buy back land after reclamation. This was not included in the proposed regulations because States may provide for this buy-back privilege in their reclamation plan or State regulations.

One commenter requested that § 879.15(a) list Subsection 407(g)(1) as well as Subsection 407(g)(2) as authority. Reference to Subsection 407(g)(2) is retained because Subsection 407(g)(1) applies to land disposed of by public sale. Subsection 407(g)(2) was used because it provides requirements for public notice of hearings for any land disposed of, by public sale or otherwise.

Part 882—Reclamation on Private Land

Part 882 states the authority of the Office, States and Indian tribes to perform reclamation on private lands. It establishes a requirement for appraisals of the land value on lien situations before and after reclamation work consistent with uniform appraisal standards. The rules also establish conditions and procedures for the filing of liens on private property equal to the increase in fair market value that results from reclamation work under certain circumstances.

Section 882.1 (Scope) is retained as it appears in the present rules.

Section 882.11 (Operations on private lands) was deleted in its entirety because the requirements are contained in Section 877 and need not be repeated in this Section.

Section 882.12 (Appraisals). One commenter suggested using the more restrictive phrase "when a lien is not waived and the property is subject to a lien" to determine the requirement for appraisals. This language is too restrictive since there are occasions when the appraisal must first be performed to determine if a lien shall apply. This section was modified to require appraisals only on those projects that may be subject to a lien situation. As originally written, it was implied that appraisals were required in every instance. The reference that all appraisals shall meet the quality of appraisal practices found in the handbook on "Uniform Appraisal Standards for Federal Land Acquisition" is eliminated and replaced with the requirements that the Office will provide appraisal standards for Federal projects, and the State or Indian tribes will provide appraisal standards for State or Tribal projects. Two commenters suggested performing "before" and "after" appraisals at the same time, with the caution that substantial field changes be considered for reappraisal. Section 882.12(b) has been rewritten to indicate that post-reclamation appraisals can be obtained prior to reclamation, in some instances. In many cases, when reclamation is short term, the appraisals of both the unreclaimed and reclaimed property can be performed at the same time. However, appraisals on projects where reclamation activities take more than six months should be performed after completion of reclamation to assure that appreciation due to reclamation is reflected in value.

Section 882.12(c) was modified at the request of the States to require that the landowner be provided with a statement of the increase in market value only in those cases where a lien is to be filed. Section 882.12(d) was deleted because appraisal requirements for non-lien situations for Federal projects will be contained in OSM policies and procedures and States and Indian tribes will develop their own appraisal requirements in non-lien situations.

Section 882.13 (Liens). Four comments were received relative to § 882.13. Three urged that the rule more accurately reflect the language of Section 408 of the Act. The change effected in § 882.13(a) now gives the Office, State or Tribe the discretionary authority to place or waive a lien on reclaimed land. Another comment urged a rule change to allow States or Tribes to establish priority of AML liens in accordance with State laws. The language has been changed to reflect the fact that State laws and State court decisions apply to lien priorities. Section 882.13(a) has been modified by eliminating "shall" in the present rules and replacing it by "has the discretionary authority to" and inserting "significant" before "increase in the fair market value." This change was requested by the States and reflects Congressional intent of Section 408 of the Act. Section 882.13(b) was changed to remove the reference to the priority of the lien as being second only to any lien of real estate taxes imposed upon the land. Liens are governed by existing State and Federal laws which may be different from the requirements stated in the current rules. Therefore, this reference was deleted and substituted with the requirement that the lien is to be recorded in compliance with existing Federal or State laws. Section 882.13(c) has been retained as it appears in the present rules.

Section 882.14 (Satisfaction of liens) is retained as it appears in the present rules.

Part 884—State Reclamation Plans

Part 884 establishes the content of the State plan required by § 405(b) (30 U.S.C. 1235) of the Act.

Section 884.1 establishes the scope of Part 884. The Office has decided to delete portions of § 884.1 already contained in SMCRA. Section 884.2 (Objectives) was deleted for the same reasons.

Section 884.11 (State eligibility) has not been changed. This requirement remains necessary to clearly set forth the requirements of SMCRA. One State commenter agreed that the section is necessary because it clarifies the intent of the Act. Another State commenter requested that the regulation be changed to delete the requirement of an approved State regulatory (Title V) program because a State AML Program could be stalled if regulatory program (Title V) approval was not granted. The State commenter's suggestion of deleting reference to an approved State regulatory program was rejected based on the clear intent of Congress under Sections 405(c) and (h) (30 U.S.C. 1235) of the Act that approval of Title IV State abandoned mine land programs be contingent on approval of Title V State regulatory programs.

Section 884.12 (Activities eligible for inclusion in State Reclamation Plans) has been deleted to avoid duplication of § 405 of SMCRA (30 U.S.C. 1235). Section 884.12(d) has been designated § 884.17. See preamble discussion to § 884.17.

Section 884.13 has been substantially modified based on State comments. The effect is to limit the opinion of the State's or agency's legal officer to the authority of the agency under State law to conduct the Title IV program of SMCRA. The modification is consistent with the requirements of section 405 of the Act (30 U.S.C. 1235).

The work "detailed" and the phrase "but not limited to" were deleted from § 884.13(c) because they are unnecessary to clarify the words of the regulation or the requirements of the Act. One public interest organization opposed the changes on the grounds tha the Secretary could not properly discharge his duties under section 503 (30 U.S.C. 1233) without sufficient detail to ensure compliance and capability by the State in enforcing its program. The Office disagrees since the Secretary has sufficient authority to monitor the progress and quality of State and Indian programs under section 405(i) (30 U.S.C. 1235). The word "purposes" is substituted for the words "goals and objectives" in § 884.13(c)(1) to conform to the explicit wording of section 405(e) of SMCRA (30 U.S.C. 1235). Although commenters on the proposed rules suggested deleting § 884.13(c)(3) becaus it was not explicitly required by

SMCRA, the Office has decided to retain the regulation to avoid duplication of reclamation efforts. Section 884.13(c)(4) combines public participation requirements for coal and non-coal reclamation and for public participation in the preparation of the State Reclamation Plan. It deletes specific requirements as to how the State shall implement public participation since such participation in reclamation plans and programs is required by section 102(i) of the Act (30 U.S.C. 1202).

One public interest organization disagreed with the Office's decision on § 884.13(c)(4) since the Office's rules should implement the statute and since "economy in words does not necessarily correlate with efficiency of regulations for the State or the industry." While the Office agrees with the general statement of the commenter, it has decided that section 102(i) (30 U.S.C. 1202) is clear in its citizen participation requirements. Since the Office is bound to implement this specific intent of Congress, it is not necessary to duplicate the language of the Act in the regulation.

Section 884.13(d) has been rewritten to preclude repetitious phrases. Other non-substantive changes were made to clarify the text.

Section 884.13(e) has been consolidated with § 884.13(c)(4), as discussed previously, and § 884.13(f) is redesignated (e). The phrase "derived from available data" is added to the introduction in order to clarify the intent of the Office that the State may not need to develop new data to comply with the provisions of § 884.13(f). The required map scale of 1:250,000 was deleted to avoid excessive map reproduction costs.

The requirement of existing § 884.13(f)(4) that the State Reclamation Plan contain a table summarizing the quantities of land and water proposed for reclamation has been deleted since such estimates cannot be obtained until completion of the National Inventory.

The requirements of existing § 884.13(f)(5) have been substantially modified in proposed § 884.13(f) by deleting the required narrative descriptions of sociologic and demographic characteristics; hydrology; flora and fauna; underlying or adjacent beds of commercially mineable coal and other minerals and materials and projected methods of extraction; and the anticipated benefits from reclamation. These requirements were deleted at the request of State commenters and to more accurately reflect that the State need provide only available information.

Non-substantive changes were made to § 884.13(f) for purposes of clarification.

The time for the Director to act upon a submitted Reclamation Plan was increased from 60 days to 90 days in § 884.14 to accommodate review requirements. One State commenter agreed and another State commenter disagreed with the change.

Non-substantive changes, supported by one State commenter, were made to remove redundant language in § 884.15

The words "suspension of plan" are substituted for "withdrawal of plan approval" and "withdraw" is changed to "suspend" in §884.16 to make the regulation consistent with section 405(c) of SMCRA (30 U.S.C. 1235). A State commenter supported the change since it precludes submittal of new plans when the Office takes action against a State. A public interest organization opposed the change since it contends that section 405(d) of the Act mandates "withdrawal." The Office decided that suspension of a State reclamation plan is sufficient to achieve the purposes which Congress intended in Title IV.

New § 884.17 is the former § 884.12(d). The Office decided to add this section on impact assistance in order to avoid confusion as to when impact assistance is available and how it can be obtained. The regulation parallels the language and requirements of section 402 of SMCRA (30 U.S.C. 1232). One State commenter supported this change.

Part 886—State Reclamation Grants

Part 886 sets forth the procedures and requirements for annual grants to States to conduct reclamation activities under their approved Reclamation Plans. Based on Comments received from the States and from a public interest organization, the Office has decided to include the major requirements for State reclamation grants in the form of Part 886 regulations rather than in a separate publication.

State commenters requested exemption from the requirements of Office of Management and Budget (OMB) Circulars A–95 and A–102. Discussions with OMB indicate such exemption to be impossible. However, the Office has attempted to minimize the reporting requirements imposed upon the States in the administration of grants under the OMB Circulars.

A reference to the Office's Final Guidelines for Reclamation Programs and Projects (45 FR 14810–14819 March 6, 1980) was included in § 886.1 (Scope) in order to provide program guidance.

Section 886.2 (Objectives) has been deleted to avoid duplication with SMCRA.

The requirement of existing § 886.12(a) that moneys expended by States to cover direct costs for services and materials from other State agencies or local governments be approved by the Office has been deleted. The words "local government" have been changed to "local jurisdictions" in order to provide increased flexibility in working with local agencies. States do not have to limit cooperative efforts to only those units designated as local governments under State statutory provisions.

The words "to the extent technologically and economically feasible, public facilities that are planned, constructed or modified in whole or in part with abandoned mine land grant funds should utilize fuel other than petroleum or natural gas" are added to § 886.12(b) in order to comply with Executive Order No. 12185.

Section 886.13 (Grant period) has been substantially modified based upon a petition to amend the regulations filed by Wyoming. The petition requested that the project grant period be extended beyond 3 years if the objectives of Section 403 (30 U.S.C. 1233) and Section 409 (30 U.S.C. 1239) of SMCRA are completed. It would allow States to obtain grant funds for coal impact assistance under § 402(g)(2) of SMCRA (30 U.S.C. 1232) even though the last remaining priority reclamation projects of Section 403 and Section 409 of SMCRA had not been completed if:

1. Funding has been obtained to complete all of the § 403 and § 409 priority reclamation projects;

2. An extended period of time is necessary to accomplish § 403 and § 409 projects;

3. There are adequate plans completion dates; and

4. Sufficient funds have been allocated to the State or Tribe under § 872.11(b)(2) to complete Section 403 and Section 409 projects, including provisions for corrective work on completed projects.

State commenters on the preproposed regulations requested that the word "or" be added to preproposed § 886.13(b)(1), the words "provided that" be added to (b)(2) and the word "and" be added to (b)(3). The effect of the request from the State commenters is to extend the provision for grant funding beyond 3 years for grants which meet the conditions of either § 886.13(b) (1), or (2), instead of both of the requirements. The suggested modification has, therefore, the effect of allowing other grant period extensions than those which facilitate, as Wyoming intended, coal impact assistance funding.

The Office has decided that the request of the State commenters to amend § 886.13 is not necessary since grant extensions can be achieved under

the provisions of § 886.17. The purpose of proposed § 886.13(b) is to facilitate the consideration of coal impact assistance projects which would otherwise be delayed if all Section 403 and Section 409 reclamation projects had to be completed.

In the preproposed regulations, the Office elaborated on the requirements of § 886.14 regarding the States' estimated annual budget submittals to require further detail to help the Office justify the State reclamation project requests. Based on State comments on the preproposed regulations, the Office decided to leave the substance of § 886.14 unchanged because the State commenters contended that the information which the Office proposed that the States provide would be too difficult for the States to obtain with a high degree of reliability.

The Office decided to clarify the language of § 886.14 by limiting the section to the annual submission of projects required by section 405 of the Act.

The Office will develop a system for obtaining the data it will need to justify its requests for appropriations from the Congress. At the request of the State commenters, a provision was added that allows the State to include in their grant requests funds required to prepare the annual submission of projects.

Section 886.15(a) has been changed to clarify that a State may submit a grant application at any time and that the Office has 90 days to act upon the application. This is the intent of the existing regulation and, therefore, the change is not substantive. The proposed regulation sets forth a requirement, requested by the State commenters, that the Office must act on a resubmitted grant application within 30 days of its resubmittal. The Office accepted this request because it assists the States to manage their grant activities. The remaining parts of § 886.15 have not been substantially changed. Section 886.15(g) has been deleted because it duplicates the wording of paragraphs (a) and (b).

Section 886.16 remains the same except for editorial changes and the words "or local agencies" in § 886.16(a)(4) are added. The effect of the change is to allow transfers of funds to local jurisdictions in addition to State agencies consistent with the change to § 886.12(a). See preamble discussion to § 886.12(a).

Section 886.17 (Grant amendments) has been renamed "Grant revisions" in order to be consistent with the wording of OMB Circular A–102. This change is also reflected in the text of the regulations. Section 886.17(b) has been changed to place upon the Director the reciprocal responsibility of informing the Agency in writing of any events or changes that may cause the Office to initiate a grant revision.

A new provision, § 886.17(b)(2), has been added to be consistent with the changes discussed under § 886.13. Existing § 886.17(b)(2) has been redesignated as § 886.17(b) (Budget Revisions) at the request of State commenters on the preproposed regulations. The substance of the regulation has not been changed. The reason for the change is that the Office has decided that a separate section will avoid possible confusion since grant revisions and budget revisions are separate and distinct processes.

Section 886.18 (Grant suspension) has been modified, as requested by State commenters on the proposed regulations, to increase the time limit from 10 to 30 days written notice of the intent by the Director to reduce, suspend or terminate a grant. The Office decided to make this change because it provides the States with more timely notice.

Section 886.21 has been modified to delete unnecessary words. Since the grant agreement sets the conditions for allowable costs, it is unnecessary to put these conditions in the text of the regulations.

Section 886.23 has been modified to require quarterly as well as annual reports. This rule change is necessary for proper oversight and management of the program by the Office under Section 405 (i) and (j) of SMCRA (30 U.S.C. 1235). Such increased reporting is necessary due to the size of anticipated grants, and the number, type and duration of individual projects. The annual report for construction projects will be combined by the Office with the final report on the administrative grant to meet the requirement of section 405(j) for an annual report, and thereby eliminate the need for the annual report from the State/tribe reclamation agency. In addition, many project plans will necessarily need modification affecting both the financial and performance aspects of approved projects about which OSM must be made aware.

Part 888—Indian Reclamation Program

Part 888 establishes interim procedures for addressing emergency, extreme danger and high priority reclamation projects on Indian lands. Such procedures are necessary until such time as the Indian lands study is completed and legislation is enacted.

The Office is not proposing changes nor have comments been received regarding this Section. However, proposed changes will be considered.

Determination Under Executive Order 12291, the Regulatory Flexibility Act and the National Environmental Policy Act

The Office of Surface Mining has examined this proposed rulemaking under Section 1(b) of Executive Order No. 12291 (February 17, 1971), and determined that, based on available quantitative data, it does not constitute a major rule. The reasons underlying this determination of the regulation revisions are as follows:

1. Approval will not have effect on costs or prices for consumers, individual industries, Federal, State or local Government agencies or geographic regions;

2. Approval will not have adverse effects on competition, employment, investment, productivity, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rulemaking has been examined pursuant to the Regulatory Flexibility Act 5 U.S.C. 601 *et seq.*, and OSM has determined that the rule will not have a significant economic impact on small entities. The revisions do not alter the statutory fee collection requirements or the disbursement of Abandoned Mine Land funds to States or Tribes. In addition, agency policy and statutory mandates requiring the utilization of small and minority businesses, when possible, remain unchanged. The revised rules will not have demographic effects, direct costs, information collection and recordkeeping requirements, indirect costs, nonquantifiable costs, competitive effects, enforcement costs and aggregate effects on small entities.

Environmental Assessment: OSM has prepared a draft environmental assessment (EA) on this rule that reaches an interim conclusion that this rule should not significantly affect the quality of the human environment. The draft EA is on file in the OSM Administrative Record, Room 153, 1951 Constitution Avenue, N.W., Washington, D.C. 20240. A final EA will be completed before issuance of the final rule. OSM may determine at a later date that this rulemaking and related rulemakings under Pub. L. 95–87 have cumulative effects on the environment. At that time, OSM will prepared any further environmental analysis required by the National Environmental Policy Act.

Dated: October 13, 1981.

Daniel N. Miller, Jr.,

Assistant Secretary, Energy and Minerals.

1. Part 870 is revised as follows:

PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

Sec.
870.1 Scope.
870.5 Definitions.
870.11 Applicability.
870.12 Reclamation fee.
870.13 Fee computations.
870.14 Determination of percentage-based fees.
870.15 Reclamation fee payment.
870.16 Production records.
870.17 Compliance authority.

Authority: Secs. 201 and 412, Pub. L. 95-87, 91 Stat. 445 and 446 (30 U.S.C. 1201).

§ 870.1 Scope.

This part sets out the procedures for the collection of fees for the Abandoned Mine Reclamation Fund.

§ 870.5 Definitions.

As used in Parts 870 through 888—

Abandoned Mine Reclamation Fund or Fund means a special fund established on the books of the U.S. Treasury for the purpose of accumulating revenues designated for reclamation of abandoned mine lands and other activites authorized by Title IV of the Act.

Agency means the State agency designated by the Governor to administer the State reclamation program and to receive and administer grants under this part.

Allocate means the administrative identification in the records of the Office of moneys in the fund for a specific purpose, e.g., identification of moneys for exclusive use by a State.

Anthracite, bituminous and subbituminous coal means all coals other than lignite coal.

Calendar quarter means a 3-month period within a calendar year. The first calendar quarter begins on January 1 of a calendar year and ends on the last day of March. The second calendar quarter begins on the first day of April and ends on the last day of June. The third calendar quarter begins on the first day of July and ends on the last day of September. The fourth calendar quarter begins on the first day of October and ends on the last day of December.

Eligible lands and water means lands and water eligible for reclamation or drainage abatement expenditures are those which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes, and abandoned or left in an adequate reclamation status prior to August 3, 1977 and for which there is no continuing reclamation responsibility under State or other Federal laws.

Emergency means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures.

Expended means that moneys have been obligated, encumbered, or committed by contract by the Office, State or Tribe for work to be accomplished or services to be rendered.

Extreme danger means a condition that could reasonably be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed.

Fee compliance officer means any person authorized by the Secretary to exercise authority in matters relating to this part.

In situ coal mining means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, bore hole mining, and fluid recovery mining. At this time, Part 870 considers only in situ gasification.

Indian Abandoned Mine Reclamation Fund or Indian Fund means a separate fund established by an Indian tribe for the purpose of accounting for moneys granted by the Director under an approved Indian Reclamation Program and other moneys authorized by these regulations to be deposited in the Indian Fund.

Indian reclamation program means a program established by an Indian tribe in accordance with this Chapter for reclamation of lands and water adversely affected by past mining, including the reclamation plan and annual applications for grants under the plan.

Left or abandoned in either an unreclaimed or inadequately reclaimed condition means lands and water:

(a) Which were mined or which were affected by such mining, wastebanks, processing or other mining processes prior to August 3, 1977 and all mining has ceased; and

(b) Which continue, in their present condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public; and

(c) For which there is no continuing reclamation responsibility under State or Federal laws.

Lignite coal means consolidated lignite coal having less than 8,300 British thermal units per fund, moist and mineral-matter-free. Moist, mineral-matter-free British thermal units per pound are determined by Parr's formula, page 225, equation 3, D-388-77, Part 26, 1980 Annual Book for American Society of Testing and Material Standards, as follows:

Moist, Mm-free Btu =
(Btu-50S)/[100-(1.08A + 0.55S)] × 100
where:
Mm = mineral matter
Btu = British thermal units per pound (calorific value)
A = percentage of ash, and
S = percentage of sulfur
"Moist" refers to coal containing its natural inherent or bed moisture, but not including water adhering to the surface of the coal.

Operator (for purposes of reclamation fee liability) means any person, partnership, or corporation in whom is vested ownership of the coal under State law immediately after the coal is severed from the ground, without regard to the existence of any contractual arrangement for the sale or other disposition of the coal or the payment of any royalties between the producer and third parties.

Permanent facility means any structure that is built, installed or established to serve a particular purpose or any manipulation or modification of the surface that is designed to remain after the reclamation activity is completed, such as a relocated stream channel or diversion ditch.

Project means a delineated area containing one or more abandoned mine land problems. A project may be a group of related reclamation activities with a common objective within a political subdivision of a State or within a logical, geographically defined area, such as a watershed or conservation district.

Reclaimed coal means coal recovered from a deposit that is not in its original geologic location, such as refuse piles or culm banks or retaining dams and ponds that are or have been used during the mining or preparation process, and stream coal deposits. Reclaimed coal operations are considered to be surface coal mining operations for fee calculation purposes.

Reclamation activity means the restoration, reclamation, abatement, control, or prevention of adverse effects of past mining.

Reclamation plan means a plan submitted and approved under 30 CFR Part 884.

State Abandoned Mine Reclamation Fund or *State Fund* means a separate fund established by a State for the purpose of accounting for moneys granted by the Director under an approved State Reclamation Program and other moneys authorized by these regulations to be deposited in the State Fund.

State reclamation program means a program established by a State in accordance with this chapter for reclamation of lands and water adversely affected by past mining, including the reclamation plan and annual applications for grants.

Surface coal mining means the extraction of coal from the earth by removing the materials over the coal seam before recovering the coal and includes auger coal mining. For purposes or subchapter R, reclaiming coal operations are considered surface coal mining.

Ton means 2,000 pounds avoirdupois (0.90718 metric ton).

Underground coal mining means the extraction of coal from the earth by developing entries from the surface to the coal seam before recovering the coal by underground extraction methods, and includes in situ mining.

Value means gross value at the time of initial bona fide sale, transfer of ownership, or use by the operator, but does not include the reclamation fee required by this part.

§ 870.11 Applicability.

The regulations in this Chapter apply to all surface coal mining operations except—

(a) The extraction of coal by a landowner for his own noncommercial use form land owned or leased by him;

(b) The extraction of coal for commercial purposes by surface coal mining operations which affects two acres or less during the life of the mine;

(c) The extraction of coal as an incidental part of Federal, State, or local government-financed highway or other construction;

(d) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the mineral tonnage removed for commercial use or sale in any twelve consecutive calendar months; and

(e) The extraction of less than 250 tons of coal within twelve consecutive months.

§ 870.12 Reclamation fee.

(a) The operator shall pay a reclamation fee on each ton of coal produced for sale, transfer, or use, including the products of in situ mining.

(b) The fee shall be determined by the weight and value at the time of initial bona fide sale, transfer of ownership, or use by the operator.

(1) The initial bona fide sale, transfer of ownership, or use shall be determined by the first transaction or use of the coal by the operator immediately after it is severed, or removed from a reclaimed coal refuse deposit.

(2) The value of the coal shall be determined F.O.B. mine.

(3) The weight of each ton shall be determined by the actual gross weight of the coal.

(i) Impurities, including water, that *have* not been removed *shall not* be deducted from the gross weight.

(ii) Operators selling coal on a clean coal basis shall retain records that show run-of-mine tonnage, and the basis for the clean coal transaction.

(iii) Insufficient records shall subject the operator to fees based on raw tonnage data.

(c) If the operator combines surface mined coal, including reclaimed coal, with underground mined coal before the coal is weighed for fee purposes, the higher reclamation fee shall apply, unless the operator can substantiate the amount of coal produced by each mining method by acceptable engineering calculations or other reports which the Director may require.

§ 870.13 Fee computations.

(a) *Surface mining fees.* The fee for anthracite, bituminous, and subbituminous coal, including reclaimed coal, is 35 cents per ton unless the value of such coal is less than $3.50 per ton, in which case the fee is 10 percent of the value.

(b) *Underground mining fees.* The fee for anthracite, bituminous, and subbituminous coal recovered by underground mining operations is 15 cents per ton unless the value of such coal is less than $1.50 per ton, in which case the fee is 10 percent of the value.

(c) *Surface and underground mining fees for lignite coal.* The fee for lignite coal is 10 cents per ton unless the value of such coal is less than $5 per ton, in which case the fee charged is 2 percent of the value.

(d) *In situ coal mining fees.* The fee for in situ mined coal, except lignite coal, is 15 cents per ton based on Btu's per ton in place equated to the gas produced at the site. The fee for in situ mined lignite is 10 cents per ton based on the Btu's per ton of coal in place equated to the gas produced at the site as certified through analysis by an independent laboratory.

§ 870.14 Determination of percentage based fees.

(a) If the operator submits a fee based on the percentage of the value of coal, the operator shall include with the fee and production report documentation supporting the alleged coal value. Based on this information and an additional documentation, including examination of the operator's books and records that the Director may require, the Director may accept the valuation submitted by the operator, or may otherwise determine the value of the coal.

(b) If the Director determines that a higher fee shall be paid, the operator shall submit the additional fee together with interest computed under Section 870.15(c).

§ 870.15. Reclamation fee payment.

(a) Each operator shall pay the reclamation fee based on calendar quarter tonnage no later than thirty days after the end of each calendar quarter.

(b) Each operator shall use mine report forms OSM 1 and 1A approved by OSM to report tonnage of coal sold, ownership transferred, or used during the applicable calendar quarter. Section 402(c) of SMCRA requires that these forms be notarized. [Thus, from the effective date of these rules until February 1, 1983, or until a second adjusted rate of interest becomes effective, delinquent payments are subject to interest at an annual percentage rate of 20 percent.]

(c) Delinquent payments shall be subject to interest. The Secretary will establish an adjusted rate of interest not later than October 15 of each year, to become effective on the following February 1, if the adjusted prime rate charged by banks during September, rounded the nearest full percent, is at least a full percentage point more or less than the percent per annum in effect during any given year. The term "adjusted prime rate charged by banks" means the average predominant prime rate quoted by commerical banks to large businesses, as determined by the Board of Governors of the Federal Reserve System. The Board of Governors of the Federal Reserve System has determined such rate to be 20.08 percent during September 1981. [That rate rounded to the nearest full percent is 20 percent, a change of at least 1 percent from the 12 percent per annum rate now in effect].

(d) A check or money order for each coal mine or a check or money order for all of the operator's mines represented by OSM's approved form(s) shall be made payable to Director, Office of Surface Mining Reclamation and

Enforcement, and shall be sent in the same envelope with OSM's approved form(s) to: Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, P.O. Box 25065—DFC, Denver, Colorado 80225.

(e) Operators who did not sell, transfer ownership, or use coal during a calendar quarter period shall send a negative response to the above address.

§ 870.16 Production records.

(a) Each operator shall maintain, on a current basis, books and records that contain at least the following information and data—

(1) Tons of coal sold or transferred, amount received per ton, name of party to whom sold or transferred, and the date of each sale or transfer.

(2) Tons of coal used by the operator and date of consumption.

(3) Tons of coal stockpiled or inventoried which are not classified as sold or used for fee computation purposes under 30 CFR 870.12.

(4) For in situ coal mining operations, total Btu value of gas produced, the Btu value of a ton of coal in place certified by an independent laboratory, and the amount received for gas sold, transferred or used.

(b) The fee compliance officer shall have access to the mine for the purpose of determining compliance with the regulations of this part.

(c) Each operator shall make any book or record necessary to substantiate the accuracy of reports and payments available at reasonable times for inspection and copying by the fee compliance officer. If the fee is paid at the maximum rate, the fee compliance officer shall not copy information relative to price. All information copied shall be protected in accordance with the Freedom of Information Act.

(d) The operator shall maintain books and records for a period of 6 years from the end of the calendar quarter in which the fee was due.

§ 870.17. Compliance authority.

(a) Fee compliance officers shall have the authority to examine records of the second party involved in the sale or transfer of ownership of coal by the operator.

(b) Fee Compliance Officers shall have the authority to examine the records of parties selling coal to the operator.

2. Part 872 is revised as follows:

PART 872—ABANDONED MINE RECLAMATION FUNDS

Sec.
872.1 Scope.
872.11 Abandoned Mine Reclamation Fund.
872.12 State Indian Abandoned Mine Reclamation Funds.

Authority: Secs. 102(g), 201(c), 401, 402(g), and 412. Pub. L. 95-87, 91 *Stat.* 449, 456, 458 and 466 (30 U.S.C. 1211, 1231, 1232 and 1242).

§ 872.1 Scope.

This Part sets forth general responsibilities for administration of Abandoned Mine Land Reclamation Programs and procedures for the Abandoned Mine Reclamation Funds to finance such programs.

§ 872.11 Abandoned Mine Reclamation Fund.

(a) Revenue to the Fund shall include—

(1) Reclamation fees collected under section 402 of the Act and 30 CFR Part 870;

(2) Amounts collected by the Office from charges for use of land acquired or reclaimed with moneys from the Fund under 30 CFR Part 879;

(3) Moneys recovered by the Office through satisfaction of liens filed against privately owned lands reclaimed with moneys from the Fund under 30 CFR Part 882;

(4) Moneys recovered by the Office from the sale of lands acquired with moneys from the Fund or by donation.

(5) Moneys donated to the Office for the purpose of abandoned mine land reclamation.

(b) Moneys deposited in the Fund and appropriated by the Congress shall be used for the following purpose—

(1) An amount not exceeding 10 percent of the reclamation fees collected each quarter, up to a maximum of $10,000,000 each year, shall be used to finance the Small Operator Assistance Program under 30 CFR Part 795.

(2) An amount equal to 50 percent of the reclamation fees collected from within a State shall be allocated at the end of the fiscal year in which they are collected for use in that State under an approved State Reclamation Plan. Reclamation fees collected from Indian lands shall not be included in the calculation of amounts to be allocated to a State. If a State advises the Office in writing that it does not intend to submit a State Reclamation Plan, no moneys shall be allocated to that State. Amounts allocated to a State that have not been granted to the State within 3 years from the date of allocation shall be available to the Director for other purposes under paragraph (b)(5) of this section. Amounts allocated and granted to the State that have not been expended within 3 years from the date of allocation may be withdrawn from the State if the Director finds in writing—

(i) That the amounts involved are not necessary to carry out the approved reclamation Activities; or

(ii) That failure to expend is a result of avoidable delays in conducting approved reclamation activities. Provided, however, that amounts allocated to a State and subject to withdrawal because they are not expended in 3 years will be reallocated to the State if the State has made reasonable efforts to expend the funds but was unable to do so because of unavoidable delays in program approval.

(3) An amount equal to 50 percent of the reclamation fees collected from Indian lands shall be allocated to the Indian tribe having an interest in those lands at the end of the fiscal year in which they are collected for use by that tribe under an approved Indian Reclamation Plan. If an Indian tribe advises the Office in writing that it does not intend to submit an Indian Reclamation Plan, no moneys shall be allocated to that tribe. Amounts allocated to Indian tribes that have not been granted to the Indian tribes within 3 years from the date of allocation shall be available to the Director for other purposes under paragraph (b)(5) of this section. Amounts allocated and granted to the Indian tribe that have not been expended within 3 years from the date of allocation may be withdrawn from the Indian tribe if the Director finds in writing—

(i) That the amounts involved are not necessary to carry out the approved reclamation activities; or

(ii) That failure to expend is a result of avoidable delays in conducting approved reclamation activities. Provided, however, that amounts allocated to a Tribe and subject to withdrawal because they are not expended in 3 years will be reallocated to the tribe if the Tribe has made reasonable efforts to expend the funds but was unable to do so because of unavoidable delays in program approval.

(4) An amount not exceeding 20 percent of the moneys deposited in the Fund annually may be transferred to the Secretary of Agriculture to carry out the Rural Abandoned Mine Program.

(5) All amounts not used for the above purposes shall be available to the Director for the purposes outlined in section 401(c) of the Act.

§ 872.12 State/Indian abandoned mine reclamation funds.

(a) Accounts to be known as State or Indian Abandoned Mine Reclamation Funds shall be established in each State

or Tribal government with approved Reclamation Plans. These funds will be managed in accordance with the Office of Management and Budget Circular No. A-102.

(b) Revenue shall include:

(1) Amounts granted by the Office for purposes of conducting the approved State Reclamation Plan;

(2) Moneys collected from charges for uses of land acquired or reclaimed with moneys from the State Fund under 30 CFR Part 879;

(3) Moneys recovered through the satisfaction of liens filed against privately owned lands;

(4) Moneys recovered by the State from the sale of lands; and

(5) Such other moneys as the State decides should be deposited in the Fund for use in carrying out the approved Reclamation Programs.

3. Part 874 is revised as follows:

PART 874—GENERAL RECLAMATION REQUIREMENTS

Sec.
874.1 Scope.
874.11 Applicability.
874.12 Eligible lands and water.
874.13 Reclamation objectives and priority.

Authority: Sec. 201(c) 403, 404, 409, and 412(a), Pub. L. 95-87, 91 Stat. 449, 458, 459, 465 and 466 (30 U.S.C. 1211, 1233, 1234, 1239 and 1242)

§ 874.1 Scope.

This Part establishes land and water eligibility requirements, reclamation project objectives and standards, and project selection factors.

§ 874.11 Applicability.

The provisions of this Part apply to all reclamation projects to be carried out with money from the Fund and administered by the Office and the Rural Lands Reclamation Program administered by the Secretary of Agriculture under section 406 of the Act (30 U.S.C. 1236).

§ 874.12 Eligible lands and water.

Lands and water are eligible for reclamation activities if:

(a) They were mined or affected by mining processes;

(b) They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; and

(c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal government, or the State as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the Fund may be sought under 30 CFR Parts 886 and 888.

§ 874.13 Reclamation objectives and priorities.

Reclamation projects shall reflect the priorities set out in Section 403 of the Act (30 U.S.C. 1233) Reclamation projects should be accomplished in accordance with the office's "Final Guidelines for Reclamation Programs and Projects" (45 FR 14810-14819, March 6, 1980).

4. Part 875 is added as follows:

PART 875—NON-COAL RECLAMATION

Sec.
875.1 Scope.
875.12 Eligible lands and water.
875.13 Requirements for non-coal reclamation.

Authority: Secs. 409 and 412, Pub. L. 95-87, 91 Stat. 465 and 466 (30 U.S.C. 1239 and 1242).

§ 875.1 Scope.

This Part establishes land and water eligibility requirements for non-coal reclamation.

§ 875.12 Eligible lands and water.

Non-coal lands and water are eligible for reclamation if:

(a) They were mined or affected by mining processes;

(b) They were mined prior to August 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition;

(c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal Government or the State as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the Fund may be sought under 30 CFR Parts 886 and 888;

(d) The reclamation has been requested by the Governor of the State or head of the tribal governing body;

(e) The reclamation is necessary for the protection of the public health and safety or all coal related reclamation has been accomplished; and

(f) Moneys allocated to the State or Indian tribe under § 872.11(b) (2) and (3) are available for the work.

§ 875.13 Requirements for non-coal reclamation.

Reclamation of eligible non-coal mined lands and waters shall comply with the provisions of Section 409 of Pub. L. 95-87 (30 U.S.C. 1239).

5. Part 877 is revised as follows:

PART 877—RIGHTS OF ENTRY

Sec.
877.1 Scope.
877.11 Written consent for entry.
877.13 Entry and consent to reclaim.
877.14 Entry for emergency reclamation.

Authority: Secs. 201(c), 407 (a) and (b), 410 and 412(a), Pub. L. 95-87, 91 Stat. 449, 462, 463, and 466 (30 U.S.C. 1211, 1237, 1240, and 1242).

§ 877.1 Scope.

This part establishes procedures for entry upon lands or property by the Office for reclamation purposes.

§ 877.11 Written consent for entry.

Written consent from the owner of record and lessee, or their authorized agents, is the preferred means for obtaining agreements to enter lands in order to carry out reclamation activities. Non-consentual entry will be undertaken only after due care and deliberation have exhausted all reasonable possibilities of obtaining written consent.

§ 877.13 Entry and consent to reclaim.

(a) The Office or its agents, employees, or contractors, may enter upon land to perform reclamation activities or conduct studies or exploratory work to determine the existence of the adverse effects of past coal mining if consent from the owner is obtained.

(b) If consent is not obtained, then, prior to entry under this Section, the Office shall find in writing with supporting reasons that—

(1) Land or water resources have been or may be adversely affected by past coal mining practices;

(2) The adverse effects are at a state where, in the interest of the public health, safety, or the general welfare, action to restore, reclaim, abate, control, or prevent should be taken; and

(3) The owner of the land or water resources where entry must be made to restore, reclaim, abate, control or prevent the adverse effects of past coal mining practices is not known or readily available, or the owner will not give permission for the Office, its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the effects of past coal mining practices.

(c) The Office shall give notice of its intent to enter for purposes of conducting reclamation at least 30 days before entry upon the property. The notice shall be in writing and shall be mailed, return receipt requested, to the owner, if known, with a copy of the findings required by this section. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement of where the findings required by this section may be inspected or obtained.

§ 877.14 Entry for emergency reclamation.

(a) The Office, its agents, employees, or contractors shall have the right to enter upon any land where an emergency exists and on any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary to protect the public health, safety, or general welfare.

(b) Prior to entry under this section, the Office shall make a written finding with supporting reasons that the situation qualifies as an emergency in accordance with the requirements set out in Section 410 of the Act.

(c) Notice to the owner shall not be required prior to entry for emergency reclamation. The Office shall make reasonable efforts to notify the owner and obtain consent prior to entry, consistent with the emergency conditions that exist. Written notice shall be given to the owner as soon after entry as practical in accordance with the requirements set out in § 877.13(c).

6. Part 879 is revised as follows:

PART 879—ACQUISITION, MANAGEMENT, AND DISPOSITION OF LANDS AND WATER

Sec.

879.1 Scope.
879.11 Land eligible for acquisition.
879.12 Procedures for acquisition.
879.13 Acceptance of gifts of land.
879.14 Management of acquired land.
879.15 Disposition of reclaimed land.

Authority: Secs. 201(c); 407 (c), (d), (e), (f), (g), and (h); and 412(a), Pub. L. 95–87, 91 Stat. 449, 463, 464, and 466 (30 U.S.C. 1211, 1237, and 1242).

§ 879.1 Scope.

This part establishes procedures for acquisition of eligible land and water resources for emergency and reclamation purposes by the Office or a State or Indian tribe under an approved State reclamation program. It also provides for the management and disposition of lands acquired by the Office and establishes requirements for the redeposit of proceeds from the use or sale of land.

§ 879.11 Land eligible for acquisition.

(a) Land adversely affected by past coal mining practices may be acquired by the Office with moneys from the Fund, or by a State or Indian tribe if approved in advance by the Office.

The Office shall find in writing that acquisition is necessary for successful reclamation and that—

(1) The acquired land will serve recreation, historic, conservation, and reclamation purposes or provide open space benefits after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, and

(2) Permanent facilities will be constructed on the land for the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices.

(b) Coal refuse disposal sites and all coal refuse thereon may be acquired with moneys from the Fund by the Office or by a State or Indian tribe if approved in advance by the Office. Prior to the approval of the acquisition of such sites, the Office, State or Indian tribe shall find in writing that the acquisition of such land is necessary for successful reclamation and will serve the purposes of the Abandoned Mine Land Reclamation Program. Where an emergency situation exists and a written finding as set out in Section 877.14 has been made, the Office may use Fund moneys to acquire lands where public ownership is necessary to meet an emergency situation and prevent recurrence of the adverse effects of past coal mining practices.

(c) Land adversely affected by past coal mining practices may be acquired by the Office if the acquisition with moneys from the Fund is an integral and necessary element of an economically feasible plan for project to construct or rehabilitate housing which meets the specific requirements set out in Section 407(h) of the Act.

(d) Land or interests in land needed to fill voids, seal abandoned tunnels, shafts, and entry ways or reclaim surface impacts of underground or surface mines may be acquired by the Office if the Director finds that acquisition is necessary under § 874.12(b).

(e) The Office, State, or Indian tribe which acquires land under this part shall acquire only such interests in the land as are necessary for the reclamation work planned or the post-reclamation use of the land. Interests in improvements on the land, mineral rights or associated water rights may be acquired if—

(1) The customary practices and laws of the State in which the land is located will not allow severance of such interests from the surface estate; or

(2) Such interests are necessary for the reclamation work planned or for the post-reclamation use of the land; and

(3) Adequate written assurances cannot be obtained from the owner of the severed interest that future use will not be in conflict with the reclamation to be accomplished.

§ 879.12 Procedures for acquisition.

(a) An appraisal of all land or interest in land to be acquired shall be obtained by the Office, State or Indian tribe. The appraisal shall state the fair market value of the land as adversely affected by past mining and shall otherwise conform to the requirements of the handbook on "Uniform Appraisal Standards for Federal Land Acquisition" (Interagency Land Acquisition Conference, 1973).

(b) When practical, acquisition shall be by purchase from a willing seller. The amount paid for interests acquired shall reflect the fair market value of the interests as adversely affected by past mining.

(c) When necessary, land or interests in land may be acquired by condemnation. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.

(d) The Office, State or Indian tribe which acquires land under this part shall comply, at a minimum, with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, U.S.C. 4601, *et seq.*, and 41 CFR Parts 114–50.

§ 879.13 Acceptance of gifts of land.

(a) The Director, State or Indian tribe under an approved Reclamation Plan may accept donations of title to land or interests in land.

(b) Offers to make a gift of land or interest in land to the U.S. Government shall be in writing and comply with U.S. Department of the Interior regulations for land donations. The States and Indian tribes may use procedures provided by applicable State or Tribal law.

§ 879.14 Management of acquired land.

Land acquired under this part may be used for any lawful purpose that is consistent with the necessary reclamation activities. Procedures for collection of user charges or the waiver of such charges by the Office shall be as set out in Section 407(f) of the Act.

§ 879.15 Disposition of reclaimed land.

(a) Prior to the disposition of any land acquired under this part, the Office, State or Indian tribe shall publish a notice of proposed land disposition, hold public hearings if requested, and make written findings in accordance with the authority contained in Section 407(g)(2) of the Act.

(b) The Director may transfer administrative responsibility for land acquired by the Office to any Federal Department or Agency, with or without cost to that Department or Agency. The Director may transfer title for land acquired by the Office to any State or Indian tribe or to any agency or political subdivision of a State or Indian tribe, with or without cost to that entity. The agreement under which a transfer is made shall specify:

(1) The purposes for which the land may be used, which shall be consistent with the authorization under which the land was acquired; and

(2) That the title or administrative responsibility for the land shall revert to the Office, State or Indian tribe if, at any time in the future, the Director finds that the land is not used for the purposes specified.

(c) The Director may accept title for abandoned and unreclaimed land to be reclaimed and administered by the Office. If a State or Indian tribe transfers land to the Office under this section, that State or Indian tribe shall have a preference right to purchase such land from the Office after reclamation is completed. The price to be paid by the State or Indian tribe shall be the fair market value of the land in its reclaimed condition less any portion of the land acquisition price paid by the State or Indian tribe.

(d) The Director may sell land acquired and reclaimed under this part, except that acquired for housing under § 879.11(c), to the State or local government within whose boundaries the land is located or to an Indian tribe if the land is located within the boundaries of an Indian reservation. The conditions of sale shall be in accordance with the authorities contained in Section 407(e) of the Act.

(e) The Director may transfer or sell land acquired for housing under § 879.11(c), with or without monetary consideration, to any State or political subdivision of a State, to any Indian tribe, or to any firm, association or corporation. The conditions of transfer or sale shall be in accordance with Section 407(h) of the Act.

(f) The Director may make grants or commitments for grants, or may advance money under such terms and conditions as required, to:

(1) Any State or Indian tribe, or

(2) A department, agency, or instrumentality of a State, or

(3) Any public body or non-profit organization designated by a State for the purpose of acquiring land for housing under §879.11(c).

(g)(1) The Director may sell or authorize the States or Indian tribes to sell land acquired under this part by public sale if:

(i) Such land is suitable for industrial, commercial, residential, or recreational development;

(ii) Such development is consistent with local, State, or Federal land use plans for the area in which the land is located; and

(iii) If it is found that retention by the Office, State or Indian tribe, or disposal under other paragraphs of this section, is not in the public interest.

(2) Disposal procedures will be in accordance with Section 407(g) of the Act and applicable State or Tribal requirements.

(3) States may transfer title or administrative responsibility for land to cities, municipalities or quasi-governmental bodies, provided that the State provide for the reverter of the title or administrative responsibility if the land is no longer used for the purposes originally proposed.

(h) All moneys received from disposal of land under this Part shall be deposited in the appropriate Abandoned Mine Reclamation Fund in accordance with 30 CFR Part 872.

7. Part 882 is revised as follows:

PART 882—RECLAMATION ON PRIVATE LAND

Sec.
882.1 Scope.
882.12 Appraisals.
882.13 Liens.
882.14 Satisfaction of liens.

Authority: Secs. 201(c), 407 (a) and (b), 408, 409, 410 and 412(a), Pub. L. 95-87, 91 Stat. 449, 462, 463, 464, 465, and 466 (U.S.C. 1211, 1237, 1238, 1239, 1240, and 1242).

§ 882.1 Scope.

This part authorizes reclamation on private land and establishes procedures for recovery of the cost of reclamation activities conducted on privately owned land by the Office, State or Indian tribe.

§ 882.12 Appraisals.

(a) A notarized appraisal of the fair market value of private land to be reclaimed which may be subject to a lien under § 882.13 shall be obtained from an independent appraiser. The Office will provide appraisal standards for Federal projects, and the State or Indian tribes will provide appraisal standards for State or Tribal projects.

(b) A notarized appraisal of all land reclaimed which was appraised under paragraph (a) of this section shall also be obtained from an independent appraiser. The appraisal shall state the market value of the land as reclaimed. Where reclamation will require more than six months to complete, the appraisal shall not be started until actual completion of reclamation activities.

(c) The landowner upon whose property a lien is filed is to be provided with a statement of the increase in market value, an itemized statement of reclamation expenses and a notice that a lien is being or has been filed in accordance with 882.13.

§ 882.13 Liens.

(a) The Office, State or Indian tribe, has the discretionary authority to place or waive a lien against land reclaimed if the reclamation results in a significant increase in the fair market value based on the appraisals obtained under § 882.12; however,

(1) A lien shall not be placed against the property of a surface owner who acquired title prior to May 2, 1977 and who did not consent to participate in or exercise control over the mining operation which necessitated the reclamation work.

(2) The basis for making a determination of what constitutes a significant increase in market value or what factual situation constitutes a waiver of lien will be made by the Office, State or Indian tribe pursuant to the Congressional intent expressed in Section 408 of the Act and consistent with State laws governing liens.

(3) The lien may be waived by the Office, State or Indian tribe if the reclamation work performed on private land primarily benefits health, safety or environmental values of the greater community or area in which the land is located, or if the reclamation is necessitated by an unforeseen occurrence and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the occurrence.

(b) If a lien is to be filed, the Office, State or Indian tribe shall, within 6

months after the completion of the reclamation work, file a statement in the office having responsibility under applicable law for recording judgments against land and for the lands to be liened. Such statement shall consist of an account of moneys expended for the reclamation work, together with notarized copies of the appraisals obtained under § 882.12. The amount reported to be the increase in value of the property shall constitute the lien to be recorded in compliance with existing Federal or State laws.

(c) Within 60 days after the lien is filed the landower may petition under local law to determine the increase in market value of the land as a result of reclamation work. Any aggrieved party may appeal in the manner provided by local law.

§ 882.14 Satisfaction of liens.

(a) A lien placed on private properaty shall be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property.

(b) The Office, State or Indian tribe which files a lien on private property shall maintain or renew it from time to time as may be required under State or local law.

(c) Moneys derived from the satisfaction of liens established under this part shall be deposited in the appropriate Abandoned Mine Reclamation Fund Account.

8. Part 884 is revised as follows:

PART 884—STATE RECLAMATION PLANS

Sec.

884.1 Scope.
884.11 State eligibility.
884.13 Content of proposed State reclamation plan.
884.14 State reclamation plan approval.
884.15 State reclamation plan amendment
884.16 Suspension of plan.
884.17 Impact assistance.

Authority: Secs. 201(c), 402(g)(2), 403, 404, 405, 407, 409, and 412(a), Pub. L. 95-87, 91 Stat. 449, 458, 459, 462, 465 and 468 (30 U.S.C. 1211, 1232, 1233, 1234, 1235, 1237, 1239 and 1242).

§884.1 Scope.

This Part establishes the procedures and requirements for the preparation, submission and approval of State Reclamation Plans.

§ 884.11 State eligibility.

A State is eligible to submit a State Reclamation Plan if it has eligible lands or water as defined in § 870.5 within its boundaries. A State is eligible for a State Reclamation Plan to be approved by the Director if it has an approved State regulatory program under section 503 of the Act and meets the other requirements of this Chapter and the Act.

§ 884.13 Content of proposed State reclamation plan.

Each proposed State Reclamation Plan shall be submitted to the Director in writing and shall include the following information:

(a) A designation by the Governor of the State of the agency authorized to administer the State Reclamation Program and to receive and administer grants under 30 CFR Part 886.

(b) A legal opinion from the State Attorney General or the chief legal officer of the State agency that the designated agency has the authority under State law to conduct the program in accordance with the requirements of Title IV of the Act.

(c) A description of the policies and procedures to be followed by the designated agency in conducting the reclamation program, including:

(1) The purposes of the State Reclamation Program;

(2) The specific criteria for ranking and identifying projects to be funded;

(3) The coordination of reclamation work among the State Reclamation Program, the Rural Lands Reclamation Program administered by the Soil Conservation Service, and the reclamation programs of any Indian tribes located within the State;

(4) Public participation and involvement in the preparation of the State Reclamation Plan and in the State Reclamation Program.

(d) A description of the administrative and management structure to be used in conducting the reclamation program, including—

(1) The organization of the designated agency and its relationship to other State organizations or officials that will participate in or augment the agency's reclamation capacity.

(2) The personnel staffing policies which will govern the assignment of personnel to the State Reclamation Program.

(3) The purchasing and procurement systems to be used by the agency. Such systems shall meet the requirements of Office of Management and Budget Circular No. A-102, Attachment O.

(4) The accounting system to be used by the agency, including specific procedures for the operation of the State Abandoned Mine Reclamation Fund.

(e) A general description, derived from available data, of the reclamation activities to be conducted under the State Reclamation Plan, including the known or suspected eligible lands and waters within the State which require reclamation, including—

(1) A map showing the general location of known or suspected eligible lands and waters;

(2) A description of the problems occurring on these lands and waters;

(3) How the plan proposes to address each of the problems occurring on these lands and waters;

(4) How the land to be reclaimed relates to existing and planned uses of lands in surrounding areas.

(f) A general description, derived from available data, of the conditions prevailing in the different geographic areas of the State where reclamation is planned, including–

(1) The economic base;

(2) Significant esthetic, historic or cultural, and recreational values; and

(3) Endangered and threatened plant, fish and wildlife and their habitats.

§ 884.14 State reclamation plan approval.

(a) The Director shall act upon a State Reclamation Plan within 90 days after submittal. A State Reclamation Plan shall not be approved until the Director has—

(1) Held a public hearing on the plan within the State which submitted it, or made a finding that the State provided adequate notice and opportunity for public comment in the development of the plan;

(2) Solicited and considered the views of other Federal agencies having an interest in the plan;

(3) Determined that the State has the legal authority, policies, and administrative structure necessary to carry out the proposed plan;

(4) Determined that the proposed plan meets all the requirements of this subchapter;

(5) Determined that the State has an approved State regulatory program; and

(6) Determined that the proposed plan is in compliance with all applicable State and Federal laws and regulations.

(b) If the Director disapproves a proposed State reclamation plan, the Director shall advise the State in writing of the reasons for disapproval. The State may submit a revised proposed State Reclamation plan at any time under the procedures of this section.

§ 884.15 State reclamation plan amendment.

A State may, at any time, submit to the Director a proposed amendment or revision to its approved Plan. If the amendment or revision changes the objectives, scope or major policies followed by the State in the conduct of

its reclamation program, the Director shall follow the procedures set out in § 884.14 in approving or disapproving an amendment or revision of a State Reclamation Plan.

§ 884.16 Suspension of plan.

(a) The Director shall suspend a State Reclamation Plan, in whole or in part, if he determines that—

(1) Approval of the State regulatory program has been withdrawn in whole or in part; or

(2) The State is not conducting the State reclamation program in accordance with the Plan.

(b) If the Director determines that the plan should be suspended, the Director shall notify the State by mail, return receipt requested, of the proposed action. The notice of proposed suspension shall state the reasons for the proposed action. Within 30 days the State must show cause why such action should not be taken. The Director shall afford the State an opportunity for consultation, including a hearing if requested by the State and performance of remedial action prior to the notice of suspension.

(c) The Director shall notify the State of his decision in writing. The decision of the Director shall be final.

(d) The Director shall lift the suspension if he determines that the deficiencies that led to suspension have been corrected.

§ 884.17 Impact assistance.

(a) The State Reclamation Plan may provide for construction of specific public facilities in communities impacted by coal development. This form of assistance is available when the Governor of the State has certified, and the Director has concurred that—

(1) All reclamation with respect to past coal mining and with respect to the mining of other minerals and materials has been accomplished;

(2) The specific public facilities are required as a result of coal development; and

(3) Impact funds which may be available under the Federal Mineral leasing Act of 1920, as amended, or the act of October 20, 1978, Pub. L. 94–565 (9 Stat. 2662) are inadequate for such construction.

(b) Grant applications for impact assistance may be submitted in accordance with 30 CFR 886.13.

9. Part 886 is revised as follows:

PART 886—STATE RECLAMATION GRANTS

Sec.

886.1 Scope.
886.3 Authority.
886.11 Eligibility for grants.
886.12 Coverage and amount of grants.
886.13 Grant period.
886.14 Annual submission of projects.
886.15 Grant application procedures.
886.16 Grant agreements.
886.17 Grant and budget revisions.
886.18 Grant reduction, suspension and termination.
886.19 Audit.
886.20 Administrative procedures.
886.21 Allowable costs.
886.22 Financial management.
886.23 Reports.
886.24 Records.

Authority: Secs. 201(c), 401(a) and (c), 402(g), 405(h), and 412(a), Pub. L. 95–87, 91 Stat. 449, 456, 458, 460, and 466 (30 U.S.C. 1211, 1231, 1232, 1235, and 1242).

§ 886.1 Scope.

This part sets forth procedures for grants to States having an approved State Reclamation Plan for the reclamation of eligible lands and water and other activities necessary to carry out the plan as approved. The office's final guidelines for reclamation programs and projects (45 FR 14810–14819, March 6, 1980) should be utilized as appropriate.

§ 886.3 Authority.

(a) The Director is authorized to approve or disapprove applications for grants under this part if the total amount of the grants does not exceed the moneys appropriated by the Congress and specifically allocated to the State under § 872.11(b)(2).

(b) The Director is authorized to approved additional grants to a State from the moneys available under § 872.11(b)(5).

§ 886.11 Eligibility for grants.

A State is eligible for grants under this part if it has a State Reclamation Plan approved under 30 CFR Part 884.

§ 886.12 Coverage and amount of grants.

(a) An agency may use moneys granted under this part to administer the approved State reclamation program and to carry out the specific reclamation activities included in the plan and described in the annual grant agreement. The moneys may be used to cover direct costs to the agency for services and materials obtained from other State agencies or local jurisdictions.

(b) Grants shall be approved for reclamation of eligible lands and water, construction of public facilities, program administration, the incremental cost of filling voids and sealing tunnels with waste from mine waste piles reworked for conservation purposes, and community impact assistance. To the extent technologically and economically feasible, public facilities that are planned, constructed or modified in whole or in part with abandoned mine land grant funds should utilize fuel other than petroleum or natural gas.

(c) Acquisition of land or interests in land and any mineral or water rights associated with the land shall be approved for up to 90 percent of the costs.

§ 886.13 Grant period.

(a) Except as provided in paragraph (b), the grant funding period for projects shall not exceed 3 years. The grant period for administrative costs of the authorized agency shall be for one year.

(b) The Director may approve a grant period for specific projects beyond three years if he finds, on the basis of the information contained in the grant application that:

(1) Projects to be funded will fulfill all the objectives of Section 403 and Section 409 of the SMCRA;

(2) The requests are for funding of specific projects with adequate plans, acceptable deadlines for completion, and the likelihood of specific construction contracts to meet the project deadlines; and

(3) Sufficient funds allocated to the State or Tribe under 30 CFR 872.11(b)(2) are available to complete the projects, including provisions for corrective works on completed projects and any additional eligible projects which may be discovered.

§ 886.14 Annual submission of projects.

The agency shall cooperate with the Office in the development of the annual submission of projects by providing the information required by § 405(f) of the Act for use by the Director in the preparation of his requests for appropriation of moneys for the State reclamation grants. The schedule for such estimates shall be determined by the Office on an annual basis. Funds required to prepare the annual submission of projects under Section 405(f) of the Act may be included in administrative grants under 30 CFR 886.12.

§ 886.15 Grant application procedures.

(a) The Office shall act upon a grant application within 90 days of submittal. If the Office approves an agency's grant application, a grant agreement shall be prepared and signed by the agency and the Director.

(b) If the application is not approved, the Office shall set forth in writing the reasons for disapproval and may propose modifications if appropriate. The agency may resubmit the

application or appropriate revised portions of the application. The Office shall approve or disapprove the resubmitted grant application within 30 days of the resubmittal.

(c) The agency shall use the application forms and procedures applicable to construction and/or non-construction programs specified by the Office in accordance with Office of Management and Budget Circular A–102, Attachment M. A preapplication is not required if the total of the grant requested is within the amounts allocated to the State under § 872.11(b)(2).

(d) The agency shall agree to perform the grant in accordance with the Act, OSM implementing regulations, and applicable OMB and Treasury Circulars.

(e) Complete copies of plans and specifications for projects shall not be required before the grant is approved nor at the start of the project. The Director may review such plans and specifications after the start of the project in the agency office or on the project site.

(f) A description of the actual or planned public involvement in the decision to undertake the work, in the planning of the reclamation activities and in the decision on how the land will be used after reclamation shall be included in the application.

§ 886.16 Grant agreements.

(a) If the Director approves an agency's grant application, the Office shall prepare a grant agreement, which includes:

(1) A statement of the work to be covered by the grant;

(2) A statement of the approvals of specific actions as required under this subchapter or of the conditions to be met before such approvals can be given if moneys are included in the grant for such actions;

(3) The amounts approved for each individual project included in the grant application; and

(4) Allowable transfers of funds to other State or local agencies.

(b) The Director may allow an agency to assign functions and funds to other State or local agencies. The Director shall require the grantee agency to retain responsibility for overall administration of the grant, including use of funds and reporting.

(c) The Director shall transmit four copies of the grant agreement by mail, return receipt requested, or by hand to the agency for signature. The agency shall execute the grant agreement and return all copies within 3 weeks after receipt, or within an extension of time granted by the Director.

(d) The Director shall sign the agreement upon its return from the agency or when funds are available for the grants, whichever is later, and return one copy to the agency. The grant is effective and constitutes an obligation of Federal funds at the time the Director signs the agreement.

(e) Neither the approval of the grant application nor the award of any grant shall commit or obligate the United States to award any continuation grant or to enter into any grant revision, including grant increases to cover cost overruns.

§ 886.17 Grant and budget revisions.

(a) *Grant revisions.* (1) A grant revision is a written alteration of the terms or conditions of the grant agreement, whether accomplished on the initiative of the agency or the Office. All procedures for the grant revisions shall conform to OMB Circular A–102.

(2) The agency shall promptly notify the Director, or the Director shall promptly notify the agency, in writing of events or proposed changes which may require a grant revision. The agency shall notify the Director in advance of:

(i) Planned changes in the scope or objective of any individual project even if the change will not result in a change in the total cost of the project; and

(ii) changes which will result in an extension of the grant period.

(3) The Director shall notify the agency of the approval or disapproval of each proposed grant revision within 30 days of receipt thereof.

(b) *Budget revisions.* (1) The agency shall obtain the written approval of the Office for budget revisions which will result in an increase or decrease in the total cost of any project of more than $5,000 or 5 percent of the budgeted amount, whichever is greater.

(2) The Office shall either approve or disapprove the budget revision within 15 days of its receipt.

(3) Changes of less than $5,000 or 5 percent of the budgeted amount of a project may be made by the agency without advance notification or approval of the Office if the change:

(i) can be made without exceeding the total amount of the project grant;

(ii) does not involve a change in the scope or objective of the project involved; and

(iii) is consistent with the procedures set forth in Office of Management and Budget Circular A–102, attachment K.

§ 886.18 Grant reduction, suspension, and termination.

(a) Conditions for reduction, suspension or termination.

(1) If an agency violates the terms of a grant agreement or an approved Reclamation Plan, the Office may reduce, suspend or terminate the grant.

(2) If an agency fails to expend moneys allocated and granted within 3 years from the date of allocation, the Office may reduce the grant in accordance with § 882.11(b)(2) of this subchapter.

(3) If an agency fails to implement, enforce or maintain an approved State regulatory program or any part thereof and, as a result, the administration and enforcement grant provided under Part 735 of this Chapter is terminated, the Office shall terminate the grant awarded under this Part.

(4) If an agency is not in compliance with the following nondiscrimination provisions, the office shall terminate the grant—

(i) Title VI of the Civil Rights Act of 1964, Pub. L. 88–352, 78 Stat. 252 (42 U.S.C. 2000d–1). Nondiscrimination in federally assisted programs, which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and the implementing regulations in 43 CFR Part 17.

(ii) Executive Order 11246, as amended by Executive Order 11375, Equal Employment Opportunity, requiring that employees or applicants for employment not be discriminated against because of race, creed, color, sex, or national origin, and the implementing regulations in 40 CFR Part 60.

(iii) Section 504 of the Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 355 (29 U.S.C. 794), as amended by Executive Order 11914, Nondiscrimination With Respect to the Handicapped in federally assisted programs.

(5) If an agency fails to enforce the financial interest provisions of Part 705 of this Chapter, the Office shall terminate the grant.

(6) If an agency fails to submit reports required by this subchapter or Part 705 of this Chapter the Office shall terminate the grant.

(b) Grant reduction, suspension, and termination procedures.

(1) The Office shall give at least 30 days written notice to the agency by mail, return receipt requested, of intent to reduce, suspend or terminate a grant. The Office shall include in the notice the reasons for the proposed action and the proposed effective date of the action.

(2) The Office shall afford the agency opportunity for consultation and remedial action prior to reducing or terminating a grant.

(3) The Office shall notify the agency of the termination, suspension or reduction of the grant in writing by mail, return receipt requested.

(4) Upon termination, the agency shall refund or credit to the Fund that remaining portion of the grant money not encumbered. However, any portion of the grant that is required to meet contractual commitments made prior to the effective date of termination shall be retained by the agency.

(5) Upon notification of intent to terminate the grant the agency shall not make any new commitments without the approval of the Office.

(6) The Office may allow termination costs as determined by applicable Federal cost principles listed in Office of Management and Budget Circular A-87.

(c) *Appeals.* (1) Within 30 days of the Office's decision to reduce, suspend, or terminate a grant, the agency may appeal the decision to the Secretary.

(2) The agency shall include in the appeal:

(i) A statement of the decision being appealed; and

(ii) The facts which the agency believes justify a reversal or modification of the decision.

(3) The Secretary shall act upon the appeal within 30 days of receipt.

§ 886.19 Audit.

The agency shall arrange for an independent audit at least once every 2 years, pursuant to the requirements of Office of Management and Budget Circular No. A-102. The audit will be performed in accordance with the Standards for Audit of Governmental Organizations, Programs, Activities, Functions, published by the Comptroller General of the United States and audit guides provided by the Department of the Interior.

§ 886.20 Administrative procedures.

The agency shall follow administrative procedures governing accounting, payment, property and related requirements contained in Office of Management and Budget Circular No. A-102.

§ 886.21 Allowable costs.

(a) Reclamation project costs which shall be allowed include actual costs of construction, operation and maintenance, planning and engineering, construction, inspection, other necessary administration costs and up to 90 percent of the costs of the acquisition of land.

(b) Costs must conform with any limitations, conditions or exclusions set forth in the grant agreement.

§ 886.22 Financial management.

(a) The agency shall account for grant funds in accordance with the requirement of Office of Management and Budget Circular No. A-102. Agencies shall use generally accepted accounting principles and practices consistently applied. Accounting for grant funds must be accurate and current.

(b) The agency shall adequately safeguard all funds, property, and other assets and shall assure that they are used solely for authorized purposes.

(c) The agency shall provide a comparison of actual amounts spent with budgeted amounts for each grant.

(d) When advances are made by a letter-of-credit method, the agency shall make drawdowns from the U.S. Treasury through its commercial bank as closely as possible to the time of making the disbursements.

(e) The agency shall design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 886.23 Reports.

(a) The agency shall for each grant/cooperative agreement submit quarterly to the Office the following reports prepared according to Office of Management and Budget Circular No. A-102, Attachments H and I:

(1) Financial Status Report, Form SF-269 for the agency's administrative grant/cooperative agreement and the Performance Report, Form OSM-51 covering the performance aspects of the grant/cooperative agreement.

(2) Outlay Report and Request for Reimbursement for Construction Programs, Form SF-271 and the Performance Report, Form OSM-51 for each activity or project including projects peviously funded or completed during the quarter.

(b) The agency shall for each grant/cooperative agreement submit annually to the Office the following reports prepared according to Office of Management and Budget Circular No. A-102, Attachments H and I:

(1) A final Financial Status Report, Form SF-269 for the agency's administrative grant/cooperative agreement and a final Performance Report, Form OSM-51 covering the performance aspects of the grant/coopeative agreement.

(2) A cumulative fourth quarter Outlay Report and Request for Reimbursement for Construction Programs, Form SF-271 and a cumulative annual Performance Report, Form OSM-51 which includes:

(i) For each project or activity, a brief description and the type of reclamation performed, the project location, the landowner's name, the amounts of land or water reclaimed or being reclaimed and a summary of achieved or expected benefits.

(ii) For any land previously acquired but not disposed of, a statement of current or planned uses, location and size in acres, and any revenues derived from use of the land.

(iii) For any permanent facilities acquired or constructed but not disposed of, a description of the facility and a statement of current or planned uses, location, and any revenues derived from the use of the facility.

§ 886.24 Records.

(a) The agency shall maintain complete records in accordance with Office of Management and Budget Circular No. A-102, Attachment C. This includes, but is not limited to, books, documents, maps, and other evidence and accounting procedures and practices sufficient to reflect properly—

(1) The amount and disposition by the agency of all assistance received for the program.

(2) The total direct and indirect costs of the program for which the grant was awarded.

(b) Subgrantees and contractors, including contractors for professional services, shall maintain books, documents, papers, maps and records which are pertinent to a specific grant award.

10. Part 888 is revised as follows:

PART 888—INDIAN RECLAMATION PROGRAM

Sec.

888.1 Scope.

888.2 Objectives.

888.11 Interim procedures.

Authority: Secs. 201(c), 405(k), 412(a), and 710, Pub. L. 95-87, 91 Stat. 449, 460, 466, and 523 (30 U.S.C. 1211, 1235, 1242, and 1300).

§ 888.1 Scope.

This part is reserved for any additional or unique regulations that may be required as a result of the special study report submitted pursuant to section 710 of the Act and to achieve the purpose of the Act on Indian lands. Because of the special jurisdictional status of Indian lands, general responsibilities for administration of Indian Reclamation Programs are set forth on an interim basis.

§ 888.2 Objectives.

(a) The objectives of this part are to provide a temporary vehicle for mitigation of emergency situations or extreme danger situations arising from past mining practices and to begin reclamation of other areas determined to have high priority on Indian lands.

(b) Upon completion of the special study report and enactment of any required legislation, this Part will be either deleted and supplemented by the other Parts of this chapter dealing with State and Indian Abandoned Reclamation Programs or expanded as required to achieve the purposes of the Act.

§ 886.11 Interim procedures.

(a) The Director is authorized to receive proposals from Indian tribes for projects which should be carried out on Indian lands and to carry out such projects pursuant to 30 CFR Parts 872 through 882.

(b) The Director shall consult with the Indian tribe and the Bureau of Indian Affairs' office having jurisdiction over the Indian lands on all reclamation activities carried out on Indian lands under this subchapter.

(c) If a proposal is made by an Indian tribe and approved by the Director, the tribal governing body shall approve the project plans. The costs of the project may be charged against the money allocated to the Indian tribe under § 872.11(b)(3).

(d) Approved projects may be carried out directly by the Director or through such arrangements as the Regional Director may make with the Bureau of Indian Affairs or other agencies.

[FR Doc. 81-35468 Filed 12-10-81; 8:45 am]
BILLING CODE 4310-05-M

Reader Aids

Federal Register

Vol. 46, No. 238

Friday, December 11, 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
Privacy Act	523-5237
Public Inspection Desk	523-4986
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

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 Inspection Desk	523-4986
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, DECEMBER

58271-58480.....1
58481-58638.....2
58639-59226.....3
59227-59526.....4
59527-59940.....7
59941-60172.....8
60173-60410.....9
60411-60564.....10
60565-60798.....11

CFR PARTS AFFECTED DURING DECEMBER

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.

3 CFR

Administrative Orders:

Presidential Determinations:

No. 73-10 of January 2, 1973 (Amended by Presidential Determination No. 82-2 of November 23, 1981).....58481

No. 82-2 of November, 23 1981.....58481

Proclamations:

4885.....60173

Executive Orders:

May 27, 1913 (Revoked by PLO 6094).....59974

February 7, 1933 (Revoked in part by PLO 6093).....58491

12036 (Revoked by EO 12333).....59941

12333.....59941

12334.....59955

5 CFR

213.....58271

550.....58271

890.....59227

Proposed Rules:

213.....60590

1252.....60591

1253.....60591

7 CFR

2.....59227

201.....59527

271.....60160

272.....60160

273.....60160

274.....60160

278.....60160

800.....58277, 60411

905.....58483, 60170, 60411

907.....58278, 58639, 60412

910.....59228, 60565

928.....58639, 59228

944.....60170

959.....59228

966.....60175

984.....59228, 59229

987.....59228

989.....58640, 59228

991.....60177

1001.....58641

1030.....58278

1032.....59230

1133.....60412

1421.....59957

1822.....60179

1863.....60179

1872.....60179

1924.....60179

1927.....60179

1951.....60179

1955.....60179

2856.....58643

Proposed Rules:

102.....59930

225.....60592

272.....60614

442.....58492

701.....60616

1004.....58337

1427.....60210

1924.....58497

1944.....58497

9 CFR

51.....60565

71.....59527

83.....59527

91.....59959

201.....60414

202.....60414

203.....60414

204.....60414

10 CFR

2.....58279

11.....58281

19.....58281

20.....58281

21.....58281

25.....58281

50.....58484

72.....58281

75.....58281

95.....58281

170.....58281

500.....59872

501.....59872

503.....59872

504.....59872

505.....59872

Proposed Rules:

Ch. I.....58340

20.....60005

456.....58340, 58341

478.....58500

500.....59924

501.....59924

503.....59924

12 CFR

5.....59232

201.....60189

205.....60190

226.....58644, 60190

523.....59234

614.....58284, 59959, 59960

615.....59960

1204 58285

Proposed Rules:

543 60005
544 60005
545 ..... 58341, 59256, 60005
552 60005
577 60005

13 CFR

Proposed Rules:

122 58701

14 CFR

25 59528
39 ..... 58285, 58644–58647, 59529, 60417–60419
71 59529-59530
73 58649
93 60420
97 58650
121 58651
127 58651
135 58651
145 58651

Proposed Rules:

1 60461
21 60461
25 58702
43 60461
45 60461
47 60461
61 60461
63 60461
65 60461
71 ..... 59547, 60462–60464
73 60465
75 60466
91 60461
93 60461
99 60461
121 60461
123 60461
125 60461
127 60461
133 60461
135 60461
137 60461
141 60461
373 58501

15 CFR

399 58286
806 60191

Proposed Rules:

2009 59547

16 CFR

13 ..... 58652–58654, 59532

Proposed Rules:

13 ..... 59258, 60211
1145 ..... 58702, 59548

17 CFR

15 59960
16 59960
17 59960
18 59960
21 59960
200 ..... 59532, 60192
230 58287
231 60421
240 ..... 58291, 58654, 60193
241 60421
271 60421

Proposed Rules:

190 60007
210 58505–58511
229 ..... 58507, 58511
230 58511
239 58511
240 58511
249 58511
260 58511

18 CFR

34 60420
154 ..... 58292, 60429
157 60429
250 60429
260 60429
271 ..... 58293–58295, 59533, 60193
282 58296

Proposed Rules:

Ch. X 60406
2 60466
141 60214
271 ..... 60467, 60468
357 60617

20 CFR

416 58664

Proposed Rules:

416 60470

21 CFR

5 59234
81 59235
172 ..... 58297, 59968
173 59235
175 60566
177 58297
178 ..... 59235, 60566
193 58486
312 59968
430 58297
431 60567
436 ..... 58297, 60567
440 58297
444 60567
446 60567
448 60567
450 60567
453 60567
455 60567
460 60569
510 60569
520 ..... 60569, 60570
522 60569
526 60569
540 60567
544 60567
546 60567
548 60571
555 59969
558 58300
561 ..... 58487, 51533
808 59236
1308 ..... 59969, 60572

Proposed Rules:

135 60007
148 58343
168 60625–60628
193 58343
1308 60008

22 CFR

22 60572
134 58301
213 58488

Proposed Rules:

203 60009

23 CFR

511 59533
520 59533
522 59533
524 59533
530 59533
542 59533
544 59533
560 59533

Proposed Rules:

772 59550

24 CFR

420 59971

26 CFR

301 60435

27 CFR

9 59237–59241

Proposed Rules:

9 59273–59276

28 CFR

503 59506
522 59506
527 59506
543 59506
551 59506

Proposed Rules:

571 59510

29 CFR

1910 60758
2204 59243
2530 ..... 59243, 60572

30 CFR

221 58304
602 60435
801 59934
806 59934

Proposed Rules:

730 59482
731 59482
732 59482
733 59482
736 59482
840 58464
842 58464
843 58464
845 58464
870 60778
872 60778
874 60778
875 60778
877 60778
879 60778
882 60778
884 60778
886 60778
888 60778
946 60216

31 CFR

341 60572
346 60577
535 59939

32 CFR

210 58306
504 60194
701 60445

33 CFR

117 ..... 58665, 60445

Proposed Rules:

87 59533
117 ..... 59534, 60477

34 CFR

Proposed Rules:

776 59555

35 CFR

Proposed Rules:

10 60216
103 60013

37 CFR

201 58307
202 58671

38 CFR

3 59971
21 59246

39 CFR

111 ..... 59247, 60200, 60201

40 CFR

52 ..... 58673, 59536, 59971–59973, 60202, 60204
81 59974
122 60446
123 58488
136 58489
180 ..... 58314, 58490, 59248
260 59537
262 60446

Proposed Rules:

52 ..... 60015–60017, 60217
81 60017
123 60477
141 58345
180 ..... 60020, 60217

41 CFR

Ch. 101 60204
101-7 58315
101-11 60204

42 CFR

52 58674
55 58675
86 58675
87 58675
401 59249
447 58677

Proposed Rules:

52d 58706
86 58706

43 CFR

7 58420
20 58420
1820 58316

Public Land Orders:

6090 59542
6093 58491
6094 59974

Proposed Rules:

Subtitle A 58346, 60022

44 CFR

64 60448–60451

65 ..... 58316, 60453
67 ..... 58319, 60206, 60581
70 60207

Proposed Rules:
67 ..... 59278, 60218–60220

45 CFR

Proposed Rules:
74 58706
400 60629
401 60629
1336 58706

47 CFR

0 ..... 58681, 59975
1 ..... 58681, 60402, 60403
22 60403
63 ..... 58682, 59976
64 59976
73 ..... 58688–58691, 59542–59544, 60454–60456
81 60457
90 ..... 58691, 59996

Proposed Rules:
1 60022
2 ..... 60221, 60633
22 60022
73 ..... 58710–58727, 59555–59563, 60023, 60478, 60480
74 ..... 60024, 60222
81 ..... 58347, 60022, 60633
83 ..... 60022, 60633
90 ..... 58728, 59564, 60031
97 60033

48 CFR

Proposed Rules:
7 60634
22 60634
34 60634

49 CFR

23 60458
172 58693
173 58693
175 58693
176 58693
178 58693
1033 ..... 58491, 58697, 59996
1201 59249
1206 59545
1207 59545
1241 59249
1310 60208

Proposed Rules:
571 60481
580 60482
1207 60035
1240 60035

50 CFR

20 58335
23 60589
258 58804
296 59998
611 ..... 58336, 58698, 60002, 60209
671 58699

Proposed Rules:
Ch. VI 60483
16 58348
611 ..... 59278, 59565
672 59565

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/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

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.

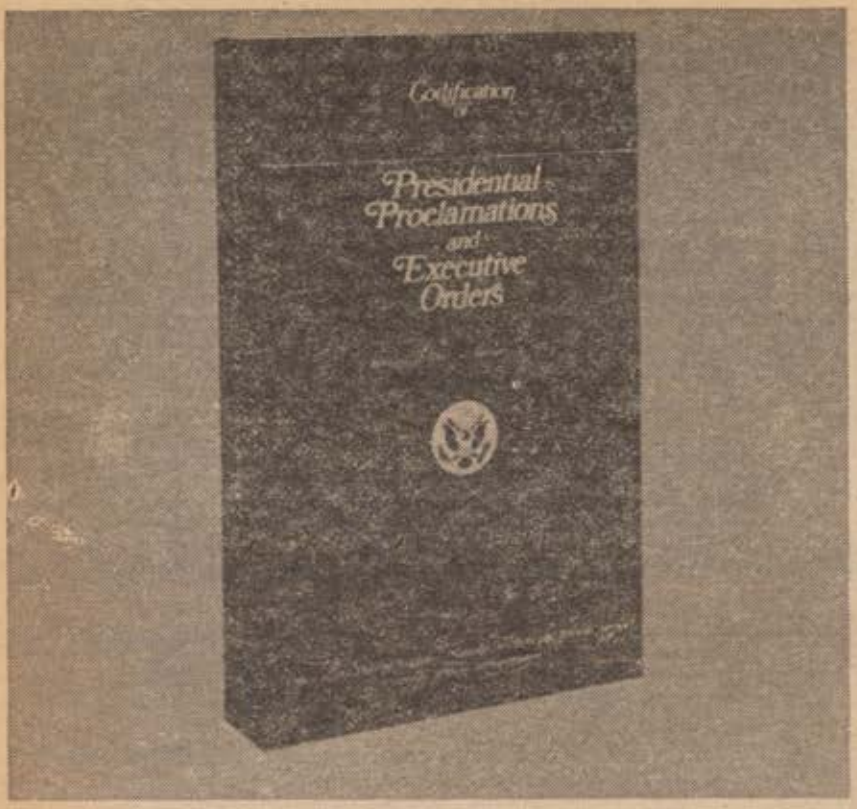
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

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 December 8, 1981

NEW PUBLICATION NOW AVAILABLE



For those of you who must keep informed about Presidential proclamations and Executive orders, there is now a convenient reference source that will make researching certain of these documents much easier.

Arranged by subject matter, this first edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period January 20, 1961, through January 20, 1977, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1961–1977 period, along with any amendments, an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register, National Archives and Records Service, General Services Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

MAIL ORDER FORM To:

Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ _____ ☐ *check,* ☐ *money order, or charge to my*

Deposit Account No. ☐☐☐☐☐☐☐–☐ *Order No.* _____

master charge

VISA

Credit Card Orders Only

Total charges $ _____. Fill in the boxes below:

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Master Charge Interbank No. ☐☐☐☐

FOR OFFICE USE ONLY	
Quantity	Charges
Enclosed	
To be mailed	
Subscriptions	
Postage	
Foreign handling	
MMOB	
OPNR	
UPNS	
Discount	
Refund	

Please send me _____ *copies of the* ***Codification of Presidential Proclamations and Executive Orders*** *at $6.50 per copy. Stock No. 022-002-00060-1*

NAME—FIRST, LAST

COMPANY NAME OR ADDITIONAL ADDRESS LINE

STREET ADDRESS

CITY STATE ZIP CODE

(or) COUNTRY

PLEASE PRINT OR TYPE