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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Parts 1700 through 1799

Public Information; Appendix A—REA Bulletins

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: REA hereby amends 7 CFR Parts 1700–1799, Appendix A—REA Bulletins, by revising section II of Attachment A to REA Bulletin 20–14, Supplemental Financing for Loans Considered Under section 4 of the Rural Electrification Act. This bulletin is used in determining the REA/supplemental loan percentages for concurrent loans. As a result of the recent amendment to the RE Act on August 13, 1981, and in accordance with existing REA policy, most of the 140 borrowers which had been eligible to receive 100 percent of their financing needs from REA at a 2 percent interest rate would be required to obtain up to 30 percent of their financing needs from non-REA sources. The remaining portion of their financing needs would be provided by an REA insured loan at a 5 percent interest rate. This action amends the REA/supplemental lending ratios for those former statutory 2 percent borrowers (those with two or fewer consumers per mile or an average adjusted plant revenue ratio of over 9.0 as of December 31, 1980) to allow them to obtain 90 percent of their financing needs from an REA insured loan at a 5 percent interest rate and the remaining 10 percent from non-REA sources. It applies to loan requests received by REA after July 24, 1981. All other REA borrowers will be unaffected by this change. This revision is an interim measure. On January 22, 1982, REA initiated rulemaking procedures for a complete review and possible revision of REA Bulletin 20–14.

EFFECTIVE DATE: April 20, 1982.

FOR FURTHER INFORMATION CONTACT: Milton E. Wright, Chief, Borrowers Management Branch—Electric Loans and Management Division, Room 3338, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, Telephone (202) 382–1936.

The Final Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: REA regulations are issued pursuant to the Rural Electrification Act as amended (7 U.S.C. 901 et seq.). 7 CFR Parts 1700–1799, Appendix A—REA Bulletins, is hereby amended to provide for the revision of section II of Attachment A to REA Bulletin 20–14, Supplemental Financing for Loans Considered Under section 4 of the Rural Electrification Act. The text of section II of Attachment A is as follows:

Attachment A, Supplemental Loan Criteria for Electric Distribution Borrowers

II. Loan Proportions for Concurrent Loans

A. The loan proportions for concurrent loans to borrowers, who are eligible for supplemental financing as set forth above, with an average consumer density (DENSITY) of two or fewer per mile or an average adjusted plant revenue ratio (APRR) of over 9.0 as of December 31, 1980, will be 90 percent from REA and 10 percent from supplemental sources.

B. The loan proportions for concurrent loans to all other borrowers, who are eligible for supplemental financing as set forth above, will be based on the borrower's plant revenue ratio (PRR) as follows:

PRR	REA percentage	Supplemental lender percentage
9.01 and above	90	10
8.01 to 9.0	80	20
8.00 and below	70	30

This final action has been issued in conformance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers; individual industries, Federal, State or local government agencies; or (3) result in significant adverse effects on competition, employment, investment or productivity, and therefore has been determined to be "not major." This action is not subject to the Regulatory Flexibility Act or to OMB Circular A–95 review requirements. This program is listed in the Catalog of Federal Domestic Assistance as 10.850 Rural Electrification Loans and Loan Guarantees.

The primary objective of this rule is to ease for certain borrowers the transition from 100 percent REA financing to partial supplemental financing and the resulting increase in interest costs. As a result of this rule these borrowers will be required to establish and use non-REA supplemental lending sources. This action is also consistent with previous REA policy. When other borrowers were first required to use non-REA lending sources REA used a transition period to ease the impact on the borrowers of going to partial supplemental financing.

Among the various options which REA considered was allowing former statutory 2 percent borrowers to obtain 100 percent of their financing needs from REA at a 5-percent interest rate. This option would not encourage the use of non-REA financing, and it would increase the demand for REA insured loan funds. REA also considered taking no action. This option would create a hardship for some borrowers in terms of both the impact of increased interest costs and the need to establish new financing arrangements with non-REA lenders.

A notice of Proposed Rulemaking was published in the **Federal Register** on January 26, 1982, Volume 47, Number 15, page 3554. We received five comments directly responding to the publication of the proposed **Federal Register** notice. Three of the respondents favored adoption of the action i.e. allowing former statutory 2 percent borrowers to receive 90/10 REA/non-REA financing. The other two respondents did not favor adoption of section II of Attachment A because they said that its adoption and the resulting increase in interest costs to low density, REA-financed systems would ultimately make it impossible for these systems to provide service to their consumers at acceptable, competitive rates.

None of the respondents mentioned that Congress had amended the RE Act on August 13, 1981, and removed the requirement that REA provide 2 percent insured loans for 100 percent of the financing needs of borrowers with two or fewer consumers per mile or an average APRR of over 9.0. Without the adoption of section II of Attachment A, most of the former statutory 2 percent

borrowers would have been required to establish new financing arrangements and to receive up to 30 percent of their financing from non-REA sources.

List of Subjects

Administrative practice and procedure, Electric utilities, Loan programs—energy.

Dated: April 20, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-12077 Filed 5-3-82; 8:45 am]

BILLING CODE 3410-15-M

Farmers Home Administration

7 CFR Part 1980

Form FmHA 449-35; Lender's Agreement

CFR Correction

In Title 7, Parts 1900–2799, revised as of January 1, 1981, the text of 7 CFR Part 1980, Subpart A, Appendix B, paragraph XII, E, appearing at page 935, was inadvertently removed. The text should read as published at 41 FR 47462, Oct. 22, 1976, and set forth below:

Appendix B—Form FmHA; Lender's Agreement

* * * * *

XII. *Liquidation.*

* * * * *

E. *Determination of Loss and Payment.* In all liquidation cases, a final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses paid under the guarantee from any party liable.

* * * * *

BILLING CODE 1505-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

Physical Protection of In Transit Special Nuclear Material of Moderate Strategic Significance

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its physical protection regulations for special nuclear material of moderate strategic significance to improve licensee safeguards capabilities for early detection of the possible theft of this material while it is in transit. These improvements include (1) maintaining the material under lock or under the control of a responsible individual, (2) confirming the status of shipments while en route, and (3) employment of either dedicated use transports or signature acknowledgement of custody of shipments. The intent of these amendments is to assure close monitoring of shipments of special nuclear material of moderate strategic significance in order to achieve early detection of loss or theft of the material so that repeated thefts can be prevented.

EFFECTIVE DATE: June 3, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. C. K. Nulsen, Material Transfer SG Licensing Branch, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 427–4181.

SUPPLEMENTARY INFORMATION: The Commission has been concerned that possible multiple thefts of special nuclear material (SNM) of moderate strategic significance could result in the accumulation by an adversary of more strategically significant quantities of special nuclear material. To help prevent this, current physical protection requirements for SNM of moderate strategic significance were designed to help provide early detection of an initial theft of this material. Early detection would allow the Commission to take further actions to assure that additional thefts could be prevented before the lost or stolen material was accounted for. On June 15, 1981, the Commission published proposed amendments in the **Federal Register** (46 FR 31267) to require additional physical protection for intransit SNM of moderate strategic significance. These amendments were to improve the licensee's capabilities for early detection of possible thefts of the material by requiring (1) the material be maintained under lock or under the control of a responsible individual, (2) periodic communications between the licensee and the transport vehicle, and (3) employment of exclusive use vehicles or signature acknowledgement of all custody transfers. A sixty-day comment period expired on August 15, 1981. Comments were received from eight respondents.

The proposed amendments have been modified in response to the comments received, and will be published in final form, as modified, to become effective 30 days after publication of this notice. Changes were made in response to the public comments to better reflect services which can be provided by common carrier(s), and also to provide clarification where necessary. A summary of the public comments and, where appropriate, a description of the changes that resulted from them follows:

(1) *Need for these amendments.* All but one of the commenters questioned the need for additional physical protection requirements for the affected shipments. They suggested that current requirements allowing the NRC to order delays in these shipments to keep formula quantities of SSNM from being in transit at the same time would be unnecessarily redundant with additional physical protection requirements for individual shipments.

The final amendments complement existing regulations which allow the NRC to order shipment delays for safeguards purposes. They provide for closer licensee control over shipments and better traceability so that the chances of having to delay a shipment will be decreased. With regard to the comment concerning those shipments of low enriched uranium covered by these amendments, it was decided to exclude low enriched uranium of moderate strategic significance from the requirements (1) to maintain the material under lock or under the control of a responsible individual and (2) to use an exclusive use vehicle or signature acknowledgement of all custody transfers. Low enriched uranium shipments, however, will be required to meet the remaining physical protection regulations for material of moderate strategic significance. The exclusion of low enriched uranium from the additional requirements of this amendment was made after considering the primary intent of the additional requirements to provide early detection in time to prevent the theft of a formula quantity of strategic special nuclear material, which consists of only high enriched uranium and plutonium.

(2) *Locking requirements.* The proposed amendments would have required the material to be transported in a locked cargo compartment, and during road shipments, to be kept under lock while in transit or in temporary storage en route. Many commenters noted that these locking requirements would be impossible to comply with in the case of less-than-truckload (LTL) shipments and most air shipments, the modes primarily used in past shipments. The loading and unloading of other cargo, it was stated, precludes maintaining the material continuously under lock. Also, most aircraft do not have lockable cargo compartments. It was also stated that storage of the material in a locked area was not always feasible for import and export shipments.

It was anticipated by commenters that some carriers might refuse to carry the material if the proposed amendments

became effective, and that less-than-truckload shipments would be effectively eliminated. Commenters also questioned whether the purpose of the proposed locking requirements was to prevent rather than detect theft.

The final amendments permit an alternative to the lock requirements. This alternative provides for maintaining the material under the control of a responsible individual where the use of locks is not practicable. Under this alternative, the shipment should be kept under continuous observation or be checked periodically by a responsible individual to assure its continued integrity. Periodic checking of the shipment could be facilitated by inspecting the seals required on NRC-approved shipping containers, or by use of an appropriate seal placed on the cargo compartment or temporary storage areas containing the shipment. The responsible individual also should assure the correct routing of the shipment, and should assure that the licensee or its designee is notified immediately if the material is determined to be missing. The responsible individual in each case will be required to be an individual who has acknowledged by signature acceptance of custody of the material.

For air shipments these requirements could be satisfied by requesting the signature security service provided by air carriers. This service provides routing control, surveillance and periodic checking of shipments. For road shipments, common carriers of less-than-truckload quantities should be able to provide service consistent with these requirements under special arrangements, and at a cost less than what would be charged for an exclusive use vehicle. A revised regulatory guide will be published to reflect these changes, which will describe in further detail the appropriate means for complying with the requirements for maintaining control of the shipments.

(3) *Exclusive use vehicles.* Some commenters questioned the use of the term "exclusive use vehicle." It was claimed that prohibiting other cargo from being transported in the same vehicle with a shipment of SNM of moderate strategic significance would not necessarily affect the security of the shipment and thus is unjustified. The term "exclusive use vehicle" was used in the proposed amendments in reference to a type of service routinely offered in the motor freight industry. In order to avoid confusion, the term "exclusive use vehicle" does not appear in the final amendments. More descriptive language focusing only on the security aspects of these shipments has been substituted.

One commenter also suggested that the requirement for exclusive use vehicles goes beyond the stated objective of the proposed rule. Although use of an exclusive use vehicle itself would not prevent the theft of this material, it would not appear to be inconsistent with assuring early detection of a possible theft. Also, it should be noted that the final amendments permit the use of alternative means for satisfying this objective.

(4) *Communications.* Some commenters considered the proposed requirement for periodic communications between the shipper, receiver, or their designee, and the transport vehicle to be unnecessary since they supplement existing requirements for tracing lost or unaccounted for shipments and notifying authorities. It also was suggested that communications more often than every several hours would slow shipments, greatly increase operating costs, and effectively eliminate less-than-truckload shipments. Conversely, however, one commenter endorsed the proposed periodic communications requirement and suggested exclusive use vehicles be used, equipped with satellite-based navigation receivers and transmitters.

Some commenters questioned specifically whether communications would be required during periods when the shipment was in temporary storage, and whether the requirement was intended to apply to all modes or only to road shipments. With regard to the periodic communications requirement, the objective of early detection could be achieved by periodic reports from the carrier on the shipment's status relative to a predetermined itinerary. Several airfreight and motor freight carriers who have previously handled shipments of special nuclear material are known to provide the appropriate tracing services at no additional cost. Computerized data bases maintained by some of the motor freight carriers are generally updated every 10 to 14 hours, and more frequently in the case of air shipments.

Concerning the use of a satellite communications system, as suggested by one commenter, this could conceivably satisfy the proposed communications requirements but it would not be appropriate for the Commission to require a particular system design or type of hardware in preference to other acceptable alternatives.

(5) *Cost effectiveness.* Some commenters stated that the proposed amendments would result in cost increases that would have a significant impact on the operations of nonpower reactor facilities which must financially justify their existence even though they might be subsidiaries of much larger companies or institutions. Generally, these statements appear to have been based on the premise that the proposed amendments would force licensees to utilize exclusive use vehicles for road portions of shipment in preference to less-than-truckload shipments.

As stated earlier, the additional physical protection measures included in the proposed amendments were not intended to force licensees to utilize exclusive use vehicles for road shipments. Based upon information developed in staff inquiries, the modifications to the proposed amendments will make it possible for licensees to satisfy the additional physical protection requirements for shipments of SNM of moderate strategic significance while continuing to employ common carriers provided they can make special arrangements for the required services. This should be possible to arrange at a cost significantly less than if an exclusive use vehicle were required. Thus the Commission has determined that the additional physical protection measures are cost effective in balancing the additional protection provided against the additional cost.

Paperwork Reduction Act Statement

The Nuclear Regulatory Commission has submitted this rule to the Office of Management and Budget for such review as may be appropriate under the Paperwork Reduction Act, Pub. L. 96-511. The SF-83, "Request for Clearance," Supporting Statement, and other related documentation submitted to OMB have been placed in the Public Document Room at 1717 H St., NW., Washington, D.C. 20555 for inspection and copying for a fee. The application requirements contained in this regulation have been approved by the Office of Management and Budget; OMB approval No. 3150-0002 (expires May 31, 1983).

Regulatory Flexibility Statement

In accordance wih the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This proposed rule would amend 10 CFR Part 73 to require certain improvements in the capabilities of physical protection

systems provided by licensees to protect against the theft or loss of special nuclear material of moderate strategic significance while this material is in transit. These improvements would increase the cost of shipment of this material in absolute terms, but the total costs of transportation would generally remain less than one percent of the value of the material shipped. In addition, the number of shipments expected to be made annually is quite low, estimated to be about thirty shipments per year based upon past experience in the nuclear industry. The licensees who could be affected by these amendents number approximately 37 possessing special nuclear material of moderate strategic significance, 27 of which operate nonpower reactors. In addition to these 37 licensees, there are about six licensees possessing formula quantities of strategic special nuclear material who may occasionally choose to ship their material in less than formula quantities. All the licensees potentially affected are either large private or state universities, large corporations, each employing in excess of 500 persons having annual sales or revenues in excess of $1 million, or state or Federal agencies. Less than ten of the affected licensees are small colleges or businesses that fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards in regulations issued by the Small Business Administration at 13 CFR Part 21.

List of Subjects in 10 CFR Part 73

Hazardous materials—transportation, Nuclear materials, Nuclear plants and reactors, Penalty, Reporting requirements, and Security measures.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 73, are published as a document subject to codification.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 53, 147, 161b, 161i, 161o, Pub. L. 85–703, 68 Stat. 930, 948–950, as amended, Pub. L. 85–507, 72 Stat. 327, Pub. L. 88–489, Stat. 602, Pub. L. 93–377, 88 Stat. 475, Pub. L. 96–295, 94 Stat. 780 (42 U.S.C. 2073, 2201, 2167); Sec. 201, Pub. L. 93–438, 88 Stat. 1242, 1243, as amended, Pub. L. 94–79, 89 Stat. 413 (42 U.S.C. 5841). For the purposes of Sec. 223, 68 Stat. 958, as amended, (42 U.S.C. 2273), 73.37(g) and § 73.55 are issued under Sec. 161b, 68 Stat. 948, as amended, 42 U.S.C. 2201(b); §§ 73.20, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, and 73.67 are issued under Sec. 161i, 68 Stat. 949, as amended, 42 U.S.C. 2201(i); and §§ 73.20(c)(i), 73.24(b)(i), 73.26(b)(3), (h)(6), (i)(6) and (k)(4), 73.27(a) and (b), 73.37(f), 73.40(b) and (d), 73.46 (g)(6) and (h)(2), 73.50 (g)(2), (3)(iii)(B) and (h), 73.55(h)(2), and (4)(iii)(B), 73.70, 73.71 and 73.72 are issued under Sec. 161o, 68 Stat. 950, as amended, 42 U.S.C. 2201(o). Paragraph 73.37(f) also is issued under Section 301 Pub. L. 96–295, 94 Stat. 280.

2. Section 73.67 is amended as follows:

a. Paragraph (c)(1) is revised.

b. Paragraph (e)(1)(iii) is removed and paragraphs (e)(1)(iv) and (v) are redesignated as (e)(1)(iii) and (iv).

c. The introductory text of paragraph (e)(3) and paragraphs (e)(3)(i) and (e)(3)(vi) are revised.

d. Paragraph (e)(3)(vii) is added.

e. Paragraph (e)(4) is redesignated as paragraph (e)(5) and revised.

f. Paragraphs (e)(5) and (e)(6) are redesignated as (e)(6) and (e)(7).

g. A new paragraph (e)(4) is added.

§ 73.67 Licensee fixed site and in-transit requirements for the physical protection of special nuclear material of moderate and low strategic significance.

* * * * *

(c) * * *

(1) Submit a security plan or an amended security plan describing how the licensee will comply with all the requirements of § 73.67 (d), (e), (f) and (g), as appropriate, including schedules of implementation

* * * * *

(e) * * *

(i) * * *

(iii) Check the integrity of the container and locks or seals prior to shipment, and

(iv) Arrange for the in-transit physical protection of the materials in accordance with the requirements of § 73.67(e)(3) of this part unless the receiver is a licensee and has agreed in writing to arrange for the in-transit physical protection.

* * * * *

(3) Each licensee who arranges for the in-transit physical protection of special nuclear material of moderate strategic significance, or who takes delivery of this material free on board (f.o.b.) the point at which it is delivered to a carrier for transport shall:

(i) Arrange for telephone or radio communications between the transport and the licensee or its designee: (A) To periodically confirm the status of the shipment (B) for notification of any delays in the scheduled shipment, and (C) to request appropriate local law enforcement agency response in the event of an emergency.

* * * * *

(vi) Initiate immediately a trace investigation of any shipment that is determined to be lost or unaccounted for after a reasonable time beyond the estimated arrival time.

(vii) Notify immediately the Director of the appropriate Nuclear Regulatory Commission Regional Office listed in Appendix A of this part of the action being taken to trace the shipment.

(4) Each licensee who arranges the physical protection of strategic special nuclear material in quantities of moderate strategic significance while in transit or who takes delivery of this material free on board (f.o.b.), the point at which it is delivered to a carrier for transport shall, in addition to the requirements of (e)(1), (e)(2), and (e)(3) above:

(i) Make all shipments of the material either (A) in dedicated transports with no intermediate stops to load or unload other cargo and with no carrier or vehicle transfers or temporary storage in-transit, or (B) under arrangements whereby the custody of the shipment and all custody transfers are acknowledged by signature, and

(ii) Maintain the material under lock or under the control of an individual who has acknowledged acceptance of custody of the material by signature.

(5) Each licensee who exports special nuclear material of moderate strategic significance shall comply with the requirements specified in § 73.67(c), (e)(1), (e)(3) and (e)(4).

(6) Each licensee who imports special nuclear material of moderate strategic significance shall,

(i) Comply with the requirements specified in § 73.67 (c), (e)(2), (e)(3), (e)4).

(ii) Notify the exporter who delivered the material to a carrier for transport of the arrival of such material.

(7) If, after receiving advance notice pursuant to § 73.72 from a licensee planning to import, export, transport, deliver to a carrier for transport in a single shipment, or take delivery at the point where it is delivered to a carrier, special nuclear material of moderate strategic significance containing in any part stritegic special nuclear material, it appears to the Commission that two or more shipments of special nuclear material of moderate strategic significance, constituting in the aggregate an amount equal to or greater than a formula quantity of strategic special nuclear material, may be en route at the same time, the Commission may order one or more of the shippers to

delay shipment according to the following provisions:

* * * * *

Dated at Washington, D.C. this 29th day of April, 1982

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82-12067 Filed 5-3-82; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 550

[No. 82-309]

Delegation of Authority Regarding Trust Powers Applications

April 28, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") has delegated to its Principal Supervisory Agents the authority to approve certain applications for trust powers. These amendments are intended to streamline the processing of applications that do not present significant legal or policy considerations.

EFFECTIVE DATE: May 4, 1982.

FOR FURTHER INFORMATION CONTACT: Gregory B. Smith (202-377-6451), Attorney, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: These amendments to the Board's regulations governing trust operations of federal savings and loan associations (12 CFR Part 550) delegate to the Board's Principal Supervisory Agents authority to approve applications by federal associations or their service corporations for trust powers.

Section 5(n) of the Home Owners' Loan Act, 12 U.S.C. 1464(n) ("Act"), authorizes the Board to grant by special permit to an association applying therefor, when not in contravention of state or local law, the right to act as trustee, executor, administrator, guardian, or in any other fiduciary capacity in which state banks, trust companies, or other corporations which compete with associations are permitted to act. Under that section, the Board may not issue a trust powers permit to any association that does not meet the capital and surplus requirement that state law imposes on state-chartered banks, trust companies, and corporations exercising such powers.

State law capital and surplus requirements serve as a threshold criterion, however; the Act further provides that, in considering those applications, "the Board may take into consideration the amount of capital and surplus of the applying association, whether or not such capital and surplus is sufficient under the circumstances of the case, the needs of the community to be served, and any other factors and circumstances that seem to it proper." 12 U.S.C. 1464(n)(9), implemented at 12 CFR 550.2(b). In delegating authority to approve trust powers applications, the Board has prescribed minimum criteria relevant to those factors. If the applicant fails to meet any of those criteria or the Principal Supervisory Agency recommends that the application be denied, the application will be referred to the Board for consideration.

The Board has also amended 12 CFR 550.2 to clarify the scope and effect of approvals by the Board or its Principal Supervisory Agents of trust powers applications by specifying that the trust powers authorized are limited to those stated in the approval and the offices from which services based on those powers may be offered are limited to those listed in the application. The applicant would, therefore, have to reapply before exercising any additional trust power or offering fiduciary services at additional offices.

In addition, the Board has amended 12 CFR 550.3 to delegate to the Principal Supervisory Agents the Board's authority to issue to the federal association resulting from a merger or consolidation a certificate transferring to it the trust powers previously granted the disappearing association by the Board or a Principal Supervisory Agent.

Because the amendments pertain to internal Board procedures and will facilitate the processing of applications for fiduciary powers, and because it is in the public interest to provide prompt action on such applications, the Board believes it is appropriate to implement the amendments without delay. Therefore, the Board has determined that observance of the notice and public procedure provisions of 12 CFR 508.11 and 5 U.S.C. 553(b) is unnecessary and that publication of these amendments for the period specified in 12 CFR 508.14 and 5 U.S.C. 553(d), prior to the effective date of the amendments, is likewise unnecessary.

List of Subjects in 12 CFR Part 550

Savings and loan associations, Fiduciary powers, Trusts and trustees, Applications.

Accordingly, the Board hereby amends Part 550, Subchapter C, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 550—TRUST POWERS OF FEDERAL ASSOCIATIONS

1. Amend § 550.2 by adding new paragraphs (c) and (d), to read as follows:

§ 550.2 Applications.

* * * * *

(c) Board approval of applications filed under this section may be given by the Principal Supervisory Agent, provided that all of the following conditions are met:

(1) The application does not raise any significant issues of law or policy on which the Board has not taken a formal position;

(2) The financial condition of the association meets the financial standards prescribed for state-chartered corporate fiduciaries by the laws of each state in which the association has offices from which it will offer the fiduciary services (the Principal Supervisory Agent may consider the net worth of a mutual association as equivalent to capital stock and surplus when state law prescribes minimum capital stock and surplus requirements) and the Principal Supervisory Agent has determined that the financial condition of the association is sufficient to support the proposed trust operations;

(3) The association has submitted a legal opinion from independent counsel certifying that the proposed trust powers are authorized for state-chartered corporate fiduciaries by the laws of each state in which the association has offices from which it will offer fiduciary services;

(4) The association's net worth meets the Board's minimum requirements for that association under § 563.13 of this Chapter;

(5) Based on the most recent examination of the association and any other available information, the Principal Supervisory Agent determines that any deficiencies with respect to the association's management are minor;

(6) Based on the most recent examination of the association and any other available information, the Principal Supervisory Agent determines that the overall performance of the association is satisfactory;

(7) The proposed trust officer(s) who would be in charge of the trust operations must (a) have been responsible for trust operations or fiduciary matters comparable to those

proposed, for a period of at least two years during the previous five years; or (b) have had two years of such experience prior to the last five years and successfully completed, during the previous year, an intensive course on trust operations comparable to those proposed;

(8) The Principal Supervisory Agent determines, based on the information available, that the proposed trust officer(s) is trustworthy and competent (the person's experience, education and other relevant factors may be considered) to be in charge of the proposed trust operations;

(9) The proposed trust department or service corporation has legal counsel available to provide advice with respect to fiduciary matters;

(10) The Principal Supervisory Agent has determined that there is sufficient need for the proposed trust activities in the communities to be served; and

(11) The approval of the appropriate Federal or state authorities has been obtained if the proposed fiduciary services are to be exercised through a state or Federally chartered service corporation.

(d) Approval by the Board or its Principal Supervisory Agent of an application under this section authorizes the applicant to exercise only those trust powers specified in the approval. Unless otherwise provided by the approval, fiduciary services based on those trust powers may be offered only in those offices listed in the application.

2. Amend § 550.3 by revising the last sentence thereof, to read as follows:

§ 550.3 Consolidation or merger of two or more Federal associations.

* * * However, when the name or charter number of the resulting association differs from that of the association to which the right to exercise trust powers was originally granted, the Board or the Principal Supervisory Agent will issue a certificate to that association showing its right to exercise the trust powers theretofore granted to any of the associations participating in the consolidation or merger.

(Sec. 5, 48 Stat. 132, as amended, 12 U.S.C. 1464; Reorg. Plan No. 3 of 1947, 12 Fed. Reg. 4981, 3 CFR 1071 (1943–48 Compilation))

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-12071 Filed 5-3-82; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 410

Federal Coal Mine Health and Safety Act of 1969, Title IV, as Amended (The Black Lung Benefits Act); Payment of Benefits—Withholding Part B Benefits Where Part C Payments Are Made for the Same Period

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This regulation confirms the interim rule authorizing the Social Security Administration to withhold payment of Part B Black Lung benefits where Part C Black Lung benefits administered by the Dept. of Labor are paid for the same period. We are doing this by expanding the definition of "overpayment" in 20 CFR 410.560(a) to include these duplicate payments under Part C. This regulation provides a quick and efficient means of avoiding unjustified duplicate payments.

EFFECTIVE DATE: This regulation became effective when the interim rule was published on September 16, 1981 (46 FR 45942).

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Room 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–6785.

SUPPLEMENTARY INFORMATION: On September 16, 1981, the interim rule on avoidance of duplicate payment of Part B and Part C Black Lung benefits for the same period was published in the Federal Register (46 FR 45942) with a 60-day comment period. Four comments were received and are discussed under the heading Discussion of Comments.

Background Information

Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, known as the Black Lung Benefits Act, provides for the payment of monthly cash benefits to coal miners who are totally disabled due to pneumoconiosis and to certain survivors of the miner if the miner was entitled to Black Lung benefits, was totally disabled by pneumoconiosis at the time of death, or died from pneumoconiosis. The law provides for two programs—Part B and Part C, which insofar as claimants are concerned, have an identical objective. The difference is that Part B is administered by the Social Security Administration; Part C by the Department of Labor. Part B consists of miners' claims filed on or before June 30, 1973 and survivors' claims filed on or before December 31, 1973 or, if later, within 6 months of a miner's or widow's death. All claims filed after these dates and more than 6 months after a miner's or widow's death are considered Part C claims and are within the jurisdiction of the Department of Labor (DOL).

Under Part B, benefits may be awarded for the same period for which Part C benefits are payable. However, the Act explicitly provides (30 U.S.C. 932(g)) that the amount equal to Part C benefits must be reduced by the amount of any other governmental compensation which is payable because of pneumoconiosis.

Because of the lengthy appeals and litigation process, there are many claims for Part B benefits that are now or will be payable to persons for the same months that they have been receiving Part C benefits. Since the amount of Part C benefits must be reduced by the amount of other governmental benefits payable because of pneumoconiosis, the payment of Part B benefits will create Part C overpayments.

Section 413(b) of the Black Lung Benefits Act provides for Black Lung overpayments to be recovered as provided by section 204 of the Social Security Act, "as if [Black Lung] benefits * * * were * * * [Social Security] benefits." Section 204(a) provides authority to recover Social Security overpayments under regulations issued by the Secretary.

If Part B payments were Social Security, i.e., title II benefits,then other Social Security beneifts, i.e., those paid under the same title for the same period, could be recouped from the Part B benefits. Hence, the amount of Part C benefits paid for the same period may be withheld from Part B benefits. (It seems highly unlikely that Congress intended to provide duplicate benefit payments for the same period of time in the same program.

Duplicate payments are specifically banned under title II of the Social Security Act where, for instance, a disabled individual cannot receive both disability benefits and old-age benefits for the same period.) However, until promulgation of the interim regulation on September 16, 1981, § 410.560(a) of the Black Lung regulations (20 CFR 410.560(a)) which defines the term "overpayment" did not include duplicate Part C payments. Thus, we were barred from recovering the amount of a Part C payment from any payment for the same period payable under Part B of title IV of the Act, though the amount of Part C benefits can be offset by the amount of

Part B benefits. (Therefore, DOL sought recovery of the duplicate payments from the recipients, who generally were unable to pay back the large overpaid amounts.)

To correct this inconsistency, we revised 20 CFR 410.560(a), so that duplicate payments of Part B and Part C benefits for the same period could be avoided by withholding or reducing the Part B benefits. This revision, issued now in final form, adds much needed uniformity to the Black Lung benefits program and avoids excessive overpayments which might otherwise never be recovered.

Discussion of Comments

We received four comments on the interim regulation published on September 16, 1981, (46 FR 45942). One comment was entirely favorable towards the interim regulation and requires no response. That commenter stated that he strongly agreed "with the Social Security Administration's endeavor to cease the inappropriate payment of duplicative benefits and the recovery of such payments as set forth in the interim rule * * *"

Two commenters stated that the regulation as written was too vague to be beneficial to Responsible Mine Operators (RMO) or the Black Lung Disability Trust Fund. In so doing the commenters gave three requirements for consideration by Social Security. The three recommendations are as follows: (1) Require a continual cross-reference check between Part B and C payments; (2) require SSA to inform the Department of Labor (DOL) when Part B benefits are to be paid to a Part C beneficiary already in pay status; and (3) require SSA to refund any money recovered under this regulation to DOL or the RMO.

We have requested that the Master Payment File received by SSA from DOL be utilized so that all Part C beneficiaries will be identified. Once the approval is finalized, the DOL tape can be matched against any SSA payment program. In addition, DOL has informed SSA that in January 1982 this same file will include all RMO payments. Regarding the second recommendation, SSA's current policy requires a telephone contact on all Part B cases where there is no mention of a possible Part C benefit being paid. If the claimant is receiving Part C benefits, DOL then supplies SSA with a summary worksheet to reflect the entire payment history for that particular case. In addition, DOL takes the information provided by SSA (e.g., the date of the court or appeals council decision) and effectively suspends the Part C payment 60 days following the month of the court or appeals council decision. This 60-day time allowance permits SSA to prepare its payment process in time so that there will be no break in payments to the claimant.

The third recommendation regarding refunding the withheld benefits will not be addressed in this regulation. We do not believe that this regulation, which is being promulgated solely to prescribe substantive and procedural rights of claimants, should contain a provision relating to fiscal accountability between the agencies administering title IV of the Federal Coal Mine Health and Safety Act.

The last comment was from an attorney who was concerned that the reduction of Part B past-due benefits by the amount of duplicate Part C benefits before determining the amount to be withheld in anticipation of an attorney fee would affect the amount of the attorney's fee.

The amount of the fee awarded an attorney is not based upon the amount of retroactive benefits payable to the claimant; it is determined independently, based upon criteria for evaluating the attorney's services as set out in 20 CFR 410.686c. The amount of retroactive benefits payable to the claimant is pertinent only in determining how much of the authorized fee may be paid directly by SSA to the attorney. In this regard, section 206(a) of the Social Security Act provides for the withholding for the direct payment of attorney's fees of up to 25 percent of the past-due benefits. Past-due benefits are defined in 20 CFR 410.686a(c) and 20 CFR 410.686b(c) as the amount of benefits actually payable. Since the only amount payable is the amount of Part B benefits less the duplicate payment made under Part C, no more than 25 percent of this reduced amount may be withheld.

Regulatory Procedures

Executive Order 12291—This regulation has been reviewed under E.O. 12291 and does not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act—There are no recordkeeping or reporting requirements requiring OMB clearance.

Regulatory Flexibility Act—We certify that this regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities because it affects only the benefit amounts payable to individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs No. 13.806—Special Benefits for Disabled Coal Miners)

List of Subjects in 20 CFR Part 410

Administrative practice and procedure; Black lung benefits, Death benefits, Disabled, Miners.

Dated: March 2, 1982.

John A. Svahn,

Commissioner of Social Security.

Approved: April 16, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

PART 410—FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, TITLE IV—BLACK LUNG BENEFITS (1969- —)

Part 410 of Chapter III of Title 20 of the Code of Federal Regulations is amended by revising paragraph (a) of § 410.560 to read as follows:

§ 410.560 Overpayments.

(a) *General.* As used in this subpart the term "overpayment" includes a payment where no amount is payable under Part B of title IV of the Act; a payment in excess of the amount due under Part B or Part C of title IV of the Act; a payment resulting from the failure to reduce benefits under section 412(b) of the Act (see §§ 410.520 and 410.530); a payment to a resident of a State whose residents are not eligible for payment (see § 410.550); a payment of past due benefits to an individual where such payment had not been reduced by the amount of attorney's fees payable directly to an attorney (see § 410.686d); and a payment resulting from the failure to terminate benefits of an individual no longer entitled thereto.

* * * * *

(Sec. 204 of the Social Security Act, as amended, and Sec. 413 of the Federal Coal Mine Health and Safety Act of 1969, as amended; 49 Stat. 624, as amended and 83 Stat. 793; 42 U.S.C. 404 and 30 U.S.C. 923)

[FR Doc. 82-12016 Filed 5-3-82; 8:45 am]
BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Hygromycin B

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 for International Nutrition, Inc., providing for use of a 0.6-gram-per-pound hygromycin B premix for making complete swine feeds for control of large roundworm, nodular worm, and whipworm infections and for making complete chicken feeds for control of large roundworms, cecal worms, and capillary worms.

EFFECTIVE DATE: May 4, 1982.

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

SUPPLEMENTARY INFORMATION: International Nutrition, Inc., 6664 L St., Omaha, NE 68117, is sponsor of supplemental NADA 109-688 providing for use of a 0.6-gram-per-pound hygromycin B premix for making complete swine and chicken feeds. The complete swine feed is used as an aid in the control of large roundworm, nodular worm, and whipworm infections. The complete chicken feed is used as an aid in the control of large roundworms, cecal worms, and capillary worms. The supplement was filed by Elanco Products Co. for the sponsor International Nutrition, Inc.

Approval of this supplement is based on safety and effectiveness data contained in Elanco's approved NADA's 10-918 and 11-948. Elanco has authorized use of the data in NADA's 10-918 and 11-948 to support approval of this application. Satisfactory chemistry, manufacturing, and control information was also submitted. The firm currently holds approval for use of a 2.4-gram-per-pound hygromycin B premix for making complete swine feed. This approval does not change the approved use of the drug. Consequently, approval of the supplement poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), approval of NADA 109-688 does not require reevaluation of the safety and effectiveness data in NADA's 10-918 and 11-948. Supplemental NADA 109-688 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 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.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.274 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83, Part 558 is amended in § 558.274 *Hygromycin B* by adding, in numerical sequence, drug sponsor code "043733" to paragraph (a)(4) and to the "sponsor" column in paragraph (e)(1)(i).

Effective date. May 4, 1982.

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

Dated: April 23, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82-11755 Filed 5-3-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin

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 Elanco Products Co. providing for the use of monensin liquid feed supplements in the production of finished cattle feeds. The supplemental application provides for revised specifications, general use mixing directions, and caution statements for monensin liquid feed supplements. The amended regulation also establishes a procedure for the approval of supplemental NADA's providing for (1) positionally stable monensin liquid feed supplements which do not need to bear mixing directions, and (2) positionally unstable monensin liquid feed supplements which bear mixing directions that differ from the general standard established by the regulation.

DATES: Effective May 4, 1982. Supplemental applications shall be submitted on or before June 3, 1982. The agency will withdraw applications not appropriately supplemented on or before June 3, 1982.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Bureau of Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3183.

SUPPLEMENTARY INFORMATION: Elanco Products Co., a Division of Eli Lilly & Co., 740 South Alabama St., Indianapolis, IN 46206, filed a supplemental NADA to NADA 95-735. The supplemental NADA is based on data collected by the American Feed Manufacturers Association (AFMA). AFMA submitted the data to a master file and authorized Elanco to reference that file to support Elanco's supplemental NADA. The submitted and referenced data demonstrate that many monensin liquid feed supplements are positionally unstable, i.e., they segregate if not mixed. This may result in concentration of monensin in feed to levels that are lethal to cattle. Therefore, Elanco's supplemental NADA (1) establishes general use mixing directions for monensin liquid feed supplements; (2) revises the existing caution statements on the labeling of monensin liquid feed supplements to stress the importance of following these mixing directions; and (3) identifies the hazard associated with species other than cattle gaining access to monensin-containing cattle feed.

Based on submitted and referenced information, the agency has also determined that it is unnecessary and inappropriate to specify in the revised regulations the range of ingredients or the minimum quantity of molasses permissible in monensin liquid feed supplements because the current specifications do not ensure stable products and could, in fact, serve as a deterrent to the development of stable products. Furthermore, data submitted by Elanco also support revision of the current specification (4.3 to 6.0)

regarding the pH of monensin liquid supplements to 4.3 to 7.1. The supplemental application to NADA 95–735 which calls for these changes in the currently published regulation is approved and the regulation is being revised accordingly.

On or before June 3, 1982, all current holders of approved medicated feed applications providing for the use of monensin in liquid feed supplements shall submit a supplemental application to their approved medicated feed application(s) (MEA) to provide for labeling revised to conform to the new revised regulation resulting from the approval. MFA holders who no longer wish to manufacture monensin liquid feeds should request withdrawal of their application(s) and waive the opportunity for a hearing. The agency will proceed to withdraw any medicated feed application not appropriately supplemented on or before June 3, 1982. Labeling bearing the mixing directions and caution statements required by this revised regulation and otherwise consistent with labeling provided for by Elanco's supplemental NADA may be placed into effect in advance of approval of the supplemental medicated feed application because the changes increase the safety of monensin liquid feed supplements. Any other changes in labeling, including those discussed below, will not be permitted in advance of approval of an original or supplemental medicated feed application.

No monensin liquid feed supplement currently being marketed has been approved as positionally stable. It is possible, however, to manufacture supplements which can be shown to be stable and to require no mixing. Any liquid feed supplement that a manufacturer contends is positionally stable must be the subject of an approved NADA, or supplemental NADA, which establishes positional stability. The kind of data needed to support a showing of positional stability may not be submitted to applications under section 512(m) of the Federal Food, Drug, and Cosmetic Act (the act). Those feed manufacturers who do not wish to file an NADA but who wish to legally market positionally stable monensin liquid feed supplements that are not required to bear labeling with mixing directions or who wish to market positionally unstable monensin liquid feed supplements with mixing directions different from the standard established by the revised regulation may: (1) Establish a master file containing data to support the stability of their product(s) (or suitability of their mixing directions); (2) authorize the agency to reference and rely upon the data in the master file to support an approval of a supplemental NADA; and (3) request Elanco to file a supplemental application to provide for the use of its monensin premix in the manufacture of the liquid feed supplement(s) specified in the appropriate master file. If the data demonstrate the stability of the liquid feed supplement(s) (or suitability of mixing directions) described in the master file, the agency will approve the supplemental NADA. Approval of the supplemental NADA need not be published in the **Federal Register**, because the approval will not affect or alter the content of the regulation. The approval will, however, provide a basis for the individual liquid feed manufacturer to submit, and for the agency to approve, an MFA under section 512(m) of the act, for the liquid feed supplement(s) supported by data in the master file. The type of data required to support such an approval is addressed in the appendix of an October 5, 1981 letter to all holders of approved medicated feed applications for monensin liquid feed supplements. A copy of that appendix may be secured from the contact person identified in this publication.

The approval of this supplemental application to NADA 95–735 is subject to the Bureau's supplemental application approval policy (42 FR 64367; December 23, 1977). This approval poses no increased human risk from exposure of the new animal drug monensin because the number of food-producing animals receiving medication will not significantly increase. The drug will not be administered at higher dosage levels, for longer duration, or for different indications than are already in effect. Accordingly, under the Bureau's supplemental approval policy, these approvals do not constitute a reevaluation of the human safety and effectiveness data supporting the parent application.

Because this approval does not involve the submission of safety and effectiveness data per se, 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)), do not apply. The manufacturing and control data submitted by AFMA and Elanco do, however, relate to safety. Therefore summaries of these data are available upon request from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

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.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.355 by revising paragraph (f)(3)(i)(*b*) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(3) * * *

(i) * * *

(*b*) *Limitations.* (*1*) Feed only to cattle being fed in confinement for slaughter. Feed continuously in complete feed at a rate of 50 to 360 milligrams of monensin per head per day; as monensin sodium. Complete feeds may be manufactured from monensin liquid feed supplements. The liquid supplements have a pH of 4.3 to 7.1 and their labels must bear appropriate mixing directions. Mixing directions for liquid supplements stored in recirculating tank systems are: Recirculate immediately prior to use for no less than 10 minutes, moving not less than 1 percent of the tank contents per minute from the bottom of the tank to the top. Recirculate daily, as directed in this paragraph, even when supplement is not used. Mixing directions for liquid supplements stored in mechanical, air, or other agitation-type tank systems are: Agitate immediately prior to use for not less than 10 minutes, creating a turbulence at the bottom of the tank that is visible at the top. Agitate daily, as directed in this paragraph, even when supplement is not used. The liquid supplement must bear directions to mix thoroughly with grain and/or roughage prior to feeding and must bear caution statements as follows: Inadequate mixing, (recirculation or agitation), of liquid supplements has resulted in

increased monensin concentration which has been fatal to cattle. Feeding an undiluted liquid supplement could result in monensin concentrations that could be fatal to cattle. Do not allow horses or other equines access to feeds containing monensin. Ingestion of monensin by horses has been fatal. Monensin medicated cattle feed is safe for use in cattle only. Consumption by unapproved species may result in toxic reactions.

(*2*) An approved positionally stable monensin liquid feed supplement will not be subject to the requirements for mixing directions and cautionary labeling prescribed in paragraph (f)(3)(i)(*b*)(*1*) of this section. A manufacturer may secure approval of a positionally stable liquid supplement by (*i*) either filing an NADA for the product or by establishing a master file containing data to support the stability of its product; (ii) authorizing the agency to reference and rely upon the data in the master file to support approval of a supplemental NADA to establish positional stability; and (*iii*) requesting No. 000986 in § 510.600(c) of this chapter to file a supplemental NADA to provide for the use of its monensin premix in the manufacture of the liquid feed supplement specified in the appropriate master file. If the data demonstrate the stability of the liquid feed supplement described in the master file, the agency will approve the supplemental NADA. Approval of the supplement need not be published in the **Federal Register** because approval will not affect or alter the content of the regulation. The approval will, however, provide a basis for the individual liquid feed manufacturer to submit, and for the agency to approve, a medicated feed application under section 512(m) of the act for the liquid feed supplement. A manufacturer who seeks to market a positionally unstable monensin liquid feed supplement with mixing directions different from the standard established in paragraph (f)(3)(i)(*b*)(*1*) of this section may also follow this procedure.

* * * * *

Effective date. May 4, 1982.

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

Dated: April 26, 1982.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 82-11894 Filed 5-3-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

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) sponsored by Nutra-Blend Corp. providing for use of a tylosin and sulfamethazine premix to make complete swine feeds.

EFFECTIVE DATE: May 4, 1982.

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

SUPPLEMENTARY INFORMATION: Nutra-Blend Corp., Neosho, MO 64850, is sponsor of NADA 129-161 for Tylan 5 Sulfa Premix, a premix containing 5 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine. The NADA provides for safe and effective use of the premix for subsequent manufacture of complete swine feed to be used for (1) maintaining weight gain and feed efficiency in the presence of atrophic rhinitis, (2) lowering the incidence and severity of *Bordetella bronchiseptica* rhinitis, (3) prevention of swine dysentery (vibrionic), and (4) control of swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*).

Approval of the application is based on safety and effectiveness data contained in Elanco Product Co.'s approved NADA's 12-491 and 41-275. Elanco has authorized FDA to refer to these applications to support approval of the application. Because this approval does not change the approved use of the drug, it poses no increased human risk from exposure to drug residues, and does not affect the conditions of safe use in the target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), approval of this NADA has been treated as would approval of a Category II supplement and does not require reevaluation of the safety and effectiveness data contained in NADA's 12-491 and 41-275. NADA 129-161 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 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.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.630 *Tylosin and sulfamethazine*, paragraph (b)(9), by adding in numerical sequence sponsor number "050568."

Effective date. May 4, 1982.

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

Dated: April 22, 1982.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 82-11693 Filed 5-3-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 805, 860, 861, and 865

[Docket No. R-82-976]

Gross Rent—Public Housing Program

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: HUD is implementing recent statutory changes affecting the amount of the Gross Rent payable by families under the Public Housing Program. This interim rule changes the income-percentage formula for determining the Gross Rent payable by a family under the Public Housing Program. The Gross Rent is the amount payable by an assisted family towards the Contract Rent payable to the PHA plus, where some or all utilities are not included in the Contract Rent, the amount of any utility allowance.

DATES: Effective Date: Upon expiration of first period of 30 calendar days of continuous session of Congress after publication, subject to waiver. Further notice of the effectiveness of this interim rule will be published in the Federal Register.

Comments Due Date: June 18, 1982.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Each comment should include the commentor's name and address and must refer to the docket number indicated in the heading of this rule. A copy of each comment will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Edward Whipple, Chief, Rental Occupancy Branch, (202) 426-0744; Department of Housing and Urban Development, Washington, D.C. 20410. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

1981 Legislation

The Housing and Community Development Amendments of 1981 (1981 Amendments), contained in Title III, Subtitle A, of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), amend several provisions of the United States Housing Act of 1937, as amended (1937 Act). This interim rule implements the change in the income-percentage formula for determining the Gross Rent payable by a family under the Public Housing Program. The Gross Rent is the amount payable by an assisted family towards the Contract Rent payable to the PHA plus, where some or all utilities are not included in the Contract Rent, the amount of any utility allowance.

Other changes made by the 1981 Amendments affecting income limits, definition of income, and reexamination of family income and composition will be implemented separately in regulations now being developed by the Department.

The principal effect of the 1981 Amendments on computing the Gross Rent is to establish a formula for computing Gross Rent applicable for the first time to the Public Housing Program as well as to Section 8. PHA discretion to set rents (subject to statutory maximum limits) was eliminated. A separate companion regulation will make the necessary changes to the formula for the Section 8 program.

The 1981 Amendments enacted similar rent calculation provisions governing other subsidized programs (rent supplement and Section 236 rental assistance payments). These changes will also be implemented through separate rulemaking proceedings.

Gross Rent Formula

Section 322 of the Amendments, being implemented in 24 CFR 860.404, establishes a formula for computing the rent which families participating in public housing and Section 8 will pay. For all families, rent is the greatest of:

(1) 10 percent of gross income,

(2) 30 percent of adjusted income, or

(3) if the family receives welfare assistance, a portion of which is designated for housing and is adjusted in accordance with actual housing costs, that portion designated for housing.

New families admitted to the programs will pay these rents immediately upon admission.

Item 3 above covers families who receive public assistance in "as paid" States, which are those which designate a portion of the welfare payment as a shelter and utility component and then reduce the maximum allowable component down to actual rent paid (if lower). Some "as paid" States make a further reduction in the welfare payment by applying a percentage factor to the rent paid. In this case, the shelter and utility component, reduced once by this percentage factor, will be the amount utilized in item (3) of the formula for computing the Gross Rent—nonwithstanding that the public assistance agency may apply its percentage a second time to the Gross Rent to further reduce the welfare payment. The provision of the interim rule prescribing a single application of the percentage reduction factor is consistent with prior practice in the public housing program. The Department believes that this limitation is a reasonable exercise of administrative discretion and is not inconsistent with section 3(a)(3) of the 1937 Act.

Section 322 of the Amendments authorizes the Secretary to provide for delayed applicability or staged implementation of the rent computation requirements for tenants already occupying assisted housing if the Secretary determines that immediate application of the procedures would be impracticable, would violate the terms of existing leases, or would result in extraordinary hardship for any class of tenants. The Secretary has determined to exercise this flexibility so that rent increases for tenants already in the program can be phased in gradually. Section 322 also restricts rent increases pursuant to the statutory changes to a maximum of 10 percent during any 12-month period and further provides that such provisions shall not result in reduction of a tenant's rent below the amount paid on the day before the effective date of the Amendments.

The phase-in of the new system for tenants already in occupancy would begin no later than at the first lease expiration or annual reexamination occurring after the effective date of this interim rule. For the remainder of Federal Fiscal Year 1982, the rent will be computed using 26 percent of adjusted income, in Fiscal Year 1983, using 27 percent of adjusted income, etc., until in Fiscal Year 1986, the full 30 percent will be used. In no case will a family's Gross Rent increase by more than 10 percent during any 12-month period due to these changes or other changes in Federal law regarding the counting of other governmental benefits as income, nor will there be a decrease in rent due to these changes.

Related Amendments

This rule revokes or amends several regulations, as described below.

(a) Part 805, Indian Housing. Section 805.302(b)(2)(iii) is being amended to correct a cross reference to Part 860, Subpart D, Rents. Section 805.416(a)(1)(ii) is being amended to permit an Indian PHA to base the required monthly payment on a range of 15 to 30 percent of income (instead of 15 to 25 percent). Section 805.423(a)(2) is being amended to permit a homebuyer to be eligible for Indian PHA homeownership financing when, among other things, the homebuyer's income has reached a level at which 30 percent (instead of 25 percent) of income is equal to debt service plus certain other monthly costs. These increases to 30 percent are not required by the statute but are being established to promote uniformity among the various rent policies for the assisted housing programs.

(b) Part 860, Subpart A, Income Limits. Section 860.6 is being amended to provide that a PHA may not commence

an eviction or refuse to renew a lease, based upon the income of a tenant family, unless it has identified a unit renting for an amount not exceeding the family's Gross Rent computed under Part 860, Subpart D. This replaces the current rule based on 25 percent of income, as defined by the PHA for the purpose of determining rents, since PHAs no longer have authority to set rents. Accordingly, use of the statutory formula is the appropriate test of when a family may be required to obtain housing in the private market.

(c) Part 860, Subpart D, Rents. In addition to the new rent formula in § 860.404, which is described above, several other changes are being made to Subpart D. The title is changed to "Rents." The provisions in the former §§ 860.404 and 860.405 governing minimum and maximum rents are being revoked since rents payable by families are prescribed by the statute, thereby making these provisions obsolete. The minimum aggregate rent to income ratio required for payment of operating subsidies (§ 860.407), required under section 9 of the 1937 Act, is being revoked since the statute prescribes family rents which are expected always to result in an aggregate rent of at least 20 percent of income. Section 860.408 is being revoked since § 860.404, as revised, covers phasing in the new requirements and the previous phase in requirements are now obsolete. Finally, § 860.409, establishing the effective date of section 3(1) of the 1937 Act, is being revoked. Section 860.409 is no longer necessary since it should have been implemented in all cases by now and because it has been superseded in the 1981 legislation.

(d) Part 861, PHA-Owned Projects—Rents. This Part is being revoked since family rents are prescribed by statute and, therefore, rent schedules are no longer necessary and notice to tenants of proposed changes in schedules is inappropriate.

(e) Part 865, PHA-Owned Projects—Maintenance and Operation. Sections 865.473(a) and 865.480(d) are revised to delete the reference to Part 861, which is being revoked.

Publication as Interim Rule

The subject matter of this rulemaking action relates to grants, benefits, or contracts and is, therefore, exempt from the notice and public comment requirements of section 553 of the Administrative Procedure Act. As a matter of policy, HUD submits most rulemaking actions dealing with such subject matter to public comment, either before or after effectiveness of the action, notwithstanding the statutory exemption.

Because the new formula revisions established by this rule flow directly from legislative changes without additional exercise of discretion and because of the public interest in implementation of the legislation, which became effective on October 1, 1981, the Secretary has determined that good cause exists for publication of this rule as an interim rule, to become effective as soon as possible and prior to the receipt of public comment. However, public comments on the interim rule will be received for a 45-day period following publication.

While the Secretary has determined, for the reasons stated above, that good cause exists for exempting this interim rule from the 30-day delay in effectiveness provided in the Administrative Procedure Act (5 U.S.C. 553(d)), Section 7(o)(3) of the Department of HUD Act (42 U.S.C. 3535(o)(e)) provides for a delay in effectiveness for a period of 30 calendar days of continuous session of Congress after publication, unless waived by the Chairmen and Ranking Minority Members of the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Banking, Finance and Urban Affairs. The Secretary has requested such waivers but, at the time of publication of this interim rule, it is not known whether or when such waivers will be granted. Under Section 7(o)(5) of the Department of HUD Act, "Congressional inaction on any rule or regulation shall not be deemed an expression of approval of the rule or regulation involved." The foregoing provision refers to inaction on a joint resolution of disapproval or other legislation which is intended to modify or invalidate the rule or regulation or any portion thereof, and the principle that such inaction does not imply Congressional approval applies, *a fortiori*, to a waiver of the nature requested by the Secretary.

Notice of the effectiveness of this interim rule will be published in the **Federal Register.**

Other Findings

The Department has determined that this rule does not constitute a "major rule" as defined in Executive Order 12291 because its economic impact, while it may exceed $100 million annually when considered together with related amendments for the Section 8 Program, results entirely from the legislative enactment and not from an additional exercise of administrative discretion.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of General Counsel, Rules Docket Clerk, at the address listed above.

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations, published pursuant to Executive Order 12291 and the Regulatory Flexibility Act on August 17, 1981 (46 FR 41708).

(The Catalog of Federal Domestic Assistance number is 14.146, Low Income Housing Assistance Program (Public Housing))

List of Subjects in 24 CFR Part 805

Grant programs: housing and community development, Grant programs: Indians, Loan programs: Indians, Low and moderate income housing, Public housing, Homeownership.

Part 860

Public housing.

Part 861

Public housing.

Part 865

Energy conservation, Loan programs: housing and community development, Public housing, Utilities.

Accordingly, 24 CFR Chapter VIII is amended as follows:

PART 805—INDIAN HOUSING

1. In § 805.302, paragraph (b)(2)(iii) is revised to read as follows:

§ 805.302 Admission policies.

* * * * *

(b) * * *

(2) * * *

(iii) For Rental and Turnkey III Projects, to achieve compliance with the applicable provisions of 24 CFR Part 860, Subpart D, Rents, including, but not limited to, § 860.406 which requires that at least 20 percent of the dwelling units in any project placed under ACC in any fiscal year beginning after September 26, 1975, shall be occupied by very low income families, and

* * * * *

2. In § 805.416, paragraph (a)(1)(ii) is revised to read as follows:

§ 805.416 Required monthly payments.

(a) * * *

(1) * * *

(ii) Subject to the requirement for payment of at least the Administration Charge, each Homebuyer shall pay an amount of Required Monthly Payment computed by (i) multiplying Family Income by a specified percentage, and (ii) subtracting from that amount the Utility Deduction (as specified in the approved schedule). The specified percentage shall be no less than 15 percent and no more than 30 percent, as determined by the IHA.

* * * * *

3. In § 805.423, the introductory text of paragraph (a)(2) is revised to read as follows:

§ 805.423 IHA homeownership financing.

(a) * * *

(2) The Homebuyer's income has reached the level, and is likely to continue at such level, at which 30 percent of monthly Family Income is at least equal to the sum of the monthly debt service amount shown on the Homebuyer's Purchase Price Schedule and the IHA's estimates, approved by HUD, of the following monthly payments and allowances:

* * * * *

PART 860—INCOME LIMITS WITH RESPECT TO, ADMISSION TO, AND OCCUPANCY OF, LOW INCOME HOUSING OWNED BY PUBLIC HOUSING AGENCIES OR LEASED BY PUBLIC HOUSING AGENCIES FROM PRIVATE OWNERS

4. The title of Part 860 and table of contents for Subpart D of Part 860 are revised to read as follows:

PART 860—INCOME LIMITS FOR, ADMISSION TO, AND OCCUPANCY OF, LOW-INCOME PUBLIC HOUSING

Subpart D—Rents

Sec.

860.401 Purpose.
860.402 Applicability.
860.403 Definitions.
860.404 Computation of Gross Rent.
860.405 [Reserved]
860.406 Required Percentage of Very Low Income Families.

* * * * *

5. Section 860.6 is revised to read as follows:

§ 860.6 Restriction on eviction of families based upon income.

After (insert effective date of interim rule), no PHA shall commence eviction proceedings, or refuse to renew a lease, based upon the income of the tenant family unless (a) it has identified, for possible rental by the family, a decent, safe and sanitary unit of suitable size available at a rent not exceeding the family's Gross Rent as determined under Part 860, Subpart D, or (b) it is required to do so by local law.

6. The title of Part 860, Subpart D is revised to read as follows:

Subpart D—Rents

7. Section 860.401 is revised to read as follows:

§ 860.401 Purpose.

The purpose of this subpart is to establish definitions, policies and procedures related to the determination of rent for applicants and tenants and to establish the required percentage of very low income families in certain projects.

§ 860.405 and §§ 860.407 through 860.409 [Removed]

8. Sections 860.405, 860.407, 860.408, and 860.409 are removed, and § 860.404 is revised to read as follows:

§ 860.404 Computation of gross rent.

(a) *Gross Rent for Families Admitted on or after (insert effective date of interim rule).* Gross Rent shall be the highest of the following, rounded to the nearest dollar:

(1) 30 percent of Family Income

(2) 10 percent of Total Family Income

(3) If the family receives welfare assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of such payments which is so designated. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (a)(3) shall be the amount resulting from one application of the percentage.

(b) *Gross Rent for Families Admitted before (insert effective date of interim rule).* At the earlier of the first lease expiration or annual reexamination occurring on or after (insert effective date of interim rule), Gross Rent shall be calculated in accordance with paragraph (a) of this section, except that instead of 30 percent the percentage applied to Family Income shall be as follows:

Effective Date of Reexamination and Percentage
(Insert Effective Date)–September 30, 1982—26%
October 1, 1982–September 30, 1983—27%
October 1, 1983–September 30, 1984—28%
October 1, 1984–September 30, 1985—29%
October 1, 1985 and after—30%

The Gross Rent charged is subject to the following conditions:

(1) Gross Rent shall not be increased by more than 10 percent during any 12-month period as a result of (i) applying paragraph (b) of this section, or (ii) any other provision of law becoming effective on or after October 1, 1981, redefining which governmental benefits are required to or may be considered as income. However, Gross Rent may be increased by more than 10 percent during any 12-month period to the extent that the portion of such increase above 10 percent is attributed solely to increases in income not caused by redefinitions referred to in (b)(1)(ii) of this section.

(2) Gross Rent shall not be decreased below the amount payable by the family as of (insert the day before the effective date of this interim rule), unless due to decreases in Total Family Income or Family Income.

9. Section 860.406 is revised to read as follows:

§ 860.406 Required percentage of very low income families.

At least 20 percent of the dwelling units in any project placed under annual contributions contract in any fiscal year beginning after September 26, 1975, shall be occupied by very low-income families as defined in this subpart.

PART 861—PHA-OWNED PROJECTS—RENTS [Removed]

10. Part 861 is removed.

PART 865—PHA-OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATION

11. In § 865.473, paragraph (a) is revised to read as follows:

§ 865.473 Establishment of allowances by PHAs.

(a) *Basic Requirement.* PHAs shall establish (1) allowances for PHA-Furnished Utilities for all Checkmetered Utilities and (2) allowances for Tenant-Purchased Utilities for all Utilities purchased directly by tenants from the Utilities suppliers. These allowances shall be submitted for approval by the HUD field office.

* * * * *

12. In § 865.480, paragraph (d) is revised to read as follows:

§ 865.480 Review and revision of allowances.

* * * * *

(d) *Effective Date of Revised Allowances.* In order to allow a reasonable time for PHA determination and processing of a revision in Allowances, a revised Allowance shall take effect with the next billing period.

(Secs. 3 and 6, U.S. Housing Act of 1937, 42 U.S.C. 1437a and d; Section 322, Omnibus Reconciliation Act of 1981, Pub. L. 97-35; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: March 29, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 82-12122 Filed 5-3-82; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Part 888

[Docket No. R-82-945]

Section 8 Housing; Fair Market Rents for New Construction and Substantial Rehabilitation

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This Rule revises the note to Schedule A and revises the section 8 Fair Market Rents for New Construction and Substantial Rehabilitation applicable to 23 selected market areas, in compliance with the requirements of section 8(c)(1) of the U.S. Housing Act of 1937. Section 8 Fair Market Rents are published annually in the **Federal Register**. HUD published the last annual revision of the Fair Market Rents applicable to new construction and substantial rehabilitation on November 25, 1981. This Rule became effective on December 28, 1981, retroactive to October 1, 1981, pursuant to a waiver that was granted by Congress on the deferred effective date requirement of section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)). The Fair Market Rent schedules also will become effective in accordance with the requirements of this latter Act.

These revised rent schedules reflect comments received from HUD field offices and from the public as well as the Department's efforts to contain the costs of housing developed under the Section 8 New Construction and Substantial Rehabilitation Program.

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver, retroactive to October 1, 1981. Further notice of the effectiveness of this final rule will be published in the **Federal Register.**

ADDRESS: Rules Docket Clerk, Room 5218, Office of the General Counsel, Department of Housing and Urban Development, 451-7th Street, SW., Washington, D.C. 20410, (202) 755-7603. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Multifamily Housing Development, 451-7th Street, SW., Washington, D.C. 20410, (202) 755-5743. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HUD published an interim rule on November 25, 1981 at 46 FR 57838 that amended Title 24 of the Code of Federal Regulations by incorporating in Part 888, Subpart A, a revised Schedule A, "Fair Market Rents for New Construction and Substantial Rehabilitation (including Housing Finance and Development Agencies Program) for all Market Areas." The interim rule stated that the Fair Market Rent schedules would become effective December 28, 1981 or upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver under section 7(o)(4) of the Department of HUD Act and that the schedules would become effective in any event retroactive to October 1, 1981. Subsequent to publication of the rule, the requested section 7(o)(4) waiver was granted by the Chairmen and Ranking Minority Members of the Senate Committee on Banking, Housing and Urban Affairs and the Housing Committee on Banking, Finance and Urban Affairs, and the rule became effective on December 28, 1981 retroactive to October 1, 1981.

The interim rule requested public comments to be submitted on or before December 28, 1981. It stated that if evaluation of comments submitted during this 30-day period indicated a need to change the Fair Market Rent schedules, the rule would be revised. HUD received 28 comments by the deadline. Five additional comments were received after the deadline. After consideration of all these comments received from HUD field offices and from the public as a result of this publication, HUD has decided to modify the Schedule A rents concerning 23 selected market areas. These market areas are as follows: *State of West Virginia:* Beckley, Bluefield, Fairmont, Parkersburg, and Point Pleasant; *Washington, D.C.:* Washington, D.C.; *State of Maryland:* Baltimore and Hagerstown; *State of Georgia:* Columbus, Savannah, and Valdosta; *State of Illinois:* Chicago; *State of Minnesota:* St. Cloud; *State of Arkansas:* Little Rock, Fayetteville, Fort Smith, Jonesboro, and Texarkana; *State of New Mexico:* Clovis; *State of Montana:* Butte, Great Falls; *State of South Dakota:* Aberdeen and Sioux Falls.

The note to the schedule has been revised in several significant respects. Units in group homes now qualify for one bedroom FMRs only if the size of the bedroom plus the proportionate part of the common space is at least 450 square feet. This change makes the note consistent with other requirements establishing maximum dwelling unit sizes to promote modest design.

Except as provided in the next paragraph, the FMRs for manufactured homes are 95 percent of those for detached units of the appropriate bedroom size. (The Interim Rule previously established FMRs for manufactured homes as the greater of the 95 percent amount or 110 percent of FMRs for walkup units). HUD has modified the definition of FMRs for newly-constructed manufactured homes in Schedule A to eliminate the 110 percent of FMR for walkup units in order to simplify and clarify these FMRs. The FMRs for manufactured homes include the use of the manufactured home spaces. Accordingly, the space rentals associated with manufactured home FMRs are not calculated separately. The rent formula for manufactured homes supersedes the published FMRs for this housing category applicable to the Baltimore and Hagerstown, Maryland market areas.

The FMRs for manufactured homes where the field office has approved rents and reserved contract and budget authority based on the schedule published in the **Federal Register** on November 25, 1981 (46 FR 57838), or accepted for processing an application or proposal for which the rents were based on the November 25 schedule, shall be those established under paragraph 5 of the November 25 schedule until the rents established under paragraph 5(a) of this schedule exceed those established under paragraph 5 of the November 25 schedule. This category of FMRs is being established to assure that no applicant eligible for the interim

schedule published on November 25 will be adversely affected by the final rule establishing FMRs for manufactured homes as 95 percent of the rents for detached units.

The FRMs for manufactured home spaces in newly-constructed or substantially rehabilitated parks were modified from the previous Interim Rule, and they are the rents for manufactured home spaces published for the Existing Housing Program under Schedule D, multiplied by 1.25. These FMRs reflect the added cost of development of manufactured home spaces in newly-constructed or substantially rehabilitated parks.

Fair Market Rents are based primarily on the level of rentals paid for recently completed or newly-constructed dwelling units of modest design within each market area as determined by HUD Field Office staff. However, they also reflect the Department's efforts to contain costs of housing developed under the section 8 New Construction and Substantial Rehabilitation Program. They are estimates of the rentals that prospective tenants who are not receiving federal rental subsidies would be willing to pay for recently completed or newly-constructed dwelling units of modest design.

The contract rent plus any utility allowance for the unit must not exceed by more than 20 percent the Fair Market Rent in effect at the time of processing. The published Fair Market Rents reflect trended rents in order to allow for the period of construction or rehabilitation as stated in the publication.

This Final Rule includes Fair Market Rents for 0, 1, 2, 3, and 4 or more bedroom units in five structural categories (detached, semi-detached/row, walkup, elevator 2–4 story, and elevator 5+ story). Construction or rehabilitation of elevator projects for families with children is legally prohibited unless there is no practical alternative. Fair Market Rents for family units in elevator structures in these schedules have been determined necessary for the affected market areas. However, the determination that there is "no practical alternative" must be made on a project-by-project basis.

Proposals involving combinations of structural types and unit sizes for which Fair Market Rents have not yet been published may not be approved until the applicable Fair Market Rents are published and become effective.

For all projects where the Fair Market Rents are revised after the date of any processing stage, the revised Fair Market Rents shall apply to all subsequent processing in reviewing contract rents and utility allowances.

Since the amendments contained in this Final Rule are to apply to the Fiscal Year 1982 program, it is necessary that the Rule become effective as soon as possible, so that applications can be submitted and acted upon prior to the end of the Fiscal Year. For that reason, the Department has determined that there is good cause for not requiring a 30-day delay in the effective date after publication of this Final Rule (as provided in the Administrative Procedure Act (5 U.S.C. 553(d)). However, section 7(o)(3) of the Department of HUD Act (42 U.S.C. 3535(o)(3)) provides for a delay in effectiveness for a period of 30 calendar days of continuous session of Congress after publication, unless waived by the Chairmen and Ranking Minority Members of the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Banking, Finance and Urban Affairs. The Secretary has requested such waivers by the Chairmen and Ranking Minority Members but, at the time of publication of this final rule, it is not known whether or when such waivers will be granted. Under section 7(o)(5) of the Department of HUD Act, Congressional inaction of any rule or regulation shall not be deemed an expression of approval of the rule or regulation involved. The foregoing provision refers to inaction on a joint resolution of disapproval or other legislation which is intended to modify or invalidate the rule or regulation or any portion thereof, and the principle that such inaction does not imply Congressional approval applies, *a fortiori*, to a waiver of the nature requested by the Secretary.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk at the address set forth above.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based

enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities.

This rule was listed as item (C)23(H-35-81) under the Office of Housing in the Department's Semiannual Agenda of Regulations published pursuant to Executive Order 12291 and the Regulatory Flexibility Act on August 17, 1981 (46 FR 41708).

(Catalog of Federal Domestic Assistance program number and title is 14.156, Lower Income Housing Assistance Program (Section 8).)

List of Subjects in 24 CFR Part 888

Rent subsidies.

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

Accordingly, the Schedule A to 24 CFR Part 888 effective December 28, 1981, retroactive to October 1, 1981, is amended by revising the note applicable to all of such Schedule A and by revising the rents for certain market areas, as set forth below.

(Sec. 8(c)(1) of the U.S. Housing Act of 1937, 42 U.S.C. 1437f(c)(1); and section 7(d) and (o) Department of HUD Act, 42 U.S.C. 3535(d) and (o).)

Dated: April 22, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.

New Construction and Substantial Rehabilitation (Including Housing Finance and Development Agencies Program)

These Fair Market Rents have been trended ahead to October 1, 1983, to update the current Fair Market Rent Schedules which these revised schedules replace.

Note.—The Fair Market Rents for (1) dwelling units designed for the elderly or handicapped are those for the appropriate size units, not to exceed 2 bedrooms for the elderly, multiplied by 1.05; (2) congregate housing dwelling units are the same as for noncongregate units; (3) single room occupancy dwelling units are 75 percent of those for zero bedroom units of the same walkup or elevator structural type; (4) living units in a group home (each composed of a bedroom plus the proportionate part of common living space which is ordinarily included in a living unit) are those for zero bedroom or one bedroom units of walkup structural type (or, if the group home contains an elevator, of the elevator 2–4 story structural type). In group homes one bedroom Fair Market Rents may be applied only when the bedroom space plus the proportionate part of the common spaces is at least 450 square feet; (5)(a) manufactured homes shall be 95 percent of those for detached units of the appropriate bedroom size or (b) manufactured homes where the field office has approved rents and reserved contract and budget authority based on the schedule published in the **Federal Register** on November 25, 1981 (46 FR 57838), or accepted for processing an application or proposal for which the rents were based on the November 25 schedule, shall be those established under paragraph 5 of the November 25 schedule until the rents established under paragraph 5(a) of this schedule exceed those established under paragraph 5 of the November 25 schedule; (6) manufactured home spaces in newly constructed or substantially rehabilitated manufactured home parks shall be the Fair Market Rents for spaces published for the Existing Housing Program under Schedule D, multiplied by 1.25.

All rents computed in accordance with this note shall be rounded down to the nearest whole dollar.

Schedule A.—Fair Market Rents for New Construction and Substantial Rehabilitation (Including Housing Finance and Development Agencies Program)

Region 3

BALTIMORE, MD., AREA OFFICE

Structure Type	Market: Baltimore, number of bedrooms [1]					Market: Hagerstown, Number of bedrooms [1]				
	0	1	2	3	4+	0	1	2	3	4+
Detached			617	696	817			583	667	784
Semi-detached/row		429	500	594	765		412	473	570	733
Walkup	349	429	494	587	668	335	412	467	563	641
Elevator 2-4 sty	361	470	537			347	451	508		
Elevator 5+ sty	400	493	628			384	474	594		

[1] Effective date October 1, 1981; Trended date October 1, 1983.

WASHINGTON, DC AREA OFFICE

Structure type	Market: Washington, D.C., number of bedrooms [1]				
	0	1	2	3	4+
Detached			699	762	863
Semi-detached/row		491	583	635	718

WASHINGTON, DC AREA OFFICE—Continued

Structure type	Market: Washington, D.C., number of bedrooms [1]				
	0	1	2	3	4+
Walkup	342	454	539	623	690
Elevator 2–4 sty	377	505	597	680	

WASHINGTON, DC AREA OFFICE—Continued

Structure type	Market: Washington, D.C., number of bedrooms [1]				
	0	1	2	3	4+
Elevator 5+ sty	389	515	686	781	

[1] Effective date October 1, 1981; trended date October 1, 1983.

CHARLESTON, WV SERVICE OFFICE

Structure type	Market: Beckley, number of bedrooms [1]					Market: Bluefield, number of bedrooms [1]					Market: Fairmont, number of bedrooms [1]					Market: Parkersburg, number of bedrooms [1]					Market: Pt. Pleasant, number of bedrooms [1]				
	0	1	2	3	4+	0	1	2	3	4+	0	1	2	3	4+	0	1	2	3	4+	0	1	2	3	4+
Detached			440	483	539			440	483	539			455	505	565			392	452	497			391	450	492
Semi-detached/row		325	414	452	509		325	414	452	509		380	429	483	541		339	369	427	470		313	368	424	467
Walkup	285	325	368	411	451	285	325	368	411	451	291	353	413	455	513	266	339	360	405	446	265	302	359	400	444
Elevator 2–4 sty	346	411	460			346	411	460			386	424	473			337	405	491			335	400	447		
Elevator 5+ sty	352	416	466			352	416	466			393	430	478			344	411	497			340	407	454		

[1] Effective date October 1, 1981; trended date October 1, 1983.

Region 4

ATLANTA, GA AREA OFFICE

Structure type	Market: Columbus, number of bedrooms [1]					Market: Savannah, number of bedrooms [1]					Market: Valdosta, number of bedrooms [1]				
	0	1	2	3	4±	0	1	2	3	4	0	1	2	3	4±
Detached			385	471	508			439	522	560			370	422	483
Semi-detached/row		310	359	447	477		340	423	497	538		292	348	416	474
DWalkup	267	299	348	436	466	297	328	400	486	522	255	277	340	396	452
Elevator 2–4 sty	290	322	371			321	355	428			282	305	368		
Elevator 5+ sty	373	409	485			382	424	521			334	361	445		

[1] Effective date October 1, 1981; trended date October 1, 1983.

Region 5

CHICAGO, IL AREA OFFICE

Structure type	Market: Chicago, Number of Bedrooms [1]				
	0	1	2	3	4+
Detached			820	884	957
Semi-detached/row		603	676	734	822
Walkup	409	481	566	675	708
Elevator 2–4 sty	437	513	604	720	720
Elevator 5+ sty	473	591	711	729	771

[1] Effective date October 1, 1981; trended date October 1, 1983.

MINNEAPOLIS-ST. PAUL, MN AREA OFFICE

Structure type	Market: St. Cloud, number of bedrooms [1]				
	0	1	2	3	4+
Detached			538	602	633
Semi-detached/row		427	493	560	621
Walkup	286	322	386	468	492
Elevator 2–4 sty	331	384	493		
Elevator 5+ sty	397	467	573		

[1] Effective date October 1, 1981; trended date October 1, 1983.

Region 6

DALLAS, TX. AREA OFFICE

Structure type	Market: Clovis, number of bedrooms [1]				
	0	1	2	3	4+
Detached			366	475	526
Semi-detached/row		291	353	414	493
Walkup	231	263	317	378	432
Elevator 2–4 sty	250	290	365		
Elevator 5+ sty	291	350	466		

[1] Effective date October 1, 1981; trended date October 1, 1983.

LITTLE ROCK, AR AREA OFFICE

Structure type	Market: Fayetteville, number of bedrooms [1]					Market: Fort Smith, number of bedrooms [1]					Market: Jonesboro, number of bedrooms [1]					Market: Little Rock, number of bedrooms [1]					Market: Texarkana, number of bedrooms [1]				
	0	1	2	3	4+	0	1	2	3	4+	0	1	2	3	4+	0	1	2	3	4+	0	1	2	3	4+
Detached			439	536	606			418	496	576			419	503	568			473	552	622			435	532	600
Semi-detached/row	305	362	422	518	561	280	330	405	482	540	285	335	406	487	546	328	384	455	532	593	299	351	418	512	572
Walkup	296	353	412	505	547	259	308	374	454	496	264	313	377	460	501	306	362	411	506	551	278	330	401	486	529
Elevator 2–4 sty	323	385	452			288	341	415			292	349	418			335	398	454			307	363	442		
Elevator 5+ sty	390	447	525			395	450	534			387	434	522			393	452	529			393	449	517		

[1] Effective date October 1, 1981; trended date October 1, 1983.

Region 8

DENVER, CO REGIONAL: AREA OFFICE

Structure type	Market: Great Falls, MT, number of bedrooms [1]					Market: Sioux Falls, SD, number of bedrooms [1]					Market: Butte, MT, number of bedrooms [1]					Market: Aberdeen, SD, number of bedrooms [1]				
	0	1	2	3	4+	0	1	2	3	4+	0	1	2	3	4+	0	1	2	3	4+
Detached	.....	.....	428	493	529	.....	.....	461	493	540	.....	.....	431	508	546	.....	.....	450	488	531
Semi-Detached row	.....	336	420	483	521	.....	386	430	468	509	.....	360	421	499	537	.....	380	430	468	506
Walkup	274	329	411	474	512	308	367	408	450	488	288	351	412	489	528	296	354	405	450	488
Elevator 2-4 sty	294	343	430	.....	.....	324	376	420	.....	.....	306	371	434	.....	.....	308	367	417	.....	.....
Elevator 5+ sty	307	355	443	.....	.....	332	383	424	.....	.....	319	384	446	.....	.....	320	380	424	.....	.....

[1] Effective date October 1, 1981; trended date October 1, 1983.

[FR Doc. 82-12066 Filed 5-3-82; 8:45 am]

BILLING CODE 4210-27-M

24 CFR Part 889

[Docket No. R-82-975]

Gross Family Contribution; Section 8 Housing Assistance Payments Program

AGENCY: Office of Assistance Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: HUD is implementing recent statutory changes affecting the amount of the Gross Family Contribution under the Section 8 Housing Assistance Payments Program. This interim rule changes the income-percentage formula for determining the Gross Family Contribution under the Section 8 Program. Several of the Section 8 program regulations use the term Total Family Contribution, which has the same meaning as Gross Family Contribution. The Gross (or Total) Family Contribution is the amount payable by an assisted family towards the Section 8 Contract Rent payable to the owner plus, where some or all utilities are not included in the Contract Rent, the amount of any utility allowance.

DATES:

Effective date: Upon expiration of first period of 30 calendar days of continuous session of Congress after publication, subject to waiver. Further notice of the effectiveness of this iterim rule will be published in the **Federal Register.**

Comments Due Date: June 18, 1982.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Each comment should include the commentor's name and address and must refer to the docket number indicated in the heading of this rule. A copy of each comment will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Edward Whipple, Chief, Rental Occupancy Branch, (202) 426-0744; James Tahash, Program Planning Division, Office of Multifamily Housing Management, (202) 426-8730; or Monica Sussman, Office of State Agency and Bond Financed Programs, (202) 426-0730; Department of Housing and Urban Development, Washington, D.C. 20410. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

1981 Legislation

The Housing and Community Development Amendments of 1981 (1981 Amendments), contained in Title III, Subtitle A, of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), amend several provisions of the United States Housing Act of 1937, as amended (1937 Act). This interim rule implements the change in the income-percentage formula for determining the Gross Family Contribution under the Section 8 Program. Several of the Section 8 program regulations use the term Total Family Contribution, which has the same meaning as Gross Family Contribution. The Gross (or Total) Family Contribution is the amount payable by an assisted family towards the Section 8 Contract Rent payable to the owner plus, where some or all utilities are not included in the Contract Rent, the amount of any utility allowance.

Other changes made by the 1981 Amendments affecting income limits, definition of income, and reexamination of family income and composition will be implemented separately in regulations now being developed by the Department.

The principal effects of the 1981 Amendments on computing the family contribution are to (1) change the formula for computing the Gross Family Contribution and (2) make the revised family contribution requirements applicable to the Public Housing Program as well as to Section 8. A separate companion regulation will make the necessary changes for the Public Housing Program.

The 1981 Amendments enacted similar rent calculation provisions governing other subsidized programs (rent supplement and Section 236 rental assistance payments). These changes will also be implemented through separate rulemaking proceedings.

Gross Family Contribution Formula

Section 322 of the Amendments establishes a formula for computing the rent which families participating in public housing and Section 8 will pay. For all families, rent is the greatest of:

(1) 10 percent of gross income,

(2) 30 percent of adjusted income, or

(3) if the family receives welfare assistance, a portion of which is designated for housing and is adjusted in accordance with actual housing costs, that portion designated for housing.

New families admitted to the programs will pay these rents immediately upon admission. The previous Section 8 statutory rent formulas were deleted; these varied depending on such factors as whether a family was a large very low-income family, a very large lower-income family, or a family with exceptional medical expenses.

The rent for Section 8 families who are recipients of public assistance in "as paid" States is now covered by the same statutory language which previously applied to public housing (see item (3) above). "As paid" States are those which designate a portion of the welfare payment as a shelter and utility component and then reduce the maximum allowable component down to the actual rent paid (if lower). Some "as paid" States make a further reduction in the welfare payment by applying a percentage factor to the rent paid. In this case, the shelter and utility component, reduced once by this percentage factor, will be the amount utilized in item (3) of

the formula for computing the Gross Family Contribution—notwithstanding that the public assistance agency may apply its percentage a second time to the Gross Family Contribution to further reduce the welfare payment. The provision of the interim rule prescribing a single application of the percentage reduction factor conforms the Section 8 program to prior practice in the public housing program. The Department believes that this limitation is a reasonable exercise of administrative discretion and is not inconsistent with Section 3(a)(3) of the 1937 Act.

Section 322 of the Amendments authorizes the Secretary to provide for delayed applicability or staged implementation of the rent computation requirements for tenants already occupying assisted housing if the Secretary determines that immediate application of the procedures would be impracticable, would violate the terms of existing leases, or would result in extraordinary hardship for any class of tenants. The Secretary has determined to exercise this flexibility so that rent increases for tenants already in the program can be phased in gradually. Section 322 also restricts rent increases pursuant to the statutory changes to a maximum of 10 percent during any 12-month period and further provides that such provisions shall not result in reduction of a tenant's rent below the amount paid on the day before the effective date of the Amendments.

The phase-in of the new system for tenants already in occupancy would begin no later than at the first lease expiration or annual reexamination (whichever occurs first) occurring after the effective date of this interim rule. For the remainder of Federal Fiscal Year 1982, the rent will be computed using 26 percent of adjusted income, in Fiscal Year 1983, using 27 percent of adjusted income, etc., until in Fiscal Year 1986, the full 30 percent will be used. In no case will a family's contribution increase by more than 10 percent during any 12-month period due to these changes or other changes in Federal law regarding the counting of other governmental benefits as income, nor will there be a decrease in rent due to these changes.

Publication as Interim Rule

The subject matter of this rulemaking action relates to grants, benefits, or contracts and is, threrefore, exempt from the notice and public comment requirements of Section 553 of the Administrative Procedure Act. As a matter of policy, HUD submits most rulemaking actions dealing with such subject matter to public comment, either before or after effectiveness of the action, notwithstanding the statutory exemption.

Because the new formula revisions established by this rule flow directly from legislative changes without additional exercise of discretion and because of the public interest in implementation of the legislation, which became effective on October 1, 1981, the Secretary has determined that good cause exists for publication of this rule as an interim rule, to become effective as soon as possible and prior to the receipt of public comment. However, public comments on the interim rule will be received for a 45-day period following publication.

While the Secretary has determined, for the reasons stated above, that good cause exists for exempting this interim rule from the 30-day delay in effectiveness provided in the Administrative Procedure Act (5 U.S.C. 553(d)), Section 7(o)(3) of the Department of HUD Act (42 U.S.C. 3535(o)(e)) provides for a delay in effectiveness for a period of 30 calendar days of continuous session of Congress after publication, unless waived by the Chairman and Ranking Minority Members of the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Banking, Finance and Urban Affairs. The Secretary has requested such waivers but, at the time of publication of this interim rule, it is not known whether or when such waivers will be granted. Under Section 7(o)(5) of the Department of HUD Act, "Congressional inaction on any rule or regulation shall not be deemed an expression of approval of the rule or regulation involved." The foregoing provision refers to inaction on a joint resolution of disapproval or other legislation which is intended to modify or invalidate the rule or regulation or any portion thereof, and the principle that such inaction does not imply Congressional approval applies, *a fortiori*, to a waiver of the nature requested by the Secretary.

Notice of the effectiveness of this interim rule will be published in the **Federal Register**.

Other Findings

The Department has determined that this rule does not constitute a "major rule" as defined in Executive Order 12291 because its economic impact, while it may exceed $100 million annually when considered together with related amendments for the Public Housing Program, results entirely from the legislative enactment and not from an additional exercise of administrative discretion.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of General Counsel, Rules Docket Clerk, at the address listed above.

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations, published pursuant to Executive Order 12291 and the Regulatory Flexibility Act on August 17, 1981 (46 FR 41708).

The Catalog of Federal Domestic Assistance number is 14.156, Lower-Income Housing Assistance Program (Section 8).

List of Subjects in 24 CFR Part 889

Rent subsidies.

PART 889—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—DETERMINATION OF INCOME FOR ELIGIBILITY AND GROSS FAMILY CONTRIBUTION

Accordinly, 24 CFR 889.105 is revised to read as follows:

§ 889.105 Computation of Gross Family Contribution.

(a) *Gross Family Contribution for Families Admitted on or after (insert effective date of interim rule).* Gross family contribution shall be the highest of the following, rounded to the nearest dollar:

(1) 30 percent of Monthly Income after Allowances,

(2) 10 percent of Monthly Income,

(3) If the Family receives welfare assistance from a public agency and a part of such payments, adjusted in accordance with the Family's actual housing costs, is specifically designated by such agency to meet the Family's housing costs, the portion of such payments which is so designated. If the Family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (a)(3) shall be the amount resulting from one application of the percentage.

(b) *Gross Family Contribution for Families Admitted before (insert effective date of interim rule).* At the

earlier of the first lease expiration or annual reexamination occurring on or after [insert effective date], Gross Family Contribution shall be calculated in accordance with paragraph (a) of this section, except that instead of 30 percent the percentage applied to Monthly Income after Allowances shall be as follows:

Effective date of reexamination	Percentage
(Insert Effective Date)—September 30, 1982	26
October 1, 1982—September 30, 1983	27
October 1, 1983—September 30, 1984	28
October 1, 1984—September 30, 1985	29
October 1, 1985 and after	30

The Gross Family Contribution charged is subject to the following conditions:

(1) Gross Family Contribution shall not be increased by more than 10 percent during any 12-month period as a result of (i) applying paragraph (b) of this section, or (ii) any other provision of Federal law becoming effective on or after October 1, 1981, redefining which governmental benefits are required to or may be considered as income. However, Gross Family Contribution may be increased by more than 10 percent during any 12-month period to the extent that the portion of such increase above 10 percent is attributed solely to increases in income not caused by redefinitions referred to in (b)(1)(ii) of this section.

(2) Gross Family Contribution shall not be decreased below the amount payable by the family as of [the day before the effective date of this interim rule], unless due to decreases in Monthly Income or Monthly Income after Allowances.

(Secs. 3 and 8, U.S. Housing Act of 1937, 42 U.S.C. 1437a and f; Section 322, Omnibus Reconciliation Act of 1981, Pub. L. 97-35; Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: March 29, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 82-12106 Filed 5-3-82; 8:45 am]

BILLING CODE 4210-27-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2601

Bylaws of the Pension Benefit Guaranty Corp.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This document provides notice to the public of an amendment to the bylaws of the Pension Benefit Guaranty Corporation altering procedures of PBGC's Board of Directors with regard to approval of regulations, voting procedures, and amendment or adoption of PBGC bylaws.

EFFECTIVE DATE: This amendment to the bylaws became effective on March 31, 1982.

FOR FURTHER INFORMATION CONTACT: Ms. Nina R. Hawes, Staff Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006, 202-254-3010.

SUPPLEMENTARY INFORMATION: The PBGC's Board of Directors has amended its bylaws (29 CFR Part 2601) to change the procedures relating to (1) the approval of proposed and final substantive regulations, (2) voting by the Board of Directors, and (3) amendment or adoption of bylaws.

Section 2601.3(b)(1) of the bylaws provided that the power to approve all proposed and final substantive regulations prior to publication in the **Federal Register** (with the exception of interest rate changes which was delegated to the Executive Director) was expressly reserved to the Board of Directors and shall not be delegated. This provision has been changed to provide that the power to approve final substantive regulations is reserved to the Board of Directors, but the authority to approve proposed substantive regulations is delegable by a Director within his Department to a level not below that of Assistant Secretary.

The Board of Directors has also adopted an alternative voting procedure. A new § 2601.8, entitled "Alternate voting procedure", provides that a Director shall be deemed to have participated in a meeting of the Board of Directors if he was represented by a designated individual at the meeting and if he ratifies in writing the actions taken by the designee within a reasonable period of time after the meeting. Section 2601.8(b) provides that the designated individual may not be at a level lower than Assistant Secretary within the Director's Department. Section 2601.8(c) provides that a Director's approval of the minutes of a meeting of Board of Directors shall constitute ratification of the actions of his designee at such meeting.

The section entitled "Amendments", formerly numbered § 2601.8, is redesignated § 2601.9. It has been changed to allow amendments to the bylaws or new bylaws to be adopted by approval of written resolutions effecting the change rather than at a meeting of the Board of Directors. That section previously provided that bylaws may be amended or adopted at a meeting of the Board of Directors.

Because the bylaws involve agency organization and procedure, notice and opportunity for public comment on this amendment is not required. The effective date of these bylaw changes is their date of adoption.

List of Subjects in 29 CFR Part 2601

Administrative practice and procedure, Organization and functions (Government agencies).

In consideration of the foregoing, Part 2601 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2601—BYLAWS OF THE PENSION BENEFIT GUARANTY CORPORATION

1. The authority citation for Part 2601 is amended to read as follows:

Authority: Sec. 4002(f), Pub. L. 93-406, 88 Stat. 1004 (1974), (29 U.S.C. 1302).

2. 29 CFR 2601.3 is amended by revising paragraph (b)(1) and adding a new paragraph (c) to read as follows:

§ 2601.3 Board of Directors.

* * * * *

(b) * * *

(1) Approval of all final substantive regulations prior to publication in the **Federal Register**, except for amendments to the regulation on Valuation of Plan Benefits establishing new interest rates and factors, which may be approved by the Executive Director.

* * * * *

(c) Proposed substantive regulations shall be approved by the Board of Directors prior to publication in the **Federal Register**. Directors may delegate their authority for such approval to an official within his Department at a level not below that of Assistant Secretary. Such delegation shall be in writing and shall be effective until withdrawn or until a date specified therein.

3. Section 2601.8 of 29 CFR Part 2601 is redesignated as § 2601.9 and is revised to read as follows:

§ 2601.9 Amendments.

These bylaws may be amended or new bylaws adopted by unanimous vote of the Board.

4. Section 2601.8 is added to 29 CFR Part 2601 to read as follows.

§ 2601.8 Alternate voting procedure.

(a) A Director shall be deemed to have participated in a meeting of the Board of Directors for all purposes if,

(1) That Director was represented at that meeting by an individual who was designated to act on his behalf, and

(2) That Director ratified in writing the actions taken by his designee at that meeting within a reasonable period of time after such meeting.

(b) For purposes of this section, a Director, including an individual serving as Acting Secretary, shall designate a representative at a level not below that of Assistant Secretary within his Department. Such designation shall be in writing and shall be effective until withdrawn or until a date specified therein.

(c) For purposes of this section, a Director's approval of the minutes of a meeting of the Board of Directors shall constitute ratification of the actions of his designee at such meeting.

Robert E. Nagle,

Executive Director, Pension Benefit Guaranty Corporation.

Issued pursuant to the direction of the Board of Directors authorizing the Executive Director to cause these amendments to the bylaws to be published in the **Federal Register**.

Henry Rose,

Secretary, Pension Benefit Guaranty Corporation.

[FR Doc. 82-12085 Filed 5-3-82; 8:45 am]

BILLING CODE 7708-01-M

VETERANS ADMINISTRATION

38 CFR Part 3

Allowance in Lieu of Government-Furnished Headstone or Marker

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: The Veterans Administration has increased the monetary allowance payable in lieu of a Government-furnished headstone or marker from $59 to $63. The need for this action resulted from the fact that the actual cost of a Government-furnished headstone or marker increased from $59 to $63. The effect of this action is to permit payment of up to $63 in lieu of a Government-furnished headstone or marker.

DATE: This change is effective October 1, 1981.

FOR FURTHER INFORMATION CONTACT: T. H. Spindle, Jr., 202-389-3005.

SUPPLEMENTARY INFORMATION: On pages 6290 and 6291 of the **Federal Register** of February 11, 1982, the Veterans Administration published a proposed amendment to 38 CFR 3.1612. Interested persons were given until March 15, 1982, to submit comments, suggestions, or objections to the proposed amendment of § 3.1612.

We received no comments, suggestions, or objections to the proposed amendment of § 3.1612. The amendment is adopted as proposed.

The Administrator hereby certifies that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that this regulation affects individual claimants only. Pursuant to 5 U.S.C. 605(b), this regulation is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Veterans Administration has determined in accordance with Executive Order 12291 that this regulation is nonmajor because it simply implements statutory requirements and would have little or no economic impact, in itself.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

(Catalog of Federal Domestic Assistance Program number is 64.101)

Approved: April 15, 1982.

Robert P. Nimmo,

Administrator.

PART 3—ADJUDICATION

In § 3.1612, paragraph (e)(2)(ii) is revised as follows:

§ 3.1612 Monetary allowance in lieu of a Government-furnished headstone or marker.

* * * * *

(e) *Payment and amount of the allowance.* * * *

(2) The amount of the allowance payable is the lesser of the following:

* * * * *

(ii) The average actual cost, as determined by the Veterans Administration, of headstones and markers furnished at Government expense for the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased or the services for adding the veteran's identifying information on an existing headstone or marker were purchased. The average actual cost of headstones and markers furnished at Government expense for fiscal year 1980 (October 1, 1979 through September 30, 1980) is $59 and $63 for fiscal year 1981 (October 1, 1980 through September 30, 1981).

* * * * *

[FR Doc. 82-12074 Filed 5-3-82; 8:45 am]

BILLING CODE 8320-01-M

POSTAL RATE COMMISSION

39 CFR Part 3000

[Docket No. RM82-1; Order No. 430]

Outside Employment and Disclosure of Financial Interests; Standards of Conduct

April 27, 1982.

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: The Postal Rate Commission is amending its rules governing outside employment and disclosure of financial interests. The outside employment rule changes allow employees who are covered by the Fair Labor Standards Act to (with certain limitations) engage in outside employment. Subject to the same limitations imposed on covered employees, employees exempt from the provisions of the Fair Labor Standards Act may engage in outside employment if the outside employment does not involve professional practice or activity. In addition, the Commission is amending its financial disclosure rules to bring these rules into conformity with the Commission's new pay system.

EFFECTIVE DATE: June 1, 1982.

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, Postal Rate Commission, Suite 500, 2000 L Street, N.W., Washington, D.C. 20268; Telephone (202) 254-3824.

SUPPLEMENTARY INFORMATION: The Postal Rate Commission, pursuant to Executive Order 11570 (35 FR 1813, November 28, 1970), and 5 U.S.C. 553, (Pub. L. 89-554, September 6, 1966, 80 Stat. 383) amends certain provisions of its Standards of Conduct which deal with outside employment and financial disclosure.

Outside employment amendments. Currently, 39 CFR 3000.735-307 provides that Commission employees with an annual rate of salary of $20,000 or more may not engage in any outside employment or professional practice, either on a paid or unpaid basis, other than teaching, lecturing or writing, or *pro bono publico* activities when rendered for a recognized organization, except in the certain circumstances. Furthermore, this section provides that, as a matter of general policy, outside or

private professional work or practice, other than for teaching, lecturing or writing, or *pro bono publico* representation or services, is discouraged and will be approved only in unusual circumstances.

In effect, these provisions preclude Commission employees earning $20,000 or more per year from engaging in outside employment or professional practice, other than teaching, writing, lecturing or *pro bono* representation, with no consideration of the adverse effect, if any, which such activities might have on either the mission of the Commission or the duties or responsibilities of the individual employee.

At the time the Commission selected $20,000 per year salary as the dividing point for distinguishing between those who would be generally allowed to engage in outside employment from those who would generally be prohibited from outside employment, $20,000 per year salary was roughly equivalent to the salary demarcation between professional or supervisory positions, and nonprofessional or nonsupervisory positions. Because of inflation this $20,000 salary level no longer reflects this distinction. The Commission believes it appropriate to restore the original intent of the Standards of Conduct vis-a-vis outside employment by linking the determination of whether one is generally able to engage in outside employment to the type of position fulfilled by the employee. Thus, Section 307(a) is being amended to limit the prohibition against outside employment to those employees exempt from the provisions of the Fair Labor Standards Act. As employees exempt from the Fair Labor Standards Act occupy professional and supervisory positions, this amendment conforms the Commission's Standards of Conduct with the Commission's original intent when it adopted the Standards of Conduct.

The Commission has also reexamined the outside employment provisions applicable to professional and supervisory employees. The primary reasons for the general prohibition against outside employment for employees occupying these positions are the Commission's concerns that such outside employment (1) may impair the employee's job performance, (2) may result in criticism of, or embarrassment to the Commission, or (3) may result in potential conflicts of interests. The Commission has concluded that the only type of outside employment which is prone to the above abuses is professional outside employment. Hence, the Commission has determined to limit the prohibition against outside employment for professional and supervisory personnel to professional outside employment.

As an adjunct to this relaxation of the Commission's Standards of Conduct vis-a-vis outside employment, the Commission believes it appropriate to emphasize the Commission's interest in preventing outside employment which may interfere with the performance of one's job or otherwise results in the use of one's position or the Commission's equipment and facilities in furtherance of outside employment or activity. To accomplish this objective (1) a new subsection (b) is being added to Section 307, and (2) subsection 307(c)(2) is being slightly modified.

The new subsection 307(b) indicates that outside employment "shall not be conducted on Commission time or with the use of Commission equipment and facilities or with the assistance of other Commission personnel." To insure that the breadth of the clause relating to assistance of other Commission personnel is not construed beyond situations where an employee directs or assigns another employee to assist with, or otherwise uses his official position to obtain assistance in an outside employment endeavor, subsection (b) also includes a statement that the prohibition against assistance of other Commission personnel does not apply to two or more employees independently engaging in a common outside employment or activity. Finally, subsection 307(c)(2) is being modified slightly to clarify the Commission's interest in prohibiting outside employment which interferes in the performance of Commission duties and responsibilities.

Financial disclosure amendments. Insofar as financial disclosure is concerned the Commission's existing rules are intended to be compatible with the Ethics in Government Act of 1978. Consistent with the Ethics in Government Act employees whose positions are classified at GS–16 or above are required to submit financial disclosure statements which are available to the public pursuant to section 402(i)(2) of the Commission's Standards of Conduct. Employees at GS 13–15 are required to submit identical financial disclosure statements but such statements are held in confidence.

Recently the Commission amended its pay policies effectively abolishing GS pay levels. Under the new pay systems, Executive Service Levels B and C are comparable to GS Levels 16 or above and EAS–25, 28, and Executive Service Level A are comparable to GS Levels 13–15.

In order to conform the Standards of Conduct to the new pay system, Executive Service Level B or above is being substituted for "GS–16 or above" in section 402. Also, EAS–25 through Executive Level A is replacing "GS–13 through GS–15." Certain other conforming changes are also incorporated as necessary.

Since the amendments herein involve matters of agency organization and procedure, the notice requirements of the Administrative Procedure Act (5 U.S.C. 553) do not apply.

List of Subjects in 39 CFR Part 3000

Conflict of interests.

PART 3000—STANDARDS OF CONDUCT

Accordingly, pursuant to 39 U.S.C. 3603, it is ordered that, effective June 1, 1982, 39 CFR Part 3000, Subparts C and D are hereby amended as follows:

1. In § 3000.735–307, paragraph (a) is revised, paragraphs (b) through (i) are redesignated as paragraphs (c) through (j), a new paragraph (b) is added and newly redesignated paragraph (d)(2) is revised to read as follows:

§ 3000.735–307 Outside employment and other activity.

(a) No employee who is exempt from the provisions of the Fair Labor Standards Act shall engage in any outside professional practice or professional activity, either on a paid or unpaid basis, other than:

(1) Teaching, lecturing or writing as provided in paragraph (e) of this section;

(2) Outside professional practice with or for a recognized organization which furnishes professional or services on a *pro bono publico* basis.

(b) An activity not prohibited by this rule, or an activity permitted by paragraph (a)(1) or (a)(2) of this section, shall not be conducted on Commission time or with the use of Commission equipment and facilities or with the assistance of other Commission personnel. The prohibition against assistance of other Commission personnel does not apply to two or more employees independently engaging in a common outside employment or activity.

* * * * *

(d) * * *

(2) Outside employment which tends to impair the employee's mental or physical capacity for, or which otherwise interferes with, performance of his or her Commission duties and

responsibilities in an acceptable manner.

§ 3000.735-309 [Amended]

2. In § 3000.735-309, paragraph (a), change "§ 3000.735-307(d)" to "§ 3000.735-307(e)".

§ 3000.735-401 [Amended]

3. In § 3000.735-401, change "§ 3000.375-307(f)" to "§ 3000.735-307(g)".

4. In § 3000.735-402, paragraphs (a)(3), (b)(2) and (3), (h), (i)(1) and the introductory text of paragraph (i)(2) are revised to read as follows:

§ 3000.735-402 Reporting employment and financial interests—regular employees

(a) * * *

(3) In the event of termination of employment, the terminated employee shall file a financial disclosure statement if the terminated employee was at Executive Service Level B or above, and has not in the interim accepted another position which requires a financial disclosure statement satisfying the disclosure requirements of section 202 of Pub. L. 95-521 (92 Stat. 1837). The financial disclosure statement for the terminated employee must be filed no later than the 30th day after termination, covering the preceding calendar year if the annual May 15 report has not been filed, and the portion of the present calendar year up to the date of termination.

* * * * *

(b)(2) An employee whose basic rate of pay is equivalent to or greater than EAS-25 adjusted pursuant to 39 U.S.C. 3604.

(3) A special employee whose basic rate of pay is equivalent to or greater than EAS-25 as adjusted under 39 U.S.C. 3604 who is reasonably expected to perform the duties of his office or position for more than sixty days in a calendar year.

* * * * *

(h) An employee who believes that his position has been improperly included as one requiring the submission of a statement is entitled to obtain a review of his complaint under the Commission's grievance procedure.

(i)(1) The designated agency official shall hold each financial disclosure statement of each employee who is paid basic compensation at a rate equivalent to or greater than EAS-25 through Executive Level A in confidence. The designated agency official is responsible for maintaining the financial disclosure statements in confidence and shall not allow access to, or allow information to be disclosed from a statement except to carry out the purpose of this subpart. The designated agency official may not disclose information from a statement outside the Commission except as the Chairman of the Commission may determine for good cause shown.

(2) The Commission shall make each financial disclosure statement of each employee, including Commissioners, paid basic compensation at a rate equivalent to or greater than Executive Service Level B available to the public in accordance with the provisions of paragraphs (i)(2)(i) and (i)(2)(ii) of this section, together with a copy of the official position description of the Government office or position held by the reporting individual involved (if available) which shall be added to such report by such individuals' designated agency official.

* * * * *

By the Commission.

David F. Harris,

Secretary.

[FR Doc. 82-12069 Filed 5-3-82; 8:45 am]

BILLING CODE 7715-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2115-4]

Approval and Promulgation Plans; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting an error in the codification of its final Rulemaking Action for the Detroit Edison Company, Boulevard Heating Plant in Wayne County, Michigan, published January 27, 1982 (47 FR 3765). This action merely corrects that error, and in no way affects EPA's final approval rulemaking action.

EFFECTIVE DATE: This correction notice becomes effective June 3, 1982.

FOR FURTHER INFORMATION CONTACT: Ms. Toni Lesser, Regulatory Analysis Section, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6037.

SUPPLEMENTARY INFORMATION: On May 1, 1981, the State of Michigan submitted Consent Order 07-1981 for the Detroit Edison Company, Boulevard Heating Plant as a revision to the Michigan State Implementation Plan (SIP). On October 26, 1981, EPA proposed to approve Consent Order 07-1981 (46 FR 52140) and on January 27, 1982, EPA approved Consent Order 07-1981 (47 FR 3765) for the Boulevard Heating Plant.

However, the January 27, 1982 (47 FR 3765) final rulemaking codification was in error. The codification incorrectly included the Boulevard Heating Plant in the tables found in § 52.1175(e). The table does not apply to this SIP revision and is therefore eliminated from the codification which is revised as follows:

The amendment to Subpart X of 40 CFR Part 52, Docket A-5-FRL-2024-7, which begins on page 3765 of the **Federal Register** for January 27, 1982, is corrected to read as follows:

Subpart X—Michigan

1. Section 52.1170 is amended by adding paragraph (c)(48) as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

* * * * *

(48) On May 1, 1981, the State of Michigan, through the Department of Natural Resources, submitted Consent Order 07-1981 for the Detroit Edison Company, Boulevard Heating Plant located in the City of Detroit, Wayne County. Under Michigan Rule 336.1331(1)(a), the plant was restricted to a particulate emission limit of 0.45 pounds of particulate per 1000 pounds flue gas or an equivalent of 410 tons per year. The Consent Order, pursuant to Michigan Rule 333.1331(1)(d), establishes a new limitation for the Boulevard Plant of 0.65 pounds per 1000 pounds of flue gas with a daily limit of 0.9 tons per day and 10 tons per year.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator certified on January 27, 1981 (46 FR 8709) that the attached rule will not have a significant economic impact on a substantial number of small entities.

(Sec. 110 of the Clean Air Act)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: April 23, 1982.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 82-11823 Filed 5-3-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[Docket No. AH036VA; A-3-FRL-2084-3]

Approval and Promulgation of Implementation Plans Approval of Revision of the Commonwealth of Virginia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The EPA announces the Administrator's approval of an amendment to the Commonwealth of Virginia's State Implementation Plan (SIP). On August 18, 1981, Virginia submitted a revision to the Virginia SIP, consisting of the relocation and modification of the new source review provisions for major stationary sources locating in nonattainment areas. This revision was necessary to meet recent EPA requirements for review of new sources.

EFFECTIVE DATE: June 3, 1982.

ADDRESSES: Copies of the SIP revision and the accompanying support documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs and Energy Branch, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, Atten: Patricia Sheridan;

Virginia State Air Pollution Control Board, Room 801, Ninth Street Office Building, Richmond, Virginia 23219, Atten: Mr. John M. Daniel, Jr.;

Public Information Reference Unit, EPA Library, Room 2922, U.S. Environmental Protection Agency, 401 "M" Street, SW., Washington, D.C. 20460;

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20480.

FOR FURTHER INFORMATION CONTACT: Ms. Carol D. Peters at the Region III address stated above or call 215/597-9139.

SUPPLEMENTARY INFORMATION: On August 18, 1981 the Commonwealth of Virginia submitted a revision to the Virginia State Implementation Plan (SIP). This revision consists of the relocation and modification of the new source review provisions for major stationary sources locating in nonattainment areas. The provisions are being relocated from Part II, (General Provisions) to Part VIII (Permits-Major Stationary Sources and Major Modification, Prevention of Significant Deterioration Areas or Nonattainment Areas). Amendments, as necessary to facilitate the above relocation, are also included for the following:

(1) Part I (Definitions).

(2) Part IV, Rule EX-4 (Emission Standards for Particulate Emissions from Manufacturing Operations).

(3) Part V (Special Provisions).

(4) Appendix L (Prevention of Significant Deterioration Areas).

The revision is intended to meet the newly promulgated requirements of 40 CFR 51.18(j).

The proposed rulemaking notice (46 FR 63082, December 30, 1981) gives a detailed description of the changes being finalized in today's notice. The notice also invited the public to comment on the revision. No public comments were received.

EPA Evaluation: The changes to Parts I, II, IV, V, and VIII have been reviewed by EPA and are acceptable.

The definitions that are added or modified in Section 1.02 relate to the general provisions of the regulations and are approved. The relocation of several of the definitions from this section to Section 8.02 is acceptable as they relate specifically to that section of the regulations.

The changes to Part II (General Provisions), and Part IV, Rule EX-4 (Emission Standards for Particulate Emissions from Manufacturing Operations) are a result of the relocation of the permitting provisions for major stationary sources and major modifications locating in nonattainment areas. As there are now similar provisions in Section 8.02, these changes are being approved.

Until the present action, EPA had considered Part V as having been submitted for informational purposes only. The Commonwealth has asked EPA to include Part V in the SIP because of recent additions to this Part. Part V was first submitted August 14, 1975. Amendments to Part V were submitted October 20, 1976, September 20, 1978, September 6, 1979, September 21, 1979 and August 18, 1981.

EPA is now approving the following sections of Part V, as submitted on the dates specified in parenthesis.

(1) 5.01 (8/14/75), Applicability.

(2) 5.02, Compliance, (a) (9/20/78), (b)-(d) (10/20/76), and (e) (9/20/78).

(3) 5.03 (10/20/76), Performance Testing.

(4) 5.04, Monitoring, (a) (9/20/78), (b)-(d) (10/20/76), (e) (9/20/78), and (f) (10/20/76).

(5) 5.05 (10/20/76), Notification, Records and Reporting.

(6) 5.10 (9/20/78), Applicability and Designation of Affected Facility.

(7) 5.12 (9/21/79), Standard for Visible Emissions.

(8) 5.13 (8/14/75), Standard for Fugitive Dust/Emissions.

(9) 5.14 (9/20/78), Monitoring.

(10) 5.15 (9/20/78), Test Methods and Procedures.

(11) 5.16 (9/20/78), Waivers.

(12) 5.17 (8/14/75), Traffic Hazard.

(13) 5.40 (9/6/79), Applicability and Designation of Affected Facility.

(14) 5.42 (8/18/81), Standard for Stationary Sources.

(15) 5.43 (8/18/81), Standard for Major Stationary Sources (Nonattainment Areas).

(16) 5.44 (8/18/81), Standard for Major Stationary Sources (Prevention of Significant Deterioration Areas).

(17) 5.45 (9/6/79), Compliance with other Standards.

EPA will not act on any of the following sections of Part V for the reasons specified below for each.

(1) Rule NS-2. (Standards of Performance for Odorous Emissions). EPA does not regulate odorous emissions.

(2) Rule NS-3. (Environmental Protection Agency Standards of Performance for New Stationary Sources). EPA delegated the authority for the Standards of Performance for New Stationary Sources (NSPS) to the Commonwealth of Virginia on December 30, 1975 and was announced in the **Federal Register** on February 26, 1976 (41 FR 8346).

(3) Section 5.02(f) (Stack Heights). This section differs from Section 123 of the Clean Air Act in that the Act relates to the *setting* of an emission limit while the Commonwealth's regulations deal with *compliance* with the emission limit. Any stack height, not just that in excess of good engineering practices, can have no effect on compliance with an emission standard. The Commonwealth has agreed to revise this section and therefore, EPA will take no further action until the revised SIP is submitted.

Part VIII, Section 8.02 is a new section and has been found to meet the newly promulgated requirements of 40 CFR 51.18(j). Therefore, EPA is approving this section.

Appendix L specifies which areas are subject to the Prevention of Significant Deterioration (PSD) regulations for each criteria pollutant. Appendix L is approved.

Conclusion

The Administrator's decision to approve the proposed revisions was based on a determination that the amendments meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for

Preparation, Adoption and submittal of State Implementation Plans.

As a result of EPA's decision to approve this revision to the Virginia Implementation Plan, 40 CFR 52.2420 (Identification of Plan) is being revised as shown below. Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not judged to be major since it merely approves actions taken by the State and does not establish any new requirements.

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

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days of today). This action may not be challenged later in proceedings to enforce its requirements. (See Sec. 307(b)(2).)

(42 U.S.C. 7401–7642)

List of Subjects in 40 CFR Part 52

Air Pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

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

Dated: April 26, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart VV—Virginia

1. Section 52.2420 is amended by adding paragraphs (c) (64) thru (69) as follows:

§ 52.2420 Identification plan.

* * * * *

(c) * * *

(64) Amendments to Part V, §§ 5.01, 5.13, and 5.17 as submitted on August 14, 1975 by the Secretary of Commerce and Resources.

(65) Amendments to Part V, §§ 5.02 (b)–(d), 5.03, 5.04 (b)–(d) and (f), and 5.05 as submitted on October 20, 1976 by the Secretary of Commerce and Resources.

(66) Amendments to Part V, §§ 5.02 (a) and (e), 5.04 (a) and (e), 5.10, 5.14, 5.15, and 5.16 as submitted September 20, 1978 by the Secretary of Commerce and Resources.

(67) Amendments to Part V, §§ 5.40 and 5.45 as submitted on September 6, 1979 by the Secretary of Commerce and Resources.

(68) Amendment to Part V, § 5.12 as submitted on September 21, 1979 by the Secretary of Commerce and Resources.

(69) Amendments to Part I, § 1.02, Part II, §§ 2.31, 2.33 (a)–(e), (g), (k), and (m), Part IV, Rule Ex–4, § 4.41(b)(4), Part V, Rule NS–4, §§ 5.42, 5.43, and 5.44, Part VIII, § 8.02 and Appendix L as submitted August 18, 1981 by the Secretary of Commerce and Resources.

[FR Doc. 82–12045 Filed 5–3–82; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–6–FRL–2098–7]

Approval and Promulgation of Revisions to the Arkansas State Implementation Plan Regarding Intergovernmental Consultation, Interstate Pollution Abatement, and Composition of the Arkansas Commission on Pollution Control and Ecology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The purpose of this notice is to approve various minor revisions to the Arkansas State Implementation Plan (SIP) that were submitted by the Arkansas Department of Pollution Control and Ecology (ADPCE) on January 9, 1980, in fulfillment of the Federal Clean Air Act Amendments of 1977. The Environmental Protection Agency (EPA) conditionally approved plan revisions on January 29, 1980, that were submitted to meet the requirements of Part D (Plan Requirements for Nonattainment Areas) of the Act. The revisions being acted on today are specific new non Part D requirements and relate to intergovernmental consultation, interstate pollution abatement and composition of the Arkansas Commission on Pollution Control and Ecology to insure protection of the public interest in air quality planning and implementation. In reviewing the State's submittal, EPA assessed the ability of the revisions to meet the new requirements of the 1977 amendments.

EFFECTIVE DATE: This action will be effective on July 6, 1982, unless notice is received by 30 days from date of publication that someone wishes to submit adverse or critical comments.

ADDRESSES: A copy of the State's submittals and incorporation by reference materials are available for review during normal business hours at the following locations:

Environmental Protection Agency, Air Branch, Region 6, 1201 Elm Street, Dallas, Texas 75270

Environmental Protection Agency, Public Information Reference Unit (PM–213), EPA Library, 401 M Street, SW., Washington, D.C. 20460

The Office of the Federal Register, 1100 L Street, NE, Room 8401, Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: John R. Hepola, Chief, State Programs Section, Air Branch, Air and Waste Management Division, EPA Region 6, 1201 Elm Street, Dallas, Texas 75270. Phone: (214) 767–2742.

SUPPLEMENTARY INFORMATION: On January 9, 1980, the Arkansas Department of Pollution Control and Ecology (ADPCE) submitted minor revisions to the Arkansas SIP in fulfillment of the Federal Clean Air Act Amendments of 1977. These revisions relate to new non Part D requirements for intergovernmental consultation, interstate pollution abatement, and composition of the Arkansas Commission on Pollution Control and Ecology. EPA has reviewed the State's submittals and developed an Evaluation Report [1] which describes the new 1977 requirements and evaluates the State's efforts to satisfy those requirements. This evaluation report is available for review during normal business hours at the addresses listed above.

The Arkansas Department of Pollution Control and Ecology (ADPCE) has revised the Arkansas State Implementation Plan to include the following non Part D requirements:

• *Intergovernmental Consultation.* Section 121 of the Clean Air Act requires intergovernmental consultation and coordination among State and local officials in the achievement of national air quality planning and management. As the lead agency responsible for statewide air pollution control and abatement, the ADPCE has developed and implemented a formal State process for consultation and planning with relevant local governmental organizations having responsibility for any SIP revision process. The ADPCE has entered into a formal agreement of understanding with a designated metropolitan planning organization and the Arkansas State Highway and

[1] Evaluation Report for Revisions to the Arkansas State Implementation Plan as Required by the 1977 Clean Air Act Amendments. March 1982.

Transportation Department for transportation related air quality planning in a certain area of the State.

• *Interstate Pollution Abatement.* Section 126(a)(1) requires each major proposed *new* or modified source to provide written notice to all States in which the air pollution level will be adversely affected by such source. Section 126(a)(2) requires the State to identify all major *existing* stationary sources which may adversely affect the air pollution level in neighboring States, and to provide the identity of these sources to all affected States. The Arkansas agency has agreed to conduct the *new* source notification required by section 126(a)(1) in a letter of commitment dated March 31, 1982, from the Director of the ADPCE to EPA. Arkansas determined that there are no major *existing* sources in the State which adversely affect the air pollution level in neighboring States. In a letter dated November 30, 1977, from the Director of the ADPCE to EPA and neighboring States, the ADPCE did identify all sources having the potential to emit more than 100 tons/year uncontrolled.

• *State Boards.* Section 128(a)(1) requires that any board or body which approves permits or enforcement orders must contain a majority of members who represent the public interest, and do not derive any significant portion of their income from persons or businesses subject to the board or body's permits or enforcement orders. Section 128(a)(2) requires that the members of such board or body adequately disclose any potential conflicts of interest. Section 82-1903 of the Arkansas Water and Air Pollution Control Act requires that the members of the Arkansas Commission on Pollution Control and Ecology (ACPCE) be composed of members designated by and from other State agencies, as well as members from the public. Sections 3 and 4 of the Arkansas Code of Ethics Law prohibit any State official from: securing special privileges by use or reason of his office, accepting employment or engaging in any activity which would reasonably require or induce him to disclose confidential information, or using confidential information for personal gain or benefit. Sections 5 and 6 of the Code of Ethics require the members of the ACPCE and the Director of the ADPCE to file an annual financial disclosure statement. By incorporation of these requirements into the Arkansas SIP, it is the State's intent and desire that the interests of the public be adequately protected.

The revisions included in this approval notice are considered minor in nature and noncontroversial. EPA is approving them without prior proposal. This action will be effective 60 days from the date of the **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of the date of this notice. This action may not be challenged later in the proceedings to enforce its requirements. (Sec. 307(b)(2).)

Under 5 U.S.C. Section 605(b), I certify that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Incorporation by reference of the State Implementation Plan for the State of Arkansas was approved by the Director of the **Federal Register** on July 1, 1981. This notice of final rulemaking is issued under the authority of section 110 of the Clean Air Act, as amended, 42 U.S.C. 7410.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen oxides, Lead, Particulate matter, Carbon monoxide, and Hydrocarbons.

Dated: April 22, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart E—Arkansas

1. Section 52.170 is amended by adding paragraph (c)(18) as follows:

§ 52.170 Identification of plan.

* * * * *

(c) * * *

(18) Revisions to the plan for intergovernmental consultation, interstate pollution abatement, and composition of the Arkansas Commission on Pollution Control and Ecology were submitted to EPA by the Arkansas Department of Pollution Control and Ecology on January 9, 1980.

[FR Doc. 82-12075 Filed 5-3-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-6-FRL-2102-7]

State of New Mexico: Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document redesignates New Mexico's Bernalillo County from nonattainment to attainment with respect to ozone. This action is necessary because EPA has promulgated a revised standard for ozone.

EFFECTIVE DATE: This action will be effective on July 6, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESS: Written comments should be addressed to Estela Wackerbarth of the EPA Region 6 Air Branch (address below). Environmental Protection Agency, 1201 Elm Street—28th Floor, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Estela Wackerbarth, Chief, Implementation Plan Section, Air and Waste Management Division, Environmental Protection Agency, Region 6, Dallas, Texas 75270, (214) 767-1518.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978 at 43 FR 9016, the Administrator promulgated attainment status designations for the State of New Mexico for ozone and other pollutants. The designations were effective immediately and public comment was solicited. On September 11, 1978 at 43 FR 40412 in response to comments received, the Administrator revised and amended certain of the original designations. Bernalillo County was designated as a nonattainment area for ozone in the March 3, 1978, rulemaking. This designation remained unchanged in the September 11, 1978, rulemaking. On February 8, 1979, EPA promulgated a revised ozone standard from 0.08 parts per million (ppm) to 0.12 ppm. Based upon this revised standard EPA is amending the list in accordance with the

provisions of section 107(d)(5) of the Clean Air Act. EPA is redesignating Bernalillo County from nonattainment to attainment for ozone.

Redesignation of Bernalillo County

In Air Quality Control Region (ACQR) 152, the Bernalillo County area is designated as nonattainment for the primary ozone standard (43 FR 9016, March 3, 1978). The Bernalillo County area redesignation from nonattainment to attainment is based upon EPA's revision of the ozone standard from 0.08 ppm to 0.12 ppm and EPA's review [1] of supporting data collected during the years 1979, 1980 and 1981 which indicate that the average annual exceedances is less than one, thus meeting EPA's criteria for attainment. Therefore, EPA is redesignating the Bernalillo County area from nonattainment to attainment.

The public should be advised that this action will be effective 60 days from the date of this notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice published before the effective date. The subsequent notice will withdraw the final action and will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 1982. This action may not be challenged later in proceedings to enforce its requirements. [See sec. 307(b)(2).]

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

This notice of final rulemaking is issued under the authority of section 107(d) of the Clean Air Act, as amended. (42 U.S.C. 7407(d))

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

[1] EPA Evaluation Report, Bernalillo County-Ozone redesignation dated March 1982. This report is available for public inspection at the Region VI Office of EPA in Dallas, Texas.

Dated: April 22, 1982.

Anne M. Gorsuch,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Subpart C of Part 81 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

1. In § 81.332—New Mexico, the attainment status designation table for ozone (O_x) is amended by revising the designation for portion of Bernalillo County from "does not meet primary standards" to "cannot be classified or better than national standards." The amended portion of the New Mexico—O_x Table for § 81.332 reads as set forth below.

§ 81.332 New Mexico.

* * * * *

NEW MEXICO—O_x

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
* * * * *		
AQCR 152		1x.
* * * * *		

[FR Doc. 82-12046 Filed 5-3-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[A-1-FRL-2090-1]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Redesignations: Maine

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving the redesignation of the municipality of Lincoln, Maine from attainment to nonattainment with respect to the total suspended particulates (TSP) ambient air quality standards. This action, which is being taken at the request of the State of Maine and under the provisions of the Clean Air Act, is based on monitoring data showing exceedances of the secondary standard for air quality.

DATE: This action will be effective on June 3, 1982, unless notice is received on or before 30 days after publication, that someone intends to submit adverse or critical comments.

ADDRESSES: Copies of the state submittal are available for public inspection during normal business hours at the U.S. Environmental Protection Agency, Region I, Air Branch, Room 1903, JFK Federal Building, Boston, Massachusetts 02203; U.S. Environmental Protection Agency Public Information Reference Unit, Room 2922, 401 M Street S.W., Washington, DC 20460; and the Maine Department of Environmental Protection, Bureau of Air Quality Control, State House Station 17, Augusta, Maine 04333.

Written comments should be addressed to Harley F. Laing, Chief, Air Branch, U.S. Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203.

FOR FURTHER INFORMATION CONTACT: John Courcier, Air Branch, EPA Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-4448.

SUPPLEMENTARY INFORMATION: Section 107(d) of the Clean Air Act requires all areas of the nation to be designated as attaining the National Ambient Air Quality Standards (NAAQS); as not attaining the NAAQS; or as being unclassifiable with respect to their attainment status for each pollutant for which there is a NAAQS. Attainment/nonattainment designations are recommended by the state and approved or revised as necessary by EPA. The purpose of making these designations is to determine which areas within the state require additional air pollution control measures to ensure attainment of the appropriate NAAQS.

Original designations for the state of Maine were published in the March 3, 1982 **Federal Register** (43 FR 8962) and were codified in the Code of Federal Regulations at 40 CFR 81.320. At that time Lincoln, as a part of AQCR 109, was designated attainment for TSP.

The state's request for redesignation for Lincoln from attainment to nonattainment for TSP is based on monitoring data showing seventy-six exceedances of the 24 hour secondary standard.

Of these seventy-six exceedances, there were ten exceedances of the 24 hour primary standard. These exceedances reflect data which was collected through July 1981. The DEP has requested redesignation to nonattainment for the area within the corporate boundaries of Lincoln. A full description of the proposed TSP nonattainment area is contained in the state submittal of September 22, 1981 which is available for public inspection at the addresses given in this notice.

Since this action affects only the designated air quality status of a limited geographical area, this rulemaking is considered noncontroversial. Based on

past experience with similar actions in Region I, no adverse or critical comments are expected. Therefore, this action is being published as a final rulemaking. EPA believes that publishing a notice of proposed rulemaking is unnecessary.

However, if notice is received within 30 days of the date of publication of this **Federal Register** notice that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective 60 days from the date of publication of this **Federal Register** notice.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Lists of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: April 22, 1982.

Anne M. Gorsuch,

Administrator.

PART 81—DESIGNATION OF AIR QUALITY CONTROL REGIONS

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. In § 81.320 the attainment status designation table for TSP is revised to read as follows:

§ 81.320 Maine.

MAINE-TSP

Designated areas	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
AQCR 109—Bangor & Brewer	X			
Lincoln	X			
Old Town			X	
Baileyville		X		
Rest of Region				X

[FR Doc. 82-12044 Filed 5-3-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

[Docket No. FEMA-FIA]

National Flood Insurance Program Coverage, Sales and Loss Prevention Provisions

AGENCY: Federal Insurance Administration (FIA), FEMA.

ACTION: Final rule.

SUMMARY: This rule revises the National Flood Insurance Program (NFIP) regulations dealing with flood insurance coverage and the Standard Flood Insurance Policy (SFIP) terms and provisions. The purpose of the amendment is to revise the Program regulations to reflect improvements in the Flood Insurance Manual used by private sector property insurance agents and brokers in producing flood insurance business, coverage changes in the contract of flood insurance, and advances in flood hazard mitigation engendered by the President's Executive Order 11988 and FEMA's implementing regulations, at 44 CFR Part 9. In the case of the SFIP, Dwelling Form, the amendment will also result in a more readable flood insurance contract, consistent with private sector personal insurance lines practices. Where appropriate, the SFIP General Property Form has been amended, consistent with the changes in the Dwelling Form.

DATE: This rule will be effective June 1, 1982, so as to be effective at the same time as the new NFIP Insurance Manual and Rate Revision. It is imperative that these matters be placed into effect on the same day.

FOR FURTHER INFORMATION CONTACT: Donald L. Collins, Federal Emergency Management Agency, Federal Insurance Administration, Room 429, 500 "C" Street, SW., Washington, D.C. 20472, Telephone Number (202) 287-0740.

SUPPLEMENTARY INFORMATION: On December 30, 1981, FEMA published for comment in the **Federal Register** (Vol. 46, Page 63085) a proposed rule containing revisions to the SFIP which were intended to support the major FEMA goals of, in the near term, attaining greater administrative effectiveness in the operation of the NFIP and, for the longer term, an enhanced level of fiscal self-sufficiency in terms of reductions in the cost of the Program. Thus, both risk management and cost containment are being achieved through the addition of coverage restrictions aimed at reducing flood losses and loss payments. At the same time, these changes will assist materially in the realization of the Agency's hazard mitigation goals. Concurrent with these changes, FEMA has taken the opportunity to rewrite the Dwelling Form flood insurance contract in a more readable format, eschewing excessive legalese, where possible, in favor of colloquial language more readily understandable to the lay person.

As proposed, the rule would have amended the insurance contract and related rules as follows:

1. In the Insuring Agreement and Definitions section of the SFIP, at Part 61, Appendix A; the policy would respond only to direct physical loss by flood to the insured property.

2. In providing contents coverage for personal property, the $500 limitation of coverage for works of art, gems, precious metals, jewelry and the like would be reduced to $250. Such items are easily transported away from flood waters.

3. Buildings located seaward of mean high tide, or in, on or partially over water would not be covered.

4. Personal property pollutants would not be covered unless stored at safe elevations.

5. Mobile homes in special flood hazard areas would not be covered unless anchored to resist flotation or lateral movement.

6. In coastal high hazard areas, obstructions below the building's lowest floor, including solid walls, "breakaway" walls, personal property and equipment would not be covered.

7. The deductible would be raised to $500.00 for both building and contents losses and a $3,000.00 deductible would be made available as to property in V-Zones, at a commensurate reduction in premium.

8. Definitive provisions regarding policy renewal, cancellation and voidance of the contract of insurance would be added to the policy.

9. Machinery or equipment servicing the insured building below the lowest floor used for rating purposes or not contained within the foundation walls of the insured building would not be covered.

10. A mobile home (and its contents) located within a FEMA designated coastal high hazard area (Zones V1–V30 on a FEMA Flood Insurance Rate Map) which is not located in a mobile home park or subdivision in existence prior to April 1, 1982, would not be covered.

11. Replacement cost coverage would be made available only as to a single family dwelling, which is the principal residence of the insured and which is not a mobile home.

In the proposed rule, FEMA also indicated it was considering alternative approaches to the provisions on cancellation or voidance in situations when less than the full premium is paid at the time of the application or renewal. The alternatives included adjustment of the amount of insurance provided or adjustment of the premium as a condition of continued coverage. Comments on these or other possible alternatives were invited. A substantial number of comments were received during the comment period and, in view of the importance of this first major revision to the Standard Flood Insurance Policy , the docket was kept open and comments were reviewed through the period in which this final rule has been drafted so as to enable FIA to benefit from comments to the latest possible date. The Federal Insurance Administration also utilized this period of time to discuss aspects of the proposed rule with representatives of various organizations interested in the rulemaking. Thus, discussions were had with members of the public, representatives of the mobile home, banking, manufactured housing and insurance industries and with community officials and representatives.

The comments received (fourteen) are, variously, supportive, divided on some issues and, in criticism, constructive. In all, the comments are informative and provide rationale for many of the results reached in this final rule.

While some organizations expressed concern about the proposed anchoring or "tie-down" requirements for mobile homes as a condition for flood insurance coverage and unavailability in coastal high hazard areas of flood insurance in the case of mobile homes not located in existing mobile home parks or subdivisions, others urged that the anchoring requirements were helpful and, even, that new flood insurance should not be made available in any special flood hazard area, including coastal high hazard areas. The final rule provides, it is hoped, a reasonable solution: The tie-down requirements need only be in conformity with the local community's flood plain management measures and apply to mobile homes located in special flood hazard areas on and after October 1, 1982. Also under the final rule, flood insurance coverage for mobile homes may only be made available, in coastal high hazard areas, for the insuring of mobile homes located in mobile home parks which are in existence on June 1, 1982. The necessity for this latter rule is dictated by FEMA's flood plain management regulations, at 44 CFR 60.3(e)(7) which "Prohibit the placement of mobile homes, except in existing mobile home parks and mobile home subdivisions, within Zones V1–30 on the community's FIRM." In recognition of the special properties of certain manufactured homes and in order that these may be discerned from "mobile homes" for purposes of the rulemaking, the Standard Flood Insurance Policy has been amended by an appropriate definition (See, "Double-wide Mobile Home", at Article II of the policy).

Regarding the provision of replacement cost coverage, which is to be made available only as to a single family residential dwelling (not a mobile home) utilized as the policyholder's principal residence, concern was expressed regarding the denial of this coverage as to mobile homes and secondary homes. The marked propensity of mobile homes to depreciate rapidly makes economically impractical the insuring of these units on other than an actual cash value basis. This is consistent with private sector practices, as is the provision of replacement cost coverage to homeowner risks and not to other, including commercial, risks. Thus, the final rule provides actual cash value coverage for the secondary or vacation home. These buildings are, typically, in coastal or riverine areas, are susceptible to severe and repeated flooding, are not occupied much of the time and are, when occupied, often used in a commercial manner as rental vacation property. The financial exposure does not warrant extension of the more liberal replacement cost coverage in these cases. This determination in spirit, it is believed, follows the direction of the NFIP's Senate and House Committee Conferees, who cautioned FIA, in speaking to NFIP's legislative authority to make low interest loans to restore flood damage buildings, "to give priority to property which is the principal residence of the owner" (see the Report on Pub L. 97–35, the Omnibus Budget Reconciliation Act of 1981).

With respect to the provision of "actual cash value" as the basis for claims adjustment, the concern was expressed that the definition, as proposed, could result in depreciation being unfairly factored into the adjustment process twice. The point is well made and the definition has been clarified to remove the possibility of "double depreciation" being applied in the valuation of insured property.

Some lending institutions and a national banking association provided relevant comments, which were addressed in the final rule. Chief among the concerns of the banking community was the proposed rule which called for the voidance of the coverage, from the inception of the policy, as to both the policyholder and the mortgagee in cases where insufficient premium is received and the error in rating the policy is apparent on the face of the flood insurance application, renewal or other form. This result is thought to be unfair in cases where the rating error was unintentional, or inadvertent, or resulted from a simple miscalculation. The lenders agreed, however, that voidance would be appropriate in cases of willful misconduct. FEMA is persuaded that this is the correct view and has adjusted the final rule accordingly. Thus, the final rule provides, in cases where insufficient premium is received, that:

1. The policy is void ab initio where the rating error was fraudulently or willfully made;

2. a rating error innocently made and whether apparent or not on the face of the form will:

a. if discovered by the NFIP prior to a loss, result only in such limits of coverage as may be purchased with the insufficient premium, unless the insured increases the limits by endorsement and submits the correct premium payment prior to loss;

b. if discovered by the NFIP at the time of the loss, result only in such limits of coverage as may be purchased with the insufficient premium, unless the insured requests reformation of the contract up to the limits of coverage originally requested and tenders the correct premium payment to the NFIP.

Of related concern to the banking community is the perception that lending institutions would not receive notice of policy lapse in cases where the policy was not renewed for a new term by timely submission to the NFIP of a renewal form with the correct premium. The concern apparently arises out of the legal maxim that an insurer is under no obligation to send a notice of policy renewal unless required by statute, or contract obligation, or a long established custom and course of dealing with the insured, upon which the insured relies to his or her detriment. In this matter, lenders' apprehensions are groundless inasmuch as, under the terms of the Standard Flood Insurance Policy, FEMA has obligated itself contractually to provide the mortgagee named in the policy with a continuation of flood

insurance coverage, for the mortgagee's benefit, for 30 days after written notice to the mortgagee of the policy's termination without renewal. This notice is intended to give the mortgagee the opportunity to continue the coverage in force. If, for some reason, no notice is sent to the mortgagee, coverage will continue to be in effect as to the mortgagee. Similarly, mortgagees will receive notifications of policies placed in effect with reduced coverage because of insufficient premium having been received by the NFIP in respect to the limits of coverage requested.

A lending institution also expressed concern that the revised mortgagee clause might provide lenders with less protection than is afforded under the present policy language in that insureds would be given the opportunity to apply claims settlement proceeds to removal of damaged property, or repair of damaged property without retiring loan indebtedness. However, this result would not be possible so long as the mortgagee is named on the policy, in which case the mortgagee would be included on the claims draft as a payee and any rights enuring to the mortgagee by reason of the mortgage instrument could then be enforced by the mortgagee. The final rule also retains the present mortgagee clause.

The provisions of the proposed rule which would preclude coverage for buildings located seaward of mean high tide or in, or partially over, water also drew criticism in that there was not provided a "grandfather clause for these provisions whether by date of construction or by previous insurance coverage under the Program." Those objecting to this portion of the proposed rule felt that it failed to recognize the adverse economic impact the rule would have "in already, developed seaport cities and riverfront communities." The point is not without merit and the final rule has been amended to preclude new flood insurance only as to buildings newly constructed or substantially improved after October 1, 1982, which are located entirely in or on water or seaward of mean high tide. After October 1, 1982, insurance requests for new buildings constructed partially over water must be submitted to the NFIP for an underwriting decision and rating, in view of their serious potential for sustaining flood damage.

Lastly, a similar objection was made in the case of the proposed exclusion of coverage of "machinery or equipment not contained within the foundation walls of the described building or below the lowest floor used for rating the building." Here, too, the final rule has been amended to provide an October 1, 1982, effective date for this coverage limitation, which will apply to existing machinery or equipment located outside of coastal high hazard areas.

In the body of Part 61, appropriate changes to the rules have been made to conform them to the revisions of the Standard Flood Insurance Policy.

FEMA has determined based upon an Environmental Assessment that this rule does not have significant impact upon the quality of the human environment. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 "C" Street, SW., Washington, D.C. 20472.

These regulations do not have a significant economic impact on a substantial number of small entities and have not undergone regulatory flexibility analysis.

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

List of Subjects in 44 CFR Part 61

Flood insurance.

PART 61—INSURANCE COVERAGE AND RATES

Accordingly, Subchapter B of Chapter I of Title 44 is amended at Part 61 as follows:

1. Section 61.5(d) is revised to read as follows:

§ 61.5 Special terms and conditions.

* * * * *

(d) Each loss sustained by the insured is subject to a deductible provision under which the insured bears a portion of the loss before payment is made under the policy. The amount of the deductible for each loss occurrence is (1) for structural (i.e., insured building) losses, $500.00; and (2) for contents (i.e., insured personal property) losses, $500.00. (At the policyholder's option, when purchasing a flood insurance policy covering property located in a coastal high hazard area the amount of the deductible for each loss occurrence may be $3,000.00. The loss deductible shall apply separately to each building loss and contents (personal property) loss including, as to each, debris removal); and (3) for the reasonable expenses incurred in connection with the temporary removal of an insured mobile home or insured contents (personal property) from the described premises and away from the peril of flood, $50.00.

* * * * *

2. Section 61.5(f) is revised to read as follows:

* * * * *

(f) the following property and contents for residential structures are not insurable under the Program:

(1) Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, or other valuable papers or records; and contents used in connection with any incidental commercial occupancy or use of the building;

(2) On and after October 1, 1982, newly constructed and substantially improved buildings located seaward of mean high tide, or entirely in, on or over water;

(3) Fences, retaining walls, seawalls, swimming pools, bulkheads, wharves, piers, bridges, docks; other open structures located on or over water, including boathouses or other similar structures or buildings into which boats are floated or personal property in the open;

(4) Land values, lawn, trees, shrubs or plants, growing crops, or livestock; underground structures and equipment servicing the building including wells, septic tanks or septic systems; those portions of walks, driveways and other paved or poured surfaces outside the foundation walls of the building;

(5) Animals, birds, fish; aircraft, any self-propelled vehicle or machine and motor vehicles (other than motorized equipment pertaining to the service of the premises, operated principally on the premises of the insured, and not licensed for highway use) including their parts and equipment, trailers on wheels and other recreational vehicles whether affixed to a permanent foundation or on wheels; watercraft including their furnishings and equipment; and business property;

(6) Units which are primarily containers, rather than buildings (such as gas and liquid tanks);

(7) Buildings and their contents, including machinery and equipment, which are part of the building, where more than 49 percent of the actual cash value of such buildings is below ground, unless the lowest level is at or above the base flood elevation (in the Regular Program) or the adjacent ground level (in the Emergency Program) by reason of earth having been used as an insulation material in conjunction with energy efficient building techniques;

(8) On and after October 1, 1982, a mobile home located within a FEMA designated Special Flood Hazard area that is not affixed to a permanent site (anchored) to resist flotation, collapse, or lateral movement by providing over-

the-top ties to ground anchors or that otherwise meet the community's flood plain management requirements;

(9) A mobile home and its contents located within a FEMA designated coastal high hazard area (Zones V1–V30 on a FEMA Flood Insurance Rate Map) which is not located in a mobile home park or subdivision in existence and open for business prior to June 1, 1982.

(10) On and after June 1, 1982, with respect to any building located outside of a coastal high hazard area, solid, non-load bearing walls; open, wood constructed lattice "breakaway" walls, insect screening or other "breakaway" walls, any personal property or other contents, and machinery or equipment servicing the building when any of the foregoing items:

(i) Are not contained within the foundation walls of the described building (except for machinery and equipment servicing the building); or

(ii) Are in the open (except for machinery and equipment servicing the building); or

(iii) Are contained below the lowest floor used for rating the building in order to calculate the premium amount to be paid for the policy;

(iv) In the case of a building rated with Emergency Program or pre-firm rates, were placed in the areas described in paragraph (f)(10) (i) or (ii) or (iii), of this section, on or after June 1, 1982.

The terms, "machinery or equipment," for purposes of this paragraph (f)(10) of this section, include, but are not limited to, heating equipment, water heaters, air conditioning equipment and air ducts.

* * * * *

3. Section 61.5(g) is revised to read as follows:

* * * * *

(g) The following property and contents for non-residential structures are not insurable under the Program:

(1) Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, or other valuable papers or records;

(2) Except for the insurability of "animals, birds and fish", at paragraph (f)(5) of this section, all of the kinds of uninsurable property and contents referenced at paragraphs (f) (2) through (5) and at paragraph (f) (7) through (9), of this section;

(3) Units which are primarily containers, rather than buildings (such as gas and liquid tanks, chemical or reactor container tanks or enclosures, brick kilns, and similar units) and their contents (Silos and grain storage buildings including their contents, may be insured even though they may be of container-type construction);

4. Section 61.5(h) is revised to read as follows:

* * * * *

(h) The following rules provide for voidance, reduction or reformation of coverage issued under a Standard Flood Insurance Policy by the insurer:

(1) Voidance: This policy shall be void and of no legal force and effect in the event that any one of the following conditions occurs:

(i) The property listed on the application is not eligible for coverage, in which case the policy is void from its inception date;

(ii) The community in which the property is located was not participating in the National Flood Insurance Program on the policy's inception date and did not qualify as a participating community during the policy's term and before the occurrence of any loss, in which case the policy is void from its inception date;

(iii) During the term of the policy, the participation in the National Flood Insurance Program of the community in which the insured property is located ceases, in which case the policy shall be deemed void effective at the end of the last day of the policy year in which such cessation occurred and shall not be renewed; in the event the voided policy included three policy years in a contract term of three years, the insured shall be entitled to a pro-rata refund of any premium applicable to the remainder of the policy's term after voidance of the policy.

(iv) The insured or the insured's agent has (A) sworn falsely, or (B) fraudulently or willfully concealed or misrepresented any material fact (including facts relevant to the rating of the policy) in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under this policy, in which case this entire policy shall be void as of the date the wrongful act was committed, or from its inception if this policy is a renewed policy and the wrongful act occurred in connection with an application for renewal or endorsement of a policy issued to the insured in a prior year and affects the rating of or premium amount received for this policy. Refunds of premiums, if any, shall be subject to offsets for the insurer's administrative expenses (including the payment of agent's commissions for any voided policy year, in connection with the issuance of the policy).

(v) The premium received by the insurer for the issuance of the policy, in the case of an application for a new policy or a policy renewal, is less than $50.00, in which case the policy is void from its inception date.

(2) Reduction of coverage limits or reformation. In the event that the premium payment received by the insurer is not sufficient to purchase the amounts of building coverage and contents (personal property) coverage requested or in the event a rating error has been innocently made by the insured or the agent on the application, renewal, endorsement or other form (whether evident or not) resulting in insufficient premium being received by the insurer for the purchase of the amounts of coverage requested, then:

(i) If the insufficient premium or other rating error is discovered by the insurer prior to a loss under the policy, the policy shall be deemed to provide only such coverage as can be purchased, for the entire term of the policy, with the amount of premium received; provided, the insured may increase any reduced coverage(s) at any time by payment of the correct premium for the additional coverage limits requested and any such correct premium received by the insurer prior to any loss under the policy shall result in coverage being provided for the loss up to the additional amount of coverage requested by the insured. The application of the insufficient premium received to the provision of flood insurance coverage shall be made as follows:

(A) In the event that only one kind of coverage (building coverage or contents coverage) has been requested, the insured shall receive the limits of that kind of coverage which can be purchased for the amount of premium received, less the expense constant;

(B) In the event that both building coverage and contents coverage have been requested, the insurer shall determine the percentage ratio that each kind of insurance bears to the total amount of coverage requested, apportion the total premium received by the percentage ratio for each kind of coverage, and the insured shall receive, as to each kind of coverage requested, the amount of coverage which can be purchased by the premium amount as apportioned for each kind of coverage; where both building and contents coverage are requested and where the application of the above percentage ratio causes the premium received, as apportioned by the ratio, to produce an amount of premium for one of the kinds of coverages to be more than sufficient to purchase the amount of insurance of that kind of coverage requested by the insured, any such excess of apportioned premium will be applied to obtain an

additional amount of the other kind of coverage, until the amount of insurance requested for the other coverage is obtained;

(C) Provided, however, under this paragraph (h)(2)(i) of this section as to any mortgagee (or trustee) named in the policy, the insurer shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee (or trustee), up to the amount of the insured's indebtedness, for thirty (30) days after written notice to the mortgagee (or trustee).

(ii) If the insufficient premium or other rating error is discovered by the insurer at the time of a loss under the policy, the policy shall be deemed to provide coverage pursuant to the provisions of paragraph (h)(2)(i), of this section, unless:

(A) The insured or the insured's agent has sworn falsely or fraudulently or willfully concealed or misrepresented any material fact (including facts relevant to the rating of this policy) in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under this policy, in which case this entire policy shall be void as of the date the wrongful act was committed, or from its inception if this policy is a renewal policy and the wrongful act occurred in connection with an application for or renewal or endorsement of a policy issued to the insured in a prior year and affects the rating of or premium amount received for this policy. Refunds of premiums, if any, shall be subject to offsets for the insurer's administrative expenses (including the payment of agent's commissions for any voided policy year, in connection with the issuance of the policy), or

(B) Provided paragraph (h)(2)(ii)(A), of this section, does not apply, the insured remits and the insurer receives the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by the insured within thirty (30) days from the date the insurer gives the insured written notice of additional premium due or within sixty (60) days of the loss if no notice of premium is received by the insured, in which case the policy shall be reformed, from its inception date, to provide flood insurance coverage to the insured in the amounts of coverage initially requested. Silence or other failure to remit the additional premium required or non-receipt of such premium by the insurer within thirty (30) days from the date of notice of premium due or within sixty (60) days of the loss, whichever is sooner, shall be deemed to be refusal to pay the additional premium due and any subsequent payment of the additional premium due shall not reform the policy from its inception date but shall only add the additional amounts of coverage to the policy for the remainder of its term, pursuant to 44 CFR 61.11, with any excess of premium paid being returned to the insured. Provided, however, under this subsection "B" as to any mortgagee (or trustee) named in the policy, the insurer shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee (or trustee), up to the amount of the insured indebtedness, for thirty (30) days after written notice to the mortgagee (or trustee).

5. Appendix A(1) of Part 61, referenced at § 61.13 Standard Flood Insurance Policy is revised to read as follows:

Appendix A(1)—Federal Emergency Management Agency, Federal Insurance Administration, Standard Flood Insurance Policy

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof]

Dwelling Form—INSURING AGREEMENT

Agreement of Insurance Between the Federal Emergency Management Agency (FEMA), as Insurer, (hereinafter known as "we", "our", and "us") and the Insured (hereinafter known as "you" and "your"). Based upon your having paid the correct amount of premium, our reliance on the accuracy of the information and statements you have furnished in the application for this policy about the property to be insured and subject to all the terms of this policy, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), and regulations issued by us (Title 44, Code of Federal Regulations), we insure you and your legal representatives against all "Direct Physical Loss By Flood" to the insured property as defined in the "Definitions Section" of this Agreement to the extent of the actual cash value of the property at the time of loss but not exceeding (1) the cost of replacing the insured building at the time of loss with material of like kind and quality and (2) the actual cash value of any insured personal property at the time of loss.

Now therefore, in consideration of the foregoing and the mutual promises exchanged herein, we and you agree, further, as follows:

Article I—Persons Insured

We insure only:

A. The named insured and legal representatives;

B. Any mortgagee and loss payee named in the application and declaration page in the order of precedence and to the extent of their interest but for no more, in the aggregate, than the interest of the named insured.

Article II—Definitions

"Actual Cash Value" means the replacement cost of an insured item of property at the time of loss, less the value of physical depreciation as to the item damaged.

"Application" means the statement made and signed by you or your agent, and giving information on the basis of which we determine the acceptability of the risk, the policy to be issued and the correct premium payment, which must accompany the application for the policy to be issued. The application is a part of this flood insurance policy.

"Building" means a walled and roofed structure, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, including a mobile home on foundation, subject to Article V(H), and a walled and roofed building in the course of construction, alteration or repair. This policy does not cover more than one building.

"Cancellation" means that ending of the insurance coverage provided by this policy prior to the expiration date.

"Coastal High Hazard Area" means an area subject to high velocity waters, including hurricane wave wash and tsunami.

"Declaration Page" is a computer generated summary of information furnished by you in the application for insurance. The declarations page is a part of this flood insurance policy.

"Doublewide Mobile Home" means a building which is fully anchored and affixed to its permanent site, and which is designed and constructed as a modular or manufactured building and which has axles and wheels used solely for transportation to the lot or construction site where it is to be assembled as a nonmovable, permanent building; such a building is not considered to be a mobile home for purposes of this policy.

"Dwelling" means a building designed for use as a residence for no more than four families.

"Direct Physical Loss by Flood" means any loss in the nature of actual loss of or physical damage evidenced by physical changes to the insured property (building or personal property contents) which is directly and proximately caused by a "flood" (as defined in this Agreement), while the insured property is located: 1. at the property address shown on the application for this insurance, which is a part of this Agreement; and 2. for forty-five days, at another place above ground level, or outside of the special flood hazard area to which any of the property shall necessarily be removed by you in order to protect and preserve it from flood or from the imminent danger of flood (provided, personal property so removed must be placed in a fully enclosed building or otherwise reasonably protected from the elements to be insured against loss), in which case the reasonable expenses incurred by you including the value of your own labor at prevailing Federal minimum wage rates in moving your insured property away from the peril of flood and storing your property at the temporary location shall be reimbursed to you. The term "Direct Physical Loss by Flood" shall not include compensation for

loss of access, loss of use, loss of profits, or loss resulting from interruption of business, profession or manufacture, or reimbursement for your additional living expenses, incurred by reason of your having to live in rented quarters while the insured building is being repaired or replaced, or allowance for any increased cost of repair or reconstruction as a result of any ordinance regulating reconstruction or repair, or other economic loss. (this enumeration is not exclusive).

"Expense Constant": The expense constant is a flat charge per policy term, paid by the Insured to defray the Federal Government's policy-writing and other expenses.

"Expiration Date" means the ending of the insurance coverage provided by this policy on the expiration date shown on the declaration page.

"Flood": Wherever in this policy the term "flood" occurs, it shall be held to mean:

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.

3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in subparagraph A–2, above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, including your premises, as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding as defined in A–1 above.

"Policy" means the entire written contract between you and us; it includes this printed form, the application, and declarations page, any endorsements which may be issued and any renewal certificates indicating that coverage has been instituted for a new policy and policy term. Only one building, specifically described by you in the application, may be insured under this policy.

"Walled and Roofed" means the building has in place two or more exterior, rigid walls and the roof is fully secured so that the building will resist flotation, collapse and lateral movement.

Article III—Losses Not Covered

We only provide coverage for direct physical loss by flood which means we do not cover:

A. Losses from other casualties, including:

1. Loss caused by theft, loss of profits, fire, windstorm, wind, explosion, earthquake, land sinkage, land subsidence, landslide, gradual erosion, or any other earth movement except such mudslides (i.e., -mudflows) or erosion as is covered under the peril of flood.

2. Loss caused by rain, snow, sleet, hail, water spray, freezing, thawing, the pressure or weight of ice or water, sewer backup and seepage of water unless your property has been, at the same time, damaged by a flood.

3. Water or moisture damage resulting primarily from any condition substantially confined to the insured building or from any condition which is within your control (including but not limited to design, structural or mechancial defects, failures, stoppages or breakages of water or sewer lines, drains, pumps, fixtures or equipment).

B. Losses of the following nature:

1. Loss caused by your failure to use means reasonably accessable to you to save the property from loss resulting from a flood and to preserve the property after a flood; however, the reasonable expenses incurred by you in saving and preserving the property at the premises after a flood—including the value of your own labor at prevailing Federal minimum wage rates—may, at our sole option be a covered loss.

2. A loss which is already in progress as of 12:01 A.M. of the first day of the policy term, or as to any increase in the limits of coverage which is requested by you, a loss which is already in progress when you request the additional coverage.

3. A loss from a flood which is confined to the premises on which your insured property is located unless the flood is displaced over two acres of the premises.

4. A loss caused by your modification to the insured property or the described premises on which the insured property is located, which materially increases the risk of flooding.

5. Loss caused internationally by you or any member of your household.

Article IV—Property Covered

We will pay for physical damage caused by flood to the building at the property address you have furnished, as well as the contents of the building, if you have purchased contents coverage, and provided you have paid the correct premium for the insurance, as follows:

A. We cover your dwelling, which includes:

1. A residential building, designed for principal use as a dwelling place for no more than four families;

2. Additions and extensions attached to and in contact with the dwelling;

3. Building equipment, fixtures and outdoor equipment used in connection with the dwelling while stored inside the dwelling or another fully enclosed building at the property address;

4. Materials and supplies to be used in constructing, altering or repairing the dwelling or another building insured by us at the property address while stored inside a fully enclosed building (i) at the property address or (ii) on an adjacent property at the time of loss, or (iii) in case of another building at the property address which does not have walls on all sides, while stored and secured to prevent flotation out of the building during flooding (the flotation out of the building shall be deemed by you and us to establish the conclusive presumption that the materials and supplies were not reasonably secured to prevent flotation, in which case no coverage is provided for such materials and supples under this policy).

5. As appurtenant structures, detached garages and carports located at the described premises, at your option at the time of loss, in an amount up to 10% of the amount of insurance you have purchased to cover the dwelling, including additions to the dwelling; to the extent you exercise this option, you reduce the amount of insurance available to cover loss relating to A(1) (2) (3) and (4), above, to the dwelling and this option may not be chosen so as to extend coverage to buildings: (i) occupied, rented or leased in whole or in part for dwelling purposes (or held for such use), or (ii) used in whole or in part for personal or commercial manufacturing or farming purposes (or held for such uses), or (iii) which are boathouses.

B. We cover your Personal Property as contents incidental to the occupancy of the building as a dwelling under the policy, subject to "C" below, and that belonging to members of your family in your household and, at your option within the limits of contents coverage purchased for personal property loss, guests' and servants' personal property and the personal property of others for which you may be responsible—all while stored within a building at the property address. Personal property in the open and not stored in an insured building shall not be covered against loss by flood under this policy. However, personal property located in buildings having in place two or more rigid walls and a fully secured roof are covered if the contents are secured to prevent flotation out of the building during flooding; the flotation out of the building during flooding of any such contents shall be deemed by you and us to establish the conclusive presumption that the contents were not reasonably secured to prevent flotation. At you option at the time of loss, in an amount up to 10% of the amount of insurance you have purchased to cover personal property, this policy will also cover:

1. loss to improvements, alterations, and additions made by you, as a Tenant, to an insured building at the property address;

2. If you are an individual condominium unit owner, loss to the interior walls, floors, and ceilings of your unit that are not otherwise covered under a condominium association policy.

C. Limitation: As a limitation on "B", above, we shall not reimburse you for loss in any one flood as to the following personal property to the extent the total loss of such property exceeds $250.00: paintings, etchings, pictures, tapestries, art, glass windows and other works of art (such as but not limited to statuary, marbles, bronzes, antique furniture, rare books, antique silver, necklaces, bracelets, gems, precious or semi-precious stones, articles of gold, silver, or platinum and furs or any article containing fur which represents its principal value.

D. Debris Removal: Within the limits of your coverage, we cover any expense you incur, including the value of your own labor at prevailing Federal minimum wage rates, as a result of removing debris of, on or from the insured property so long as the debris problem was directly caused by a flood.

E. Demolition Coverage: Within the limits of your coverage, you may apply all or part of the proceeds of any flood insurance claim you make under this policy toward the expenses you incur in removing damaged portions of the insured building from the property location following a flood loss.

Article V—Property not Covered

We do not cover and will not pay for damage to or loss of any of the following:

A. Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, or other valuable papers or records and contents used in connection with any incidental commercial occupancy or use of the building.

B. On and after October 1, 1982, newly constructed or substantially improved buildings located seaward of mean high tide, or entirely in, on, or over water.

C. Fences, retaining walls, seawalls, outdoor swimming pools, bulkheads, wharves, piers, bridges, docks; other open structures located on or over water, including boat houses or other similar structures or buildings into which boats are floated or personal property in the open.

D. Land values, lawn, trees, shrubs or plants, growing crops, or livestock; underground structures and equipment including wells, septic tanks or septic systems; those portions of walks, driveways and other paved or poured surfaces, outside the foundation walls of the building.

E. Animals, birds, fish; aircraft, any self-propelled vehicle or machine and motor vehicles (other than motorized equipment pertaining to the service of the premises, operated principally on the premises of the insured, and not licensed for highway use) including their parts and equipment, trailers on wheels and other recreational vehicles whether affixed to a permanent foundation or on wheels; watercraft including their furnishings and equipment; and business property.

F. On and after June 1, 1982, with respect to any newly constructed or substantially improved building located outside of a coastal high hazard area, solid, non-load bearing walls, open, wood constructed lattice "breakaway" walls, insect screening or other "breakaway" walls, any personal property or other contents, and machinery or equipment servicing the building when any of the foregoing items:

(i) Are not contained within the foundation walls of the described building (except for machinery and equipment servicing the building); or

(ii) Are in the open (except for machinery and equipment servicing the building); or

(iii) Are contained below the lowest floor used for rating the building in order to calculate the premium amount to be paid for the policy; or

(iv) In the case of a building rated with Emergency Program or Pre-FIRM rates, were placed in the areas described in (i), (ii), or (iii) above, on or after June 1, 1982.

The terms, "machinery or equipment," for purposes of this subsection "10", include, but are not limited to, heating equipment, water heaters, air conditioning equipment and air ducts.

G. Buildings and their contents, including machinery and equipment, which are part of the building, where more than 49 percent of the actual cash value of such buildings is below ground, unless the lowest level is at or above the base flood elevation (in the Regular Program) or the adjacent ground level (in the Emergency Program) by reason of earth having been used as an insulation material in conjunction with energy efficient building techniques;

H. On and after October 1, 1982, a mobile home located within a FEMA designated Special Flood Hazard Area that is not affixed to a permanent site (anchored) to resist flotation, collapse, or lateral movement by providing over-the-top frame ties to ground anchors or that otherwise meet the community's flood plain management requirements.

I. Units which are primarily containers, rather than buildings (such as gas and liquid tanks).

J. A mobile home and its contents located within a FEMA designated coastal high hazard area (Zones VI–V30 on a FEMA Flood Insurance Rate Map) which is not located in a mobile home park or subdivision in existence and open for business prior to June 1, 1982.

Article VI—Deductibles

A. Each loss to your insured property is subject to a deductible provision under which you bear a portion of the loss before payment is made under the policy.

B. The loss deductible shall apply separately to each building loss and personal property (contents) loss including, as to each, appurtenant structures, debris removal, and any expenses incurred under Article II or III in connection with the removal of insured property.

C. The amount of the deductible for each loss occurrence is determined as follows: we shall be liable only when such loss exceeds $500 or, at your option, should you so choose when purchasing a policy covering property located in a coastal high hazard area, $3,000.00.

D. In the case of reasonable expenses incurred in the temporary removal of an insured mobile home or insured personal property from the insured premises and away from the peril of flood, the amount of the deductible shall be $50.00.

Article VII—Replacement Cost Provisions

Subject to Article VI and the limits of building coverage you have purchased, these provisions shall apply only to a Single Family Dwelling which is the principal residence of the insured and which is covered under this policy. Outdoor antennas and aerials, carpeting, awnings, appliances and other outdoor equipment, all whether attached to the insured building or not, are excluded from the replacement cost coverage. For purposes of this Article VII, a single family dwelling qualifies as your principal residence provided that, at the time of the loss, you or your spouse have lived in your building for either (1) 80% of the calendar year immediately preceding the loss or (2) 80% of the period of your ownership of the insured building, if less than one calendar year immediately preceded the loss. For purposes of this Article, the replacement cost provisions do not apply to a condominium unit within a vertical building having one or more condominium units in it not contiguous to the ground. Under this Article:

A. If at the time of loss the total amount of insurance applicable to said dwelling is 80% or more of the full replacement cost of such dwelling, or is the maximum amount of insurance available under the National Flood Insurance Program, the coverage of this policy applicable to such dwelling is extended to include the full cost of repair or replacement (without deduction for depreciation).

B. If at the time of loss the total amount of insurance applicable to said dwelling is less than 80% of the full replacement cost of such dwelling and less than the maximum amount of insurance available under the National Flood Insurance Program, our liability for loss under this policy shall not exceed the larger of the following amounts:

1. The actual cash value (meaning replacement cost less depreciation) of that part of the dwelling damaged or destroyed; or

2. That portion of the full cost of repair or replacement without deduction for depreciation of that part of the dwelling damaged or destroyed, which the total amount of insurance applicable to said dwelling bears to 80% of the full replacement cost of such dwelling.

If 80% of the full replacement cost of such dwelling is greater than the maximum amount of insurance available under the National Flood Insurance Program, use the maximum amount in lieu of the 80% figure in the application of this limit.

C. Our liability for loss under this policy shall not exceed the smallest of the following amounts:

1. The limit of liability of this policy applicable to the damaged or destroyed building.

2. The replacement cost of the dwelling or any part thereof identical with such dwelling on the same premises and intended for the same occupancy and use; or

3. The amount actually and necessarily expended in repairing or replacing said dwelling or any part thereof intended for the same occupancy and use.

D. When the full cost of repair or replacement is more than $1,000 or more than 5% of the whole amount of insurance applicable to said dwelling, we shall not be liable for any loss under paragraph A or subparagraph B–2 of these provisions unless and until actual repair or replacement is completed.

E. In determining if the whole amount of insurance applicable to said dwelling is 80% or more of the full replacement cost of such dwelling, the cost of excavations, underground flues and pipes, underground wiring and drains, and brick, stone and concrete foundations, piers and other supports which are below the under surface of the lowest basement floor, or where there is no basement, which are below the surface of the ground inside the foundation walls, shall be disregarded.

F. You may elect to disregard this condition in making claim hereunder, but such election shall not prejudice your right to make further claim within 180 days after loss for any additional liability brought about by these provisions.

G. These Replacement Cost Provisions do not apply to any mobile home or personal property (contents) covered under this policy.

nor do they apply to any loss where insured property is abandoned and remains as debris at the property address following a loss.

H. If your dwelling sustains a total loss or if we should pay you the entire building loss proceeds under these replacement cost provisions, there is no requirement that you rebuild the building at the insured property address.

Article VIII—General Conditions and Provisions

A. Pair and Set Clause: If you lose an article which is part of a pair or set, we will have the option of paying you an amount equal to the cost of replacing the lost article, less depreciation, or an amount which represents the fair proportion of the total value of the pair or set that the lost article bears to the pair or set.

B. Concealment, Fraud: We will not cover you under this policy if you have sworn falsely, or willfully concealed or misrepresented any material fact or done any fraudulent acts concerning this insurance (See "F", below).

C. Other Insurance: You may have other flood insurance covering the dwelling and personal property and, if you have such other insurance in effect at the time of a loss, we will not pay a greater portion of any loss than the proportion that our building and personal property (contents) insurance bears to the total flood insurance covering the dwelling and personal property.

D. Amendments, Waivers, Assignment: This Standard Flood Insurance Policy cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action we take under the terms of this policy can constitute a waiver of any of our rights. Except in the case of (1) a contents only policy and (2) a policy issued to cover a building in the course of construction, assignment of this policy, in writing, is allowed upon transfer of title without the consent of the Administrator.

E. Cancellation of Policy By You:

1. You can cancel this policy at any time but a refund of premium money will only be made to you when:

a. You cancel because you have transferred ownership of the insured property to someone else. In this case, we will refund to you, once we receive your written request for cancellation (signed by you), the excess of premiums paid by you which apply to the unused portion of the policy's term, pro-rata but with retention of the expense constant.

b. You cancel because we have determined that your property is not, in fact, in a special flood hazard area; and you were required to purchase flood insurance coverage by a private lender or Federal agency pursuant to P.L. 93-234, § 102; and the lender or Federal agency no longer requires the retention by you of the coverage. In this event, if no claims have been paid or are pending, your premium payments will be refunded to you in full, according to our applicable regulations, but with retention of the expense constant.

F. Voidance, Reduction or Reformation of the Coverage By Us:

1. Voidance: This policy shall be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the application is not eligible for coverage, in which case the policy is void from its inception;

b. The community in which the property is located was not participating in the National Flood Insurance Program on the policy's inception date and did not qualify as a participating community during the policy's term and before the occurrence of any loss for which you may receive compensation under the policy, in which case the policy is void from its inception date;

c. If, during the term of the policy, the participation in the National Flood Insurance Program of the community in which your property is located ceases, in which case the policy shall be deemed void effective at the end of the last day of the policy year in which such cessation occurred and shall not be renewed; in the event the voided policy included three policy years in a contract term of three years, you shall be entitled to a pro-rata refund of any premium applicable to the remainder of the policy's term after voidance of the policy;

d. In the event you or your agent have (i) sworn falsely or (ii) fraudulently or willfully concealed or misrepresented any material fact (including facts relevant to the rating of this policy) in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the policy, in which case this entire policy shall be void as of the date the wrongful act was committed or from its inception if this policy is a renewal policy and the wrongful act occurred in connection with an application for or renewal or endorsement of a policy issued to you in a prior year and affects the rating of or premium amount received for this policy. Refunds of premiums, if any, shall be subject to offsets for our administrative expenses (including the payment of agent's commissions for any voided policy year, in connection with the issuance of the policy);

e. The premium you submit is less than $50.00 in connection with any application for a new policy or policy renewal, in which case the policy is void from its inception date.

2. Reduction of coverage limits or reformation. In the event that the premium payment received by us is not sufficient to purchase the amounts of building coverage and contents (personal property) coverage requested or in the event a rating error has been innocently made by you or your agent on the application, renewal, endorsement, or other form (whether evident or not) resulting in insufficient premium being received by us for the purchase of the amounts of coverage requested, then:

(i) if the insufficient premium or other rating error is discovered by us prior to a loss under the policy, the policy shall be deemed to provide only such coverage as can be purchased, for the entire term of the policy, for the amount of premium received; provided, you may increase any reduced coverage(s) at any time by payment of the correct premium for the additional limits of coverage requested and any such correct premium received by us prior to any loss under the policy shall result in coverage being provided for the loss up to the additional amount of coverage requested by you. The application of the insufficient premium received to the provision of flood insurance coverage shall be made as follows:

a. in the event that only one kind of coverage (building coverage or contents coverage) has been requested, you shall receive the limits of that kind of coverage which can be purchased for the amount of premium received, less the expense constant;

b. in the event that both building coverage and contents coverage have been requested, we shall determine the percentage ratio that each kind of insurance bears to the total amount of coverage requested, apportion the total premium received by the percentage ratio for each kind of coverage, and you shall receive, as to each kind of coverage requested, the amount of coverage which can be purchased by the premium amount as apportioned for each kind of coverage; where both building and contents coverage are requested and where the application of the above percentage ratio causes the premium received, as apportioned by the ratio, to produce an amount of premium for one of the kinds of coverage to be more than sufficient to purchase the amount of insurance of that kind of coverage requested by you, any such excess of apportioned premium will be applied to obtain an additional amount of the other kind of coverage until the amount of insurance requested for the other coverage is obtained;

c. provided, however, under this subsection (2.) (i) as to any mortgagee (or trustee) named in the policy, we shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee (or trustee), up to the amount of your indebtedness, for thirty (30) days after written notice to the mortgagee (or trustee).

(ii) if the insufficient premium or other rating error is discovered by us at the time of a loss under the policy, the policy shall be deemed to provide coverage pursuant to the provisions of (i), above, unless:

a. you or your agent has sworn falsely or fraudulently or willfully concealed or misrepresented any material fact (including facts relevant to the rating of this policy) in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under this policy, in which case this entire policy shall be void as of the date the wrongful act was committed or from its inception if this policy is a renewal policy and the wrongful act occurred in connection with an application for or renewal or endorsement of a policy issued to you in a prior year and affects the rating of or premium amount received for this policy.

Refunds of premiums, if any, shall be subject to offsets for our administrative expenses (including the payment of agent's commissions for any voided policy year, in connection with the issuance of the policy);

b. provided (ii) a., above does not apply, you remit and we receive the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by you within thirty (30) days from the date we give you written notice of additional premium due or within sixty

(60) days of the loss if no notice of premium due is received by you, in which case the policy shall be reformed, from its inception date, to provide flood insurance coverage to you in the amounts of coverage initially requested. Silence or other failure to remit the additional premium required or non-receipt of such premium by us within thirty (30) days from the date of notice of premium due or within sixty (60) days of the loss, whichever is sooner, shall be deemed to be refusal to pay the additional premium due and any subsequent payment of the additional premium due shall not reform the policy from its inception date but shall only add the additional amounts of coverage to the policy for the remainder of its term, pursuant to 44 CFR 61.11, with any excess of premium paid being returned to you. Provided, however, under this subsection "B" as to any mortgagee (or trustee) named in the policy, we shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee (or trustee), up to the amount of your indebtedness, for thirty (30) days after written notice to the mortgagee (or trustee).

G. Policy Renewal: The term of this policy commences on its inception date and ends on its expiration date, as shown on the "Declaration Page" which is attached to the policy. We are under no obligation to send you any renewal notice or other notice that your policy term is coming to an end and the receipt of any such notice by you shall not be deemed to be a waiver of this provision on our part. We are under no obligation to assure that policy changes reflected in endorsements submitted by you during the policy term and accepted by us are included in any renewal notice or new policy which we send to you. "Policy changes" includes the addition by you of new coverage (e.g. contents coverage added to a building coverage policy or vice versa) or any increases in the amounts of coverage.

This policy shall not be renewed and the coverage provided by it shall not continue into any successive policy term unless the premium payment for any successive policy term is received by us at the National Flood Insurance Program (NFIP), prior to the expiration date of this policy, subject to Article VIII (F.), above. The renewal premium payment shall be deemed to be received by the NFIP if the renewal payment is mailed to the NFIP prior to the expiration date and is received by the NFIP prior to or within five (5) days following the expiration date or if the renewal payment is mailed by certified mail to the NFIP prior to the expiration date. In all other cases, whether the renewal premium payment is received by the NFIP after the expiration date of this policy or not, this policy shall be deemed terminated as of the expiration date of the last policy term for which the premium payment was timely received by the NFIP and, in that event, we shall not be obligated to provide you with any cancellation, termination, policy lapse, or policy renewal notice advising you of any such cancellation, termination, policy lapse or policy renewal; provided, however, with respect to any mortgagee (or trustee) named in the declarations form attached to this policy, this insurance shall continue in force only for the benefit of such mortgagee (or trustee) for 30 days after written notice to the mortgagee (or trustee) of termination of this policy, and shall then terminate.

H. Alterations and Repairs: You may, at any time, make alterations, additions and repairs to the insured property and complete structures in the course of construction. Consistent with your obligation to protect insured property damaged by a flood from further damage, as set forth in "I", below, you may also—following a loss by flood—make reasonable repairs of a temporary or permanent nature to protect the damaged, insured property from further damage and, to the extent you keep an accurate record of such repair expenditures, the cost of any such repairs—including the value of your own labor at prevailing Federal minimum wage rates—shall be included in determining the amount of loss covered by this policy.

I. Requirements in Case of Loss: Should a flood loss occur to your insured property, you must:

1. Notify us in writing as soon as practicable;

2. Protect the property from further damage;

3. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it; and

4. Within 60 days after the loss, send us a proof of loss, which is your statement as to the amount you are claiming under the policy signed and sworn to by you and furnishing us with the following information.

a. The date and time of the loss,

b. A brief explanation of how the loss happened,

c. Your interest in the property damaged (for example, "owner") and the interests, if any, of others in the damaged property,

d. The actual cash value of each damaged item of insured property after depreciation is deducted from the cost of replacement of the property (unless the policy's "REPLACEMENT COST PROVISIONS" apply, in which case the replacement cost without allowance for depreciation should be furnished) and the amount of damages sustained,

e. Names of mortgagees or anyone else having a lien, charge or claim against the insured property,

f. Details as to any other contracts of insurance covering the property, whether valid or not,

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the policy was issued,

h. Details as to who occupied any insured building at the time of loss and for what purpose, and

i. The amount you claim is due under this policy to cover the loss, including statements concerning:

(i) The limits of coverage stated in the policy.

(ii) The cost to repair or replace the damaged property (whatever costs less).

5. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you to complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it. In completing the proof of loss, you must use your own judgment concerning the amount of loss and the justification for that amount; the adjuster is not authorized to approve or disapprove claims or to tell you whether your claim will be approved by us.

J. Our Options After a Loss: Options we may, in our sole discretion, exercise after a loss include the following:

1. *Evidence of Loss*—If we specifically request it, in writing, you may be required to furnish us with a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, actual cash values, amounts of loss claims, and any written plans and specifications for repair of the damaged property which you can make reasonably available to us.

2. *Examination Under Oath*—We may require you to show us or our designee, the damaged property, to be examined under oath by our designee and to sign any transcripts of such examinations; to, at such reasonable times and places as we may designate, permit us to examine and make extracts and copies of all books of accounts, bills, invoices and other vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Repair or Replace*—We may take all or any part of the damaged property at the agreed or appraised value and, also, to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving you notice of our intention to do so within 30 days after the receipt of the proof of loss herein required under "I", above.

4. *Adjustment Options*—We may adjust loss to any insured property of others with the owners of such property or with you for their account. Any such insurance under this policy shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

K. When Loss Payable—Within 60 days after you file your proof of loss, we will either approve the claim, reject the proof of loss, deny the claim, or request appraisal. If we approve the claim, we will pay you within 60 days after the award of the appraisers and umpire is filed. If we reject your proof of loss because of the amount claimed, but do not deny the entire claim, you may file another proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

L. Abandonment. You may not abandon damaged or undamaged insured property to us.

M. Appraisal. If at any time after a loss, we are unable to agree with you as to the actual cash value—or, if applicable, replacement cost—of the damaged property so as to determine the amount of loss to be paid to you, then, on the written demand of either one of us, each of us shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. The appraisers shall first select a competent and disinterested umpire;

and failing, after 15 days, to agree upon such umpire, then, on your request or our request, such umpire shall be selected by a judge of a court of record in the State in which insured property is located. The appraisers shall then appraise the loss, stating separately replacement cost, actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with us shall determine the amount of actual cash value and loss or, should this policy's replacement cost provisions apply, the amount of replacement cost and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by both of us equally.

N. Loss Clause. If we pay you for damage to property sustained in a flood loss, you are still eligible, during the term of the policy, to collect for a subsequent loss due to another flood. Of course, all loss arising out of a single, continuous flood of long duration shall be adjusted as one flood loss.

O. Mortgagee Clause (Applicable to building items only and effective only when policy is made payable to a mortgagee (or trustee) named in the application and declaration form attached to this policy).

Loss, if any, under this policy, shall be payable to the aforesaid as mortgagee (or trustee) as interest may appear under all present or future mortgages upon the property descibed in which the aforesaid may have an interest as mortgagee (or trustee), in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided, also, that the mortgagee (or trustee) shall notify the Insurer of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

If this policy is cancelled by the Insurer, it shall continue in force for the benefit only of the mortgagee (or trustee) for 30 days after written notice to the mortgagee (or trustee) of such cancellation and shall then cease, and the Insurer shall have the right, on like notice, to cancel this agreement.

Whenever the Insurer shall pay the mortgagee (or trustee) any sum for loss under this policy and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, as its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of said mortgagee's (or trustee's) claim.

P. Mortgagee obligations—If the insured fails to render proof of loss, the named mortgagee (or trustee) upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions of this policy relating to appraisal and time of payment and of bringing suit.

Q. Conditions for filing a lawsuit—You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within twelve (12) months from the date we mailed you notice that we have denied your claim, or part of your claim, and you must file the suit in the United States District Court for district in which the insured property was located at the time of the loss.

R. Subrogation—Whenever we make a payment for a loss under this policy, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything which would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

Article IX—Liberalization Clause

While this policy is in force, should we have adopted any forms, endorsements, rules or regulations by which this policy could be broadened or extended for your benefit by endorsement or substitution of policy form, then, such matters shall be considered to be incorporated in this policy without additional premium charge and shall inure to your benefit as though such endorsement of substitution of policy form had been made.

Article X—What Law Governs

This policy is governed by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. s4001, *et seq.*) and Federal common law.

In witness whereof, we have signed this policy below and hereby enter into this Insurance Agreement.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

6. Appendix A(2) of Part 61 referenced at § 61.13 of the Standard Flood Insurance Policy is revised, in the following particulars:

a. A new provision is added just before the provison title "definition of 'flood'", as follows:

Persons Insured

The following are insured under this policy:

A. The named insured and legal representatives:

B. Any mortgagee and loss payee named in the application and declaration page in the order of precedence and to the extent of their interest but for no more, in the aggregate, than the interest of the named insured.

b. The provision titled "definition of 'flood'" is deleted and a new provision titled "Definitions" is added in its place and stead, as follows:

Definitions

Definitions—As used in this Policy:

"Actual cash value" means the replacement cost of an insured item of property at the time of loss, less the value of physical depreciation as to the item damaged.

"Application" means the statement made and signed by the Insured, or the Insured's agent, and giving information on the basis of which the Insurer determines the acceptability of the risk, the policy to be issued and the correct premium payment, which must accompany the application for the policy to be issued. The application is a part of this flood insurance policy.

"Building" means a walled and roofed structure, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, including a walled and roofed building in the course of construction, alteration or repair and a mobile home on foundation, subject to Paragraph "H" of the provision titled "Property Not Covered". This policy does not cover more than one building.

"Cancellation" means that ending of the insurance coverage provided by this policy prior to the expiration date.

"Coastal high hazard area" means an area subject to high velocity waters including hurricane wave wash and tsunamis.

"Declarations page" is a computer generated summary of information furnished by the Insured in the application for insurance. The declarations page is a part of this flood insurance policy.

"Double-wide mobile home" means a building which is fully anchored and affixed to its permanent site, and which is designed and constructed as a modular or manufactured building an which has axles and wheels used solely for transportation to the lot or construction site where it is to be assembled as a non-movable, permanent building; such a building is not considered to be a mobile home for purposes of this policy.

"Direct physical loss by flood" means any loss in the nature of actual loss of or physical damage, evidence by physical changes, to the insured property (building or personal property contents) which is directly and proximately caused by a "flood" (as defined in this Agreement), while the insured property is located: 1. at the property address shown on the application for this insurance, which is a part of this Agreement; and 2. for

forty-five days, at another place above ground level or outside of the special flood hazard area to which any of the property shall necessarily be removed in order to protect and preserve it from a flood or from the imminent danger of flood (provided, personal property so removed must be placed in a fully enclosed building or otherwise reasonably protected from the elements to be insured against loss). The term "Direct Physical Loss By Flood" shall not include compensation for loss of use, loss of access, loss of profits or loss resulting from interruption of business, profession or manufacture, allowance for any increased cost of repair or reconstruction as a result of any ordinance or repair regulating reconstruction or repair, or other economic loss, (This enumeration is not exclusive).

"Expense constant" is a flat charge per policy term, paid by the Insured, to defray the Federal Government's policywriting and other expense.

"Expiration date" means the ending of the insurance coverage provided by this policy on the expiration date shown on the declaration page.

"Flood": Wherever in this policy the term "flood" occurs, it shall be held to mean:

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.

3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in subparagraph A–2 above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding as defined in A–1 above.

"Policy" means the entire written contract between the Insured and the Insurer, including this printed form, the application and declarations page, any endorsements which may be issued and any renewal certificates indicating that coverage has been instituted for a new policy and policy term. Only one building, specifically described by you in the application, may be insured under this policy.

"Walled and roofed" means the building has in place two or more exterior, rigid walls and the roof is fully secured so that the building will resist flotation, collapse and lateral movement.

* * * * *

c. New paragraphs "G", "H", "I" and "J" are added to the "Perils excluded" provisions as follows:

Perils Excluded

The Insurer shall not be liable for loss:

* * * * *

G. Caused intentionally by the Insured.

H. Which is already in progress as of 12:01 a.m. of the first day of the policy term.

I. From a flood which is confined to the premises on which the insured property is located unless the flood is displaced over two acres of the insured premises.

J. Caused by any modification by the Insured to the insured property or the described premises on which the insured property is located which materially increases the risk of flooding.

* * * * *

d. Under the provision titled "PROPERTY COVERED", at paragraph B(2.) (a) and (b), the $500.00 limitation is reduced to $250.00 in both instances.

* * * * *

e. The provisions titled "PROPERTY NOT COVERED" are revised to read as follows:

Property Not Covered

This policy shall not cover:

A. Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, or other valuable papers or records.

B. On and after October 1, 1982, newly constructed and substantially improved buildings located seaward of mean high tide, or entirely in, on, or over water.

C. Fences, retaining walls, seawalls, swimming pools, bulkheads, wharves, piers, bridges, docks; other open stuctures located on or over water, including boathouses or other similar structures or buildings into which boats are floated; or personal property in the open.

D. Land values, lawn, trees, shrubs or plants, growing crops, or livestock; underground structures and equipment including wells, septic tanks or septic systems; those portions of walks, driveways and other paved or poured surfaces outside the foundation walls of the building.

E. Aircraft, any self-propelled vehicle or machine and motor vehicles (other than motorized equipment pertaining to the service of the premises, operated principally on the premises of the insured, and not licensed for highway use) including their parts and equipment, trailers on wheels and other recreational vehicles whether affixed to a permanent foundation or on wheels; watercraft including their furnishings and equipment; and business property.

F. On and after June 1, 1982, with respect to any building located outside of a coastal high hazard area, solid, non-load bearing walls, open, wood constructed lattice "breakaway" walls, insect screening or other "breakaway" walls, any personal property or other contents, and machinery or equipment servicing the building when any of the foregoing items:

(i) Are not contained within the foundation walls of the described building (except for machinery and equipment servicing the building); or

(ii) Are in the open (except for machinery and equipment servicing the building); or

(iii) Are contained below the lowest floor used for rating the building in order to calculate the premium amount to be paid for this policy; or

(iv) In the case of a building rated with Emergency Program or pre-firm rates, were placed in the areas described in (i) or (ii) or (iii), above, on or after June 1, 1982; or

The terms, "machinery or equipment", for purposes of this paragraph "E", include, but are not limited to, heating equipment, water heaters, air conditioning equipment and air ducts.

G. Buildings and their contents, including machinery and equipment, which are part of the building, where more than 49 percent of the actual cash value of such buildings is below ground, unless the lowest level is at or above the base flood elevation (in the Regular Program) or the adjacent ground level (in the Emergency Program) by reason of earth having been used as an insulation material in conjunction with energy efficient building techniques;

H. On and after October 1, 1982, a mobile home located within a FEMA designated Special Flood Hazard Area that is not affixed to a permanent site (anchored) to resist flotation, collapse, or lateral movement by providing over-the-top frame ties to ground anchors or that otherwise meet the community's flood plain mangement requirements.

I. Units which are primarily containers, rather than buildings (such as gas and liquid tanks, chemical or reactor container tanks or enclosures, brick kilns, and similar units) and their contents (Silos and grain storage buildings including their contents, may be insured even though they may be of container-type construction).

J. A mobile home and its contents located within a FEMA designated coastal high hazard area (Zones V1–V30 on a FEMA Flood Insurance Rate Map) which is not located in a mobile home park or subdivision in existence and open for business prior to June 1, 1982.

* * * * *

f. The provisions titled "deductibles" are revised to read as follows:

Deductibles

A. With respect to loss to the building, appurtenant structures, and debris removal covered hereunder, the Insurer shall be liable for only that portion of the loss in any one occurrence which is in excess of $500.00.

B. With respect to loss to contents or debris removal covered hereunder or to expenses, incurred under paragraph "F" of "Perils Excluded", the Insurer shall be liable for only that portion of the loss in any one occurrence which is in excess of $500.00.

C. The amount of the deductible in "A" and "B", above is $3,000.00 in the event the Insured has elected, when purchasing this policy, to have such a deductible. The election by the Insured is conditioned upon the insured property being located in a coastal high hazard area.

D. In the case of reasonable expenses incurred in the removal of an insured mobile home or personal property from the insured premises away from the peril of flood, the amount of the deductible shall be $50.00.

* * * * *

Under the provisions titled "General conditions and provisions", paragraph "E" titled "Cancellation of policy or reduction in amount of insurance" is revised to read as follows:

General Conditions and Provisions

* * * * *

E. Voidance, Reduction or Reformation of the Coverage:

1. Voidance: This policy will be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the application is not eligible for coverage, in which case the policy is void from its inception;

b. The community in which the property is located was not participating in the National Flood Insurance Program on the policy's inception date and did not qualify as a participating community during the policy's term and before the occurrence of any loss for which the insured may receive compensation under the policy, in which case the policy is void from its inception;

c. If, during the term of the policy, the participation in the National Flood Insurance Program of the community in which the insured's property is located ceases, in which case the policy shall be deemed void effective at the end of the last day of the policy year in which such cessation occurred and shall not be renewed; in the event the voided policy included three policy years in a contract term of three years, the insured shall be entitled to a pro-rata refund of any premium applicable to the remainder of the policy's term after voidance of the policy;

d. The insured or the insured's agent has (i) sworn falsely or (ii) fraudulently or willfully concealed or misrepresented any material fact (including facts relevant to the rating of this policy) in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the policy, in which case this entire policy shall be void as of the date the wrongful act was committed and coverage prior to the date of the wrongful act shall not be affected, provided, refunds of premiums, if any, shall be subject to offsets for the insurer's administrative expenses (including the payment of agent's commissions through prior policy years, if any) in connection with the issuance of the policy;

e. The premium submitted is less than $50.00 in connection with any application for a new policy or policy renewal, in which case the policy is void from its inception.

(2) Reduction of coverage limits or reformation. In the event that the premium payment received by the insurer is not sufficient to purchase the amounts of building coverage and contents (personal property) coverage requested or in the event a rating error has been innocently made by the insured or the agent on the application, renewal, endorsement or other form (whether evident or not) resulting in insufficient premium being received by the insurer for the purchase of the amounts of coverage requested, then:

(i) If the insufficient premium or other rating error is discovered by the insurer prior to a loss under the policy, the policy shall be deemed to provide only such coverage as can be purchased, for the entire term of the policy, with the amount of premium received; provided, the insured may increase any reduced coverage(s) at any time by payment of the correct premium for the additional limits of coverage requested and any such correct premium received by the insurer prior to any loss under the policy shall result in coverage being provided for the loss up to the additional amount of coverage requested by the insured; the application of the insufficient premium received to the provision of flood insurance coverage shall be made as follows:

A. In the event that only one kind of coverage (building coverage or contents coverage) has been requested, the insured shall receive the limits of that kind of coverage which can be purchased for the amount of premium received, less the expense constant;

B. In the event that both building coverage and contents coverage have been requested, the insurer shall determine the percentage ratio that each kind of insurance bears to the total amount of coverage requested, apportion the total premium received by the percentage ratio for each kind of coverage, and the insured shall receive, as to each kind of coverage requested, the amount of coverage which can be purchased by the premium amount as apportioned for each kind of coverage; where both building and contents coverage are requested and a coverage's proportion of the premium paid is more than sufficient to obtain the amount of insurance requested for that coverage, any excess of that proportion of the total premium will be applied to obtain an additional amount of the other kind of coverage until the amount of insurance requested for the other coverage is obtained;

(ii) If the insufficient premium or other rating error is discovered by the insurer at the time of a loss under the policy, the policy shall be deemed to provide coverage pursuant to the provisions of (i), above, unless:

A. The insured or the insured's agent has sworn falsely or fraudulently or willfully concealed or misrepresented any material fact (including facts relevant to the rating of this policy) in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under this policy, in which case this entire policy shall be void as of the date the wrongful act was committed and coverage prior to the date of the wrongful act shall not be affected, provided, refunds of premiums, if any, shall be subject to offsets for the insurer's administrative expenses (including the payment of agent's commissions through prior policy years, if any) in connection with the issuance of the policy, or

B. Provided (ii)A., above, does not apply, the insured remits and the insurer receives the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by the insured within thirty (30) days from the date the insurer gives the insured written notice of additional premium due or within sixty (60) days of the loss if no notice of premium due is received by the insured, in which case the policy shall be reformed, from its inception date, to provide flood insurance coverage to the insured in the amount(s) of coverage initially requested. Silence or other failure to remit the additional premium required or non-receipt of such premium by the insurer within thirty (30) days from the date of notice of premium due or within sixty (60) days of the loss, whichever is sooner, shall be deemed to be refusal to pay the additional premium due and any subsequent payment of the additional premium due shall not reform the policy from its inception date but shall only add the additional amounts of coverage to the policy for the remainder of its term, pursuant to 44 CFR 61.11, with any excess of premium paid being returned to the insured. Provided, however, under this subsection "B" as to any mortgagee (or trustee) named in the policy, the insurer shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee (or trustee), up to the amount of the insured indebtedness, for thirty (30) days after written notice to the mortgagee (or trustee).

* * * * *

(h) General Condition "J" titled "Statutory Provisions", is deleted from and a new general condition "J", titled "Policy Renewal" is added to the section titled "General conditions and provisions" as follows:

General Conditions and Provisions

* * * * *

J. Policy Renewal: The term of this policy commences on its inception date and ends on its expiration date, as shown on the "Declarations Page" which is attached to the policy. The Insurer is under no obligation to send any renewal notice or other notice that the policy term is coming to an end and the receipt of any such notice by the Insured, Mortgagee or Agent of the Insured shall not be deemed to be a waiver of this provision on the Insurer's part. The Insurer is under no obligation to assure that policy changes reflected in endorsements submitted by the Insured or Agent during the policy term and accepted by the Insurer are included in any renewal notice or new policy which is sent. "Policy changes" includes the addition of new coverage (e.g. contents coverage added to a building coverage policy or vice versa) or any increases in the amounts of coverage.

This policy shall not be renewed and the coverage provided by it shall not continue into any successive policy term unless the premium payment for any such successive policy term is received by the National Flood Insurance Program (NFIP), prior to the expiration date of this policy, subject to "General Condition "E" ", above. The renewal premium payment shall be deemed to be received by the NFIP if the renewal payment is mailed to the NFIP prior to the expiration date and is received by the NFIP prior to or within five (5) days following the expiration date or if the renewal payment is mailed by certified mail to the NFIP prior to the expiration date.

In all cases, whether the renewal premium payment is received by the NFIP after the expiration date of this policy or not, this policy shall be deemed terminated as of the expiration date of the last policy term for which the premium was timely received by the NFIP and the Insurer shall not be obliged to provide the Insured with any cancellation, termination, policy lapse, or policy renewal notice advising the Insured of any such

cancellation, termination, policy lapse or policy renewal; provided, however, with respect to any mortgagee (or trustee) named in the Declaration form attached to this policy, this insurance shall continue in force only for the benefit of such mortgagee (or trustee) for 30 days after written notice to the mortgagee (or trustee) of termination of this policy, and shall then terminate.

(National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968), 42 U.S.C. 4001–4128; Reorganization Plan No. 3 of 1978 (43 FR 41943), Executive Order 12127, dated March 31, 1979 (44 FR 19367) E.O. 11988, dated May 24, 1977 and 44 CFR 9, Delegation of Authority to Federal Insurance Administrator)

Issued at: Washington, D.C., April 25, 1982.

Jeffrey S. Bragg,

Federal Insurance Administrator.

[FR Doc. 82-12124 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Service Order No. 1493; Amdt. No. 14]

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

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 14 to Service Order No. 1493.

SUMMARY: Amendment No. 14 extends the expiration date of Service Order No. 1493, which authorizes Escanaba and Lake Superior Railroad Company (ELS) to use tracks and/or facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee) (MILW). This extension permits ELS to continue its operation while finalizing its purchase agreement with the Milwaukee.

DATES: Effective: 11:59 p.m., April 30, 1982, and continuing in effect until 11:59 p.m., June 30, 1982, unless modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275–7840 or 275–1559.

SUPPLEMENTARY INFORMATION:

Decided: April 28, 1982.

Upon further consideration of Service Order No. 1493 (46 FR 10742, 14896, 19822, 25311, 34593, 39148, 44190, 49127, 54562, 58491; 47 FR 624, 4690 and 13530), and good cause appearing therefor:

It is ordered, § 1033.1493 *Escanaba and Lake Superior Railroad Company authorized to use tracks and/or facilities of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee),* Service Order No. 1493 is amended by substituting the following paragraph (n) for paragraph (n) thereof:

(n) *Expiration date.* The provisions of this order are extended to permit an additional (60) sixty days for the Escanaba and Lake Superior Railroad Company's operations, and to permit the finalization of its purchase agreement with the Milwaukee. This order shall expire at 11:59 p.m., June 30, 1982, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., April 30, 1982.

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

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

List of Subjects in 49 CFR Part 1033

Railroads.

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien. J. Warren McFarland not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12073 Filed 5-3-82; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1249

[No. 38568]

Revisions to Annual Motor Carrier Reporting Requirements; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; correction.

SUMMARY: In the Federal Register issue of March 5, 1982, at 47 FR 9468, the Commission eliminated a number of supporting schedules contained in the Form M (Annual Report for Motor Carriers of Property), as prescribed under 49 CFR Part 1249, that it no longer used on a regular basis. By inadvertent error, Schedule 551, Equipment and Other Long-Term Obligations, was not included in the Appendix.

The purpose of this document is to add Schedule 551 to the list of schedules that were eliminated from the Form M under number (1) of the Appendix, between Schedules 540 and 610C. (Note: This correction was served in a notice to the parties on April 2, 1982.)

FOR FURTHER INFORMATION CONTACT: Wayne D. Howard, (202) 275–7448.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham, Clapp and Sterrett.

Agatha L. Mergenovich,

Secretary.

On page 9469 of the Federal Register of March 5, 1982, add the following in the middle column between the entries for Schedules 540 and 610 C:

Schedule 551—Equipment and Other Long-Term Obligations

[FR Doc. 82-12014 Filed 5-3-82; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

[Service Order No. 1495-A]

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

AGENCY: Interstate Commerce Commission.

ACTION: Service Order No. 1495–A.

SUMMARY: This order vacates Seventh Revised Service Order No. 1495, which authority is now contained in Thirty-fifth Revised Service Order No. 1473.

EFFECTIVE DATE: 12:01 a.m., May 1, 1982.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr. (202) 275–7840 or 275–1559.

Decision

In the matter of Burlington Northern Railroad Company and Fort Worth and Denver Railway Company authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company, debtor (William M. Gibbons, Trustee).

Decided: April 28, 1982.

PART 1033—CAR SERVICE

Upon further consideration of Seventh Revised Service Order No. 1495 (47 FR 7259), and good cause appearing therefor:

List of Subjects in 49 CFR Part 1033

Railroads.

It is ordered,

§ 1033.1495 Service Order No. 1495-A.

(a) *Various railroads authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company, debtor (William M. Gibbons, Trustee).*

(b) Seventh Revised Service Order No. 1495 is vacated effective 12:01 a.m., May 1, 1982.

(49 U.S.C. 10304-10305.)

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

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien. J. Warren McFarland not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12084 Filed 5-3-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

Atlantic Groundfish (Cod, Haddock, and Yellowtail Flounder); Correction

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; correction.

SUMMARY: This document corrects geographic coordinates used in delimiting the western boundary of "Closed Area I" for haddock spawning, set forth in the Interim Fishery Management Plan for Atlantic Groundfish (Interim Plan), and published in the **Federal Register** as an emergency interim rule on March 30, 1982 (47 FR 13357). This error also appeared in proposed rules published on March 11, 1982 (47 FR 10605). NOAA corrects the emergency interim rule to describe accurately the area which is closed for haddock spawning by the New England Fishery Management Council. The subsequent final rule will also specify the corrected coordinates.

FOR FURTHER INFORMATION CONTACT: Frank Grice, Fisheries Management Division, State Fish Pier, Gloucester, Massachusetts, 617-281-3600.

List of Subjects in 50 CFR Part 651

Fish, Fisheries

Dated: April 29, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

PART 651—ATLANTIC GROUNDFISH (COD, HADDOCK, AND YELLOWTAIL FLOUNDER)

Accordingly, NOAA corrects 50 CFR 651.21(a)(1)(i) (A) through (E), published on March 30, 1982, on page 13360, column 3, of the emergency interim rule. The following coordinates for "Closed Area 1":

(A) 41°50′ N. latitude, 69°45′ W. longitude;

(B) 40°55′ N. latitude, 68°55′ W. longitude;

(C) 41°35′ N. latitude, 68°30′ W. longitude;

(D) 41°50′ N. latitude, 68°45′ W. longitude;

(E) 41°50′ N. latitude, 69°45′ W. longitude;

are corrected to read as follows:

§ 651.21 Closed areas.

(a) * * *

(1) * * *

(i) * * *

(A) 41°50′ N. latitude, 69°40′ W. longitude;

(B) 40°53′ N. latitude, 68°58′ W. longitude;

(C) 41°35′ N. latitude, 68°30′ W. longitude;

(D) 41°50′ N. latitude, 68°45′ W. longitude;

(E) 41°50′ N. latitude, 69°40′ W. longitude;

* * * * *

(16 U.S.C. 1801 *et seq.*)

[FR Doc. 82-12126 Filed 5-3-82; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 47, No. 86
Tuesday, May 4, 1982

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

Certification of Industrial Radiographers

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In this advance notice of proposed rulemaking, the Commission is presenting an alternative to the present system of permitting a radiography licensee to train and designate individuals as radiographers. The suggested alternative would require that each individual who uses byproduct material in industrial radiography be certified by a third party approved by the NRC. This action is intended to ensure that all radiographers possess adequate training and experience to operate radiographic equipment safely. This action is taken in response to a petition for rulemaking and continuing Commission concern over the problem of radiography overexposures.

DATES: Comment period expires September 3, 1982. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Send comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. Submit comments in writing or present comments orally at public meetings to be conducted in NRC Regions II, III, IV, V, and in Washington, D.C. in May or June 1982. The exact location, date, and time for each public meeting will be announced at a later date.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Jones, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301–443– 5970.

SUPPLEMENTARY INFORMATION: Industrial radiography involves the use of relatively large (multicurie) gamma-emitting sealed sources in non-destructive testing of metallic material for defects. Most radiographic operations require use of the sources in open air outside a shielded container. Therefore, a high radiation field is allowed to exist in the areas surrounding the source. NRC licensees must train radiographers to employ sound radiation safety practices to assure that neither the radiographer nor members of the general public are exposed to excessive radiation during the conduct of industrial radiography. The most critical element in the conduct of industrial radiography is for the radiographer to return the source to its shielded container after each radiographic exposure and to verify that the source is in its shielded position.

During the years of 1971 through 1980, radiography licensees, although they constitute approximately 3 percent of NRC material licensees, have been involved in over 60 percent of those reported over-exposures to the whole body that were greater than 5 rems and over 80 percent of whole body exposures greater than 25 rems. The NRC Agreement States have had a similar experience.

Investigations of radiography overexposure incidents have indicated that the majority of the overexposures are the result of a failure by the radiographer to follow established operating procedures. The most common procedure violated is the failure to perform a physical radiation survey after each exposure to verify that the source has been returned to its safe storage position.

Investigations of overexposure incidents by NRC and Agreement State inspectors have also indicated that inadequate training of radiographers may be a significant contributing cause in many of the overexposure incidents. The NRC does not at the present time have an effective means of determining the competency of individual radiographers. The NRC's Office of Inspection and Enforcement, as part of its inspection of radiography licensees, determines the training and knowledge of only a small percentage of the total number of radiographers. Therefore, the training and knowledge of the majority of the individuals conducting radiography in areas under NRC jurisdiction is not known. The lack of an effective means of verifying the training of radiographers by the NRC increases the chance of having inadequately trained individuals using potentially lethal sources of radiation in the public domain.

Under present NRC regulations, individual radiography licensees are permitted under the authority of their licenses to train and designate individuals as qualified to act as radiographers. In such cases, the prospective radiography licensee submits a description of the training program for qualifying individuals to act as radiographers as a part of the overall application for a radiography license. The training program is reviewed for its adequacy by the NRC staff and, if it is found to be acceptable, the licensee is granted authority to train and designate individuals as radiographers. The inherent problem with the present system is the difficulty of verifying the effectiveness of the training programs. The NRC inspectors' primary means of determining the adequacy of a licensee's training program is by inspecting training records. While training records may serve as evidence that training was given, they do not provide an adequate basis for concluding that the training was effective or that individual radiographers are knowledgeable in NRC regulations and the licensee's operating and emergency procedure.

The Nondestructive Testing Management Association (NDTMA) requested, in a 1977 petition for rulemaking, that the NRC amend its regulations to provide for registration, licensing and control of individual radiographers. This advance notice of proposed rulemaking is being published to resolve the NDTMA petition and to further NRC efforts to improve radiation safety in the radiography industry. In August 1978, the NDTMA petition was published for comment in the Federal Register (43 FR 34563). Eleven comments were received concerning the petition. The majority of the comments received concerning the petition stated that the present system for designating individuals as radiographers is adequate

and that an NRC licensing program would be costly and would not reduce the number of overexposures in the radiography industry.

In the petition for rulemaking the NDTMA stated that in its opinion the Commission was overlooking a major contributing cause of incidents in the radiography industry. The reference was to cases where the radiographer acts negligently on his own despite being provided proper training, testing, and safety equipment. The NDTMA indicated that a program for licensing and control of individual radiographers would reduce the rate of occurrence of this kind of incident by making individual radiographers more responsible for their actions. The NDTMA added that, "it is not the intent, nor would this proposal in any way reduce the responsibility of the licensee."

The NDTMA petition did not include any information to support its opinion that a national licensing program would motivate individual radiographers to work more safely. Interested persons are specifically invited to comment concerning the motivational aspects of a certification program.

The issue of radiographer licensing has been considered for implementation at various times by the AEC/NRC since 1964. In its past considerations, the staff has not conclusively determined whether an NRC program for licensing of radiographers is desirable. The NRC now believes that due to budgetary constraints and the lack of personnel and equipment, an NEC program for licensing of radiographers is not feasible. However, the NRC does believe that the present system of permitting individual radiography licensees to train and designate individuals as qualified to act as radiographers has deficiencies. An alternative to the present system is discussed below.

Third-Party Certification

The present system for training radiographers permits wide disparity in the competence of individual radiographers depending primarily upon the quality of the particular licensee's training program. The NRC believes the present system would be improved if the final determination of competence to act as a radiographer was made by an independent body. In view of the limited staff resources, the NRC believes the development of a regulatory program that incorporates a third-party certification requirement for individual radiographers is the most feasible means of increasing NRC's assurance of the competency of radiographers. The NRC would encourage and support initiatives on the part of the radiography industry in establishing a third-party certification program for testing radiographers.

Implementation of a third-party certification program would require the development of a certification standard that is satisfactory to the NRC, the radiography industry, and other interested persons. The NRC would also be required to amend 10 CFR Part 34 of its regulations to specify that only individuals who have been tested and certified as meeting the provisions of the standard may act as radiographers under the authority of NRC licensees.

The NRC would especially appreciate receiving comments from organizations that would be interested in participating in a third-party certification program for industrial radiographers. Participants in the program could be either organizations that promote the nondestructive testing industry or organizations that are independent from the industry. The NRC would make a determination as to whether to recognize a particular organization's program for certification. Following acceptance of an organization's certification program as meeting NRC standards, the NRC regulations would be amended to require certification by that organization.

Radiography-Licensee Designation (Status Quo)

An alternative to the third-party certification program would be to continue with the present system of permitting radiography licensees to train and designate their own radiographers.

Invitation To Comment

Comments concerning the desirability of establishing a third-party certification program for certifying radiographers are invited. Comments are specifically solicited concerning the alternatives described in this notice. Suggestions of other alternatives, and estimates of costs for implementation of the programs, are encouraged.

In light of previous discussion, the NRC is particularly interested in receiving comments concerning the following:

1. Is the training provided to radiographers under the present system adequate?

2. Would a third-party certification program reduce the number of overexposures in the radiography industry?

3. Would a third-party certification program motivate radiographers to work more safely?

4. What elements in the present system or in the suggested alternative are particularly desirable or undesirable? Why?

5. If a third-party certification program is adopted, what items should be included in the standard for determining the competence of individuals to act as radiographers?

6. If a third-party certification program is adopted, should it apply to individuals presently working as radiographers or only to new radiographers?

7. If a third-party certification program is adopted, should certificates be issued to individuals for life or should there be periodic renewals of the certification?

8. Would a third-party certification program affect the ability of a licensee to respond to variable manpower needs?

9. Since a third-party certification program would likely to be based on cost recovery by a fee system, would the cost to the licensees of such a program be warranted?

10. Which alternatives of the two discussed (present system, third-party certification) is preferable? Why? Are there other better alternatives? If so, please explain.

11. With respect to the two alternatives, what kind of enforcement action could and should be taken against radiographers who do not operate equipment safely or follow established procedures? What rights should radiographers have with respect to such enforcement actions?

12. Would a small licensee, because of its size bear a disproportionate adverse economic impact under a third-party system?

13. For those organizations that are interested in participating in a third-party certification program, what would be the estimated cost in implementing such a program?

List of Subjects in 10 CFR Part 34

Packaging and containers, Penalty, Radiation protection, Radiography, Reporting requirements, Scientific equipment, Security measures.

(Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201))

Dated at Washington, DC this 27th day of April 1982.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82-12068 Filed 5-3-82; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

10 CFR Part 600

Financial Assistance Rules

AGENCY: Energy Department.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On March 19, 1982, the Department of Energy (DOE) published a proposed rule (47 FR 12038) which would comprehensively revise Subparts A and B of the DOE Assistance Regulations, 10 CFR Part 600, and which would make several technical and conforming amendments to Subpart C of 10 CFR Part 600. The deadline for public comments on the proposed rule was April 19, 1982. The Arizona Public Service Company submitted a timely written request for a 30-day extension of the comment period. In response to this request, DOE is extending the deadline for public comments to May 19, 1982.

DATE: Written comments on the proposed rule published at 47 FR 12038 (March 19, 1982) must be received by May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Ellen Feinsilber, Financial Assistance Policy Branch (MA–931.2), Procurement and Assistance Management Directorate, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–8191.

Issued in Washington, D.C., April 28, 1982.

Hilary J. Rauch,

Director, Procurement and Assistance, Management Directorate.

[FR Doc. 82–12076 Filed 5–3–82; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 556

[No. 82–308]

Branching in Connection with Supervisory and Non-Supervisory Mergers and Acquisitions

Dated: April 28, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board proposes to amend its policy statement regarding branching by federally chartered savings and loan associations. The amendments are intended to clarify the Board's position on certain matters relating to branching outside the state of an association's home office.

DATES: Comments must be received by: June 3, 1982.

ADDRESS: Send comments to Director, Information Services, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Donna K. Ralston, (202 377–6417), Attorney, Office of General Counsel, Federal Home Loan Bank Board, at the above address.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1981, the Board amended its policy statement on branching (12 CFR 556.5; 46 FR 19221, March 30, 1981) to clarify the limited exception to the Board's general policy permitting federal associations to establish branch offices only in the state in which an association's home office is located. The amendments provided that the Board may approve a merger, consolidation, or purchase of assets ("acquisition") resulting in the establishment of a branch office in a state other than the state in which an association's home office is located if (1) the proposed acquisition would be effected pursuant to a plan to prevent the failure of an institution whose accounts are insured by the FSLIC ("insured institution"), (2) the Board determines that the insurance liability or risk to the FSLIC would be reduced as a result of the proposed acquisition, and (3) the Board determines that the insurance liability or risk to the FSLIC resulting from the proposed acquisition transaction would be substantially less than the liability or risk that would result from otherwise equally desirable acquisition alternatives, if any, that would not result in interstate branch operations. In cases where more than one out-of-state association applies for Board approval of an acquisition, the Board will give preference to a particular application on the basis that the applicant is already operating in the same Standard Metropolitan Statistical Area or locality as the other institution or one or more of the other institutions engaged in the proposed acquisition.

On September 3, 1981, the Board again amended its policy statement on branching (46 FR 45120, September 10, 1981) to clarity that an association that has established a branch office in a state other than the state in which its home office is located pursuant to an action to prevent the failure of an insured institution may establish additional branch offices in that state with Board approval.

The Board now proposes to amend its policy statement on branching to clarify the following points relating to branching outside the state of an association's home office:

(1) As long as the establishment of a branch office outside the state of an association's home office will be achieved as part of an acquisition in which the FSLIC will take an action to prevent the failure of one of the institutions involved in the acquisition, it is irrelevant which institution is the survivor or acquirer.

The proposed amendments emphasize the Board's belief that by allowing branch offices to be established in connection with "reverse mergers," the FSLIC is given the flexibility necessary to structure an acquisition in a manner that will result in the greatest reduction of the insurance liability or risk to the FSLIC.

(2) Before determining that a proposal involving branching outside the state of an association's home office should be approved as part of an action by the FSLIC to prevent the failure of an institution, the Board will consider otherwise equally desirable alternatives not involving branching by a federal association outside the state of its home office. The Board's present policy statement specifically refers to an acquisition involving branching by a federal association within the state of its home office as such a possible alternative. Under the proposed amendments, it is clear that such alternatives would also include an acquisition by a state-chartered institution, even if it is not chartered under the laws of, or does not have an office in, a state in which the target institution is located, as long as the laws governing the chartering and operation of both of the institutions involved permit the acquisition.

The proposed amendments also would clarify that the Board will consider any branching alternative that could be approved under the exception to the general rule that is set forth in proposed § 556.5(a)(3)(iii) (described in paragraph (3) below).

The Board believes that in clarifying all of the acquisition alternatives to be considered by the Board before approving the establishment of branch offices by a federal association outside the state of its home office, the proposed amendments emphasize the Board's preference for intrastate branching of federal associations.

(3) The Board may approve the establishment of a branch office in a state other than the state in which an association's home office is located,

provided that the branch office will be established as a result of the consolidation of some or all of the savings and loan subsidiaries of a multi-state, multiple savings and loan holding company. The proposed amendments also would specifically indicate the Board's authority to approve the establishment of additional branch offices by the association resulting from such a consolidation in any state in which the subsidiaries had existing branch office operations prior to the consolidation.

The Board believes that the proposed amendments may be necessary to clarify the present policy statement that multi-state multiple savings and loan holding companies are able to consolidate their savings and loan subsidiaries. It should be noted that only the three multi-state multiple savings and loan holding companies that were "grandfathered" from the prohibition of the Savings and Loan Holding Company Act (12 U.S.C. 1730a *et seq.*) against the formation of multi-state multiple savings and loan holding companies would be affected by the amendments. Consolidation of the interstate savings and loan subsidiaries of a multiple savings and loan holding company would constitute, in effect, an organizational restructuring. Therefore, due to the limited application of the proposed amendments and the fact that the corporate operations of the resulting institution would not differ substantially from the operations of the subsidiaries as separate entities, the Board's policy regarding interstate branching in most non-supervisory contexts and its preference for intrastate branching of federal associations would not be affected.

(4) A federal association that has established branch offices in states outside the state of its home office pursuant to an action to prevent the failure of an institution insured by the FSLIC, may establish additional branch office operations in those states, under current § 556.5(a)(3)(iii). The proposed amendment clarifies the scope of this branching policy. For purposes of branching, such a federal association will be considered as having its home office in each of the states in which it has established branch offices. However, for purposes of branching in connection with another acquisition involving an action by the FSLIC to prevent the failure of an insured institution, such a federal association will be considered as having only one home office, and may permissibly branch outside the state of its home office only if the criteria under § 556.5(a)(3)(ii)(*a*) are met.

In addition to soliciting public comments regarding the proposed amendments, the Board takes this opportunity to solicit public comments regarding any matter relating to branching by federal associations that is currently addressed in its policy statement on branching.

Because there is a present need to clarify Board policy regarding branching in connection with supervisory and non-supervisory mergers and acquisitions and to facilitate the operations of the FSLIC in this area, the Board has limited the comment period to 30 days.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164 (September 13, 1980), the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objective and legal basis underlying the proposed rule.* These elements have been incorporated above in the supplementary information regarding the proposed rule.

2. *Small entities to which the proposed rule will apply.* The proposed rule would apply only to insured institutions.

3. *Impact of the proposed rule on small institutions.* The proposed rule would apply equally to all insured institutions regadless of size.

4. *Overlapping or conflicting Federal rules.* There are no known Federal rules that may duplicate, overlap or conflict with the proposed rule.

5. *Alternatives to the proposed rule.* There are no alternative methods for relieving the branching restrictions currently imposed on insured institutions.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 556 in Subchapter C, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 556—STATEMENTS OF POLICY

Amend paragraph (a)(3) of § 556.5 by revising paragraph (a)(3)(ii), revising paragraph (a)(3)(iii) and redesignating it as paragraph (a)(3)(iv), and adding new paragraph (a)(3)(iii) to read as follows:

§ 556.5 Establishment of branch offices.

(a) * * *

(3) * * *

(ii)(*a*) Notwithstanding paragraph (a)(3)(i) of this section, the Board may approve the establishment of a branch office in a state other than the state in which the home office is located, provided that:

(*1*) the establishment of the branch office will be achieved as part of a transaction in which the assets of one institution are acquired by another institution, by merger or otherwise, pursuant to an action by the Federal Savings and Loan Insurance Corporation ("Corporation") to prevent the failure of one of the institutions,

(*2*) the Board determines that the insurance liability or risk to the Corporation will be reduced as a result of maintaining the branch office, and

(*3*) if any otherwise equally desirable acquisition alternative has been submitted that could be approved either in accordance with paragraph (a)(3)(i) or (a)(3)(iii) of this section, or where the potential acquirer is a state-chartered insured institution, in accordance with the laws governing the chartering and operation of the institutions that will be parties to the acquisition, the Board determines that the insurance liability or risk to the Corporation resulting from the proposed interstate acquisition transaction will be substantially less than the liability or risk that would result from such other acquisition alternative.

(*b*) In reviewing acquisition alternatives submitted for consideration in accordance with this paragraph (a)(3)(ii), the Board will give preference to a particular alternative on the basis that a home office or an operating branch office of an institution that will be a party to the proposed acquisition is located in the same Standard Metropolitan Statistical Area or locality as a home office or an operating branch office of the other institution or one or more of the other institutions that will be parties to the acquisition.

(iii) Notwithstanding paragraph (a)(3)(i) of this section, the Board may approve the establishment of a branch office in a state or states other than the state in which the home office is located, provided that the establishment of the branch office will be achieved by the consolidation of some or all of the savings and loan subsidiaries of a multistate multiple savings and loan holding company. The Board may approve the establishment of a branch office by the resulting institution in any state or states in which the subsidiaries had existing branch office operations prior to their consolidation.

(iv) Notwithstanding paragraph (a)(3)(i) of this section, in a transaction not involving an action by the FSLIC to prevent the failure of an institution, the Board may approve the establishment of a branch office in any state in which the

applicant has established a branch office pursuant to the conditions set forth in paragraph (a)(3)(ii) of this secton.

* * * * *

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464, 1729; Reorg. Plan No. 3 of 1947, 172 FR 4891, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-12072 Filed 5-3-82; 8:45 am]

BILLING CODE 6720-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Ch. I

Improving Government Regulations; Semiannual Agenda

AGENCY: Small Business Administration.

ACTION: Publication of the Semiannual Agenda of Regulations under review or development by the Small Business Administration.

SUMMARY: This is SBA's sixth semiannual agenda of regulations. Although not a regulatory Agency, SBA has attempted to draft agendas that met both the criteria and the spirit of the regulatory review process. This agenda is published pursuant to Executive Order 12291 and the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, Public Law 96–354 effective January 1, 1981.

FOR FURTHER INFORMATION CONTACT:

For further information on agenda items, the public is encouraged to contact the individual Agency official listed for the particular item.

For information concerning overall SBA Regulatory Review and Development Program and general semiannual agenda questions, contact Martin D. Teckler, Assistant General Counsel for Legislation, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416, 202/653–6662.

SUPPLEMENTARY INFORMATION: The SBA agendas will contain many regulations which are limited in public impact, but they are included to increase public knowledge of all SBA regulatory activities and allow for increased public participation in the review and development process. Public comments on SBA's previous agendas have been general, and all were positive. None were directed at specific contents, nor were any changes suggested or recommended.

I. Regulations Under Review and Development

The agenda format is nor slightly modified. Part I, Regulations Under Review and Development, includes proposed and final regulations which SBA has issued since publication of the last agenda. Part II, Existing Regulations Selected for Review, informs the public of the regulation review which is currently underway within the Agency. The format for the agenda is:

Part I: Regulations Under Review and Development

A. A summary of the nature of all rules which have been published proposed or final since October 1981, stating the objectives and the legal basis. When a listed rule is a major rule within the meaning of E.O. 12291 or will have significant impact on a substantial number of small businesses, it will be so designated.

B. The approximate schedule for completing action on each rule listed.

C. The name and phone number of an Agency official knowledgeable on each listed rule.

Part II: Existing Regulations Selected for Review

A. A list of existing regulations to be reviewed or promulgated under the terms of E.O. 12291 and the Regulatory Flexibility Act.

B. A summary of the nature of any such rules, a summary of the legal basis for such rules and an approximate timetable for completing action on such rules.

C. The name and phone number of an Agency official knowledgeable on each such rule.

Publication of this agenda does not impose any binding obligation on SBA with regard to any specific item in the agenda. Additional regulatory action not listed on the agenda is not precluded.

Dated: April 28, 1982.

James C. Sanders,

Administrator.

I. Regulations Under Review and Development

Date published and Federal Register cite	Nature of publication	Subject of publication	Approximate date of completion	Knowledgeable official	Legal basis
12/3/81, 46 FR 58701	Notice of proposed rulemaking	Export Revolving Line of Credit Loans, 13 CFR Part 122.	6/1/82	Edwin T. Holloway, 653–6632	15 U.S.C. 636(a).
11/23/81, 46 FR 57266	Final rulemaking	Fixed Program Participation Rules for Section 8(a) Program, 13 CFR Part 124.	11/23/81	Charlie L. Dean, 653–6699	15 U.S.C. 637(a).
12/18/81, 46 FR 61642	do	Disaster Loans, Permitted Use, 13 CFR Part 123	12/18/81	Bernard Kulik, 653–6879	15 U.S.C. 636(a).
1/4/82, 47 FR 9	do	Small Business Lending Companies, 13 CFR Part 120.	1/4/82	Robert C. Hull, 653–7894	15 U.S.C. 636(a).
1/11/82, 47 FR 1109	do	Advance Payments, 13 CFR Part 120	1/11/82	Charlie L. Dean, 653–6699	15 U.S.C. 637(a).
1/15/82, 47 FR 2305	do	SBA Organization, 13 CFR Part 101	1/15/82	Ronald Allen, 653–8538	15 U.S.C. 634(b)(6).
3/3/82, 47 FR 8990	do	Loan Eligibility, 13 CFR Part 120	3/3/82	Edwin T. Holloway, 653–6632	15 U.S.C. 636(a).
3/23/82, 47 FR 12332	do	Standards of Conduct for SBA Employees, 13 CFR Part 105.	3/23/82	Donald W. Farrell, 653–6660	15 U.S.C. 634(b)(6).

II. Existing Regulations Selected for Review

Regulation	Basis for rule	Nature of rule	Timetable for Completion of Proposed rule	Agency offical
13 CFR Parts 121, et seq.	15 U.S.C. 632 and 634(b)(6)	Size Standards, complete revision	Summer 1982	Harvey Bronstein, (202) 653–6373.
13 CFR Parts 122, et seq.	15 U.S.C. 636(a) and 634(b)(6)	Business Loan Policy, Miscellaneous revisions based on anticipated changes in authorizing legislation.	Fall 1982	Edwin T. Holloway, (202) 653–6632.
13 CFR Parts 123, et seq.	15 U.S.C. 636(b) and 634(b)(6)	Disaster loans, Miscellaneous revisions based on anticipated changes in authorizing legislation.	Summer 1982	Edwing T. Holloway, (202) 653–6632.
13 CFR Part 120.4 et seq.	15 U.S.C. 636(a) and 634(b)(6)	Eligible loan participants	Fall 1982	Edwing T. Holloway, (202) 653–6632.
13 CFR Part 108 et seq.	15 U.S.C. 501, 502, 503, and 15 U.S.C. 634(b)(6).	State and local development companies, Miscellaneous revisions.	Summer 1982	Edwing T. Holloway, (202) 653–6632.
13 CFR Part 107 et seq.	15 U.S.C. 687(c), (d), and (g)	Complete revision of rules governing small business investment companies.	do	Robert Lineberry, (202) 653–6848.

II. EXISTING REGULATIONS SELECTED FOR REVIEW—Continued

Regulation	Basis for rule	Nature of rule	Timetable for Completion of Proposed rule	Agency offical
13 CFR Part 124 et seq.	15 U.S.C. 637(a) and 634(b)(6)	Minority Small Business and Capital Ownership Development.	Fall 1982	r. Robert Wright, (202) 653-6407.

[FR Doc. 82-12043 Filed 5-3-82; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154 and 271

[Docket No. RM82-26-000]

Impact of the NGPA on Current and Projected Natural Gas Markets

Issued: April 28, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission is issuing a Notice of Inquiry to investigate allegations that serious economic distortions may be evolving in the nation's natural gas markets. The Notice of Inquiry is intended to gather information concerning the existence of such distortions, to examine the Commission's administrative authority to reduce any such distortions and to explore the advantages and disadvantages of taking any action. A staff analysis of certain issues relating to eliminating vintaging, either in whole or in part, and establishing a single national rate for gas qualifying for sections 104, 106 and 109 of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (Suppl. II 1978) is provided in Appendix A. Appendix B is a list of questions on the possible existence of economic distortions, possible administrative action to reduce such distortions and potential impact of such administrative action. The notice invites all interested persons to participate in the inquiry.

DATES: Written comments must be received on or before August 26, 1982.

ADDRESS: Comments must be filed with Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Thomas P. Gross, Acting Deputy Assistant General Counsel, Rulemaking and Legislative Analysis, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8033.

I. Introduction

There has been considerable debate over the past year concerning the operation and impact of the Natural Gas Policy Act of 1978 (NGPA) [1] on natural gas production, distribution and pricing. These issues have been raised in various proceedings before the Commission. In addition, numerous persons and groups have brought to the Commission's attention allegations that economic distortions are evolving in today's natural gas markets, which may become more serious in 1985 when approximately sixty percent of natural gas wellhead prices will be decontrolled through operation of the NGPA. These persons and groups have urged the Commission to investigate the possible existence of distortions and to examine the extent of its current statutory authority to resolve such problems.

Congress has delegated to the Commission certain authorities under the NGPA and the Natural Gas Act (NGA).[2] In view of these statutory responsibilities, the Commission believes it is required to examine closely the allegations being made.

The Commission, therefore, is issuing this Notice of Inquiry to gather information concerning the existence of problems caused by or resulting from the Commission's administration of the NGPA and NGA. It further wishes to examine the extent of administrative authority available to resolve any such problems and to explore the advantages and disadvantages of taking any action. The Commission invites the participation of all interested person in this inquiry and will consider carefully all information and comments received. Based on the record developed, the Commission will determine whether to initiate a Notice of Proposed Rulemaking and/or to make recommendations to Congress.

II. Background

The following discussion includes a brief summary of natural gas price regulation at the wellhead under the NGA.

It was against the background of the NGA that Congress enacted the NGPA in an effort to correct perceived distortions in the interstate and intrastate gas markets that had caused shortages of supply to consumers. Also included, as background is a discussion of the changes in wellhead price regulation resulting from passage of the NGPA and the role the NGPA was intended to play in smoothing the transition to partial price deregulation in 1985 and 1987.

A. Experience under the Natural Gas Act

Prior to 1954, the wellhead sales price of natural gas was not regulated. In 1954 the Supreme Court held in *Phillips Petroleum Co.* v. *Wisconsin*,[3] that an independent producer of natural gas selling for resale in interstate commerce is a "natural gas company" within the meaning of the Natural Gas Act and that such sales of natural gas are subject to rate regulation by the Federal Power Commission.[4] Thus, wellhead sales of natural gas entering interstate commerce became subject to federal price controls for the first time. However, gas that did not enter interstate commerce, but was produced, sold, delivered and consumed in a single state ("intrastate gas"), generally continued to be sold at unregulated prices.

For a number of years following *Phillips*, price controls on interstate gas did not affect the ability of interstate pipeline purchasers to obtain adequate gas supplies at relatively low prices. Consumers experienced low prices during the period from 1954 to about 1970. When inflation is taken into account, the real cost of residential natural gas service declined substantially in this period, in part due to economies of scale and reduced unit costs as relatively minor construction substantially increased the capacity of

[1] 15 U.S.C. 3301-3432.

[2] 15 U.S.C. 717 *et seq.*

[3] 347 U.S. 672 (1954).

[4] Section 402(a) of the Department of Energy Organization Act, 42 U.S.C. 7172(a), transferred the relevant functions of the Federal Power Commission to the Federal Energy Regulatory Commission.

existing pipeline systems.[5] At the same time, prices offered by intrastate purchasers were generally at the same level or slightly lower than the prices allowed by the Federal Power Commission for jurisdictional sales.[6] Curtailment of firm service was rare and generally resulted from capacity limitations.

Over time, however, decreasing supplies and increasing demand combined to reveal market distortions resulting from the maintenance of price controls within the interstate natural gas market. The cost-based pricing approach which the Commission used to regulate the price of interstate supplies failed to elicit development and committment of new supplies sufficient to offset consumption of existing reserves. Funds potentially available for exploratory efforts frequently were directed to ventures which potentially offered more profitable returns than gas exploration. To investors and producers of interstate gas, low prices meant that full development of replacement supplies of interstate gas was not warranted.[7] The total number of wells for oil and gas dropped almost every year from 1956 to 1971, with the low point occuring in 1971 at 51 percent of the 1956 figure.[8] New gas well completions (indicating the development and extension of existing reserves) fell nearly every year from 1962 to 1971.[9]

However, throughout the 1954–1970 period, demand for natural gas increased sharply, in part because of the decline in real natural gas prices. To consumers, low prices stimulated demand and encouraged consumption. Total natural gas consumption increased from approximately 8.05 Tcf in 1954 to over 20 Tcf in 1969.[10] The combination of expanding demand and declining reserve additions resulted in a decrease in total reserves beginning in 1968. The Nation was consuming gas faster than it was replacing it.[11] From 1968 through 1979, total proved reserves decreased constantly, from 292 Tcf in 1967 to 195 Tcf in 1979.[12]

In the intrastate market, the increased demand for gas, coupled with the decrease in drilling for new supplies, caused prices to increase beginning around 1969. As a result, a price differential developed between the unregulated prices bid by intrastate purchasers and the ceiling prices maintained by the Commission on interstate sales.[13] Because interstate pipeline purchasers were legally precluded from paying price levels competitive with the prices paid by unregulated intrastate purchasers, interstate pipeline purchasers soon began to experience difficulties in contracting for new reserves. The percentage of newly discovered reserves dedicated to the interstate market began to drop by 1970. From 1970 to 1974, one estimate indicates that only about five percent of new natural gas discoveries were committed to the interstate market.[14] By the winter of 1970–71, curtailment of firm service had begun on some interstate pipelines[15] and soon spread to most major companies.

Despite the Commission's administrative efforts to alleviate the problem by creating price incentives and making intrastate gas available to the interstate market, [16] the shortages worsened through 1977. Eventually, it was widely recognized by Congress that inadequate price incentives for independent producers, underpricing of gas to consumers as compared to the price of alternative fuels, and the interstate-intrastate dual market were underlying causes of the nation's natural gas difficulties.[17]

B. Experience under the NGPA

Recognizing that price disparities between the interstate and intrastate markets were distorting the allocation of available gas supplies and that regulated prices for interstate gas were discouraging exploration and development of new supplies, both Congress and the President sought a legislative remedy. The NGPA represented a compromise, reached only after extended negotiations among the Administration, the House of Representatives and the Senate. One purpose of the NGPA was to eliminate interregional price and supply distortions by ending the distinction between the interstate and intrastate markets. Another was to bring the national natural gas market into better balance by reducing the demand for natural gas and increasing supply.[18]

In order to reduce demand and increase supply,[9] the NGPA set ceiling prices for new supplies of gas which generally were higher than the ceiling prices in effect under the NGA. The NGPA divided new supplies into several categories, defined by spud dates, production levels and other well characteristics. The ceiling price established for each category reflected the production incentives that Congress wished to provide for each category. Congress also provided that the new ceiling prices will escalate according to the general level of inflation.

In addition, the prices of most gas developed after enactment of the NGPA will be decontrolled on January 1, 1985. It has been estimated that the gas deregulated in 1985 will represent between 50 and 60 percent of total gas supplies.[20] Additional supplies will be deregulated in 1987. However, approximately 40 percent of total gas supplies, mostly gas committed to the interstate market prior to enactment of

[5] The average city-gate rate fell from 36¢ per MMBtu in 1962 to just under 33¢ by 1968 and did not rise above the 1962 level until 1970. AGA. *Gas Facts*, 1980 Data, Table 98.

[6] H. R. Rep. No. 95–496, 95th Cong., 1st Sess., Part IV at 90, *reprinted in* 1978 U.S. Code Cong. & Ad. News, at 8534.

[7] *See* H.R. Rept. No. 95–496, Part IV, *supra*, at 97 (1977), *reprinted in* 1978 U.S. Code Cong. & Ad. News 8541.

[8] Energy Information Administration, 1980 Annual Report to Congress [hereinafter cited as *EIA Annual Report*] Table 17.

[9] *Id.* This reduction in new gas well completions is representative of the fact that gas producers, unlike conventional public utilities, were under no legal obligation to serve the public or to discover and dedicate additional reserves. Thus, if incentives were inadequate, it was legally permissible for the producer to direct his capital and efforts to other activities.

[10] *Id.*, at Table 46. *See also, Minerals Yearbook, supra* (1954–1969 data).

[11] *Id.*, at Table 19.

[12] *Id.*, Also, *compare* AGA *Gas Facts*, (1980 data) Table 2 *with* EIA's publication of estimated proved gas reserves in *U.S. Crude Oil, Natural Gas, and Natural Gas Liquids Reserves*, illustrating the comparability of some EIA data and AGA data. The only year in which total proved reserves increased was in 1970 when Prudhoe Bay reserves were added. These reserves are yet to be delivered.

[13] H.R. Rep. No. 95–496, *supra*, at 90.

[14] H.R. Rep. No. 95–496, *supra*, at 95.

[15] Several major intrastate pipelines were also affected by the shortages. However, the intrastate markets were able to adapt more rapidly to the shortages, as unregulated prices increased to stabilize supply and demand.

[16] The Commission sought to provide increased incentives by raising the price for gas in Opinion Nos. 699–H and 770–A and the special relief and optional procedure programs. 18 CFR 2.56a(g), 2.56b(h), 2.75 and 2.76. Administrative attempts to provide access to intrastate markets were made in the emergency sales and direct sales programs. See 18 CFR 2.60 and 2.79. In addition to these administrative efforts, Congress adopted the Emergency Natural Gas Act of 1977, Pub. L. 95–2, 91 Stat. 4 (February 2, 1977), which allowed large volumes of intrastate gas to be sold in interstate for approximately six months at prices in excess of the otherwise applicable ceilings.

[17] *See* H.R. Rep. No. 95–496, *supra*, at 96, 110.

[18] *See* H.R. 8444, the natural gas bill based directly on the President's 1977 proposals and passed by the House on August 5, 1977. H.R. 8444, 401(b)(1), 95th Cong. 1st Sess, 123 Cong. Rec. 28,448 (1977).

[19] For a discussion of the purposes of the NGPA, see *Mid-Louisiana Gas Co.* v. *FERC*, 664 F.2d 530, 535 (5th Cir. 1981) *pet. for cert. pending* No. 81–1889; *Oklahoma* v. *FERC*, 661 F.2d 832, 834 (10th Cir. 1981) *pet. for cert. pending* Nos. 81–1478 and 81–1232; *Process Gas Consumers Group* v. *U.S. Dept. of Agriculture*, 661 F.2d 1322, 1357–8 (D.C. Cir. 1981), vacated in part and rehearing *en banc* granted on other grounds by order of November 13, 1981.

[20] *See EIA Analysis, supra*, at pp. 48–51 (Tables 11 and 12); Department of Energy, "A Study of Alternatives to the Natural Gas Policy Act of 1978" (November 1981) [hereinafter cited as the *DOE Study*] at 3.

the NGPA, will remain under price controls until exhausted.

In order to accomplish the second major purpose of eliminating the distinction between the interstate and the intrastate markets, the NGPA established identical ceiling prices for the two markets for each category of new supplies. However, the NGPA preserved to some extent price differences in the interstate and intrastate markets, in that the ceiling prices for most older supplies of natural gas were based on the prices prevailing before the NGPA was enacted. It also preserved the distinction between the two markets in its provisions for partial deregulation, since most gas supplies that were committed to the interstate market prior to enactment of the NGPA will not be deregulated in 1985. On the other hand a significant portion of the gas supplies committed to the intrastate market before enactment will be deregulated.[21] These statutory differences suggest that the average price of price-controlled gas may continue to be lower in the interstate market than in the intrastate market and that, after 1985, price-controlled gas will also constitute a relatively larger part of the total supply in the interstate market than in the intrastate market.[22]

Congress in passing the NGPA also sought to assure a smooth transition as gas supplies become deregulated. To achieve that result, it adopted three mechanisms. First, deregulation was phased-in over a period of nine years. A few categories, constituting a very small portion of the nation's supplies, were deregulated within a year of enactment of the NGPA. In 1985, approximately 60 percent of the supplies will be deregulated, and in 1987 some additional gas will be deregulated. Second, the NGPA provides that the incentive price for new gas supplies will escalate so that by 1985, the price of those supplies would be equivalent to the price of crude oil based on the assumptions made by Congress at the time of enactment. Finally, the provisions of Title II of the NGPA (incremental pricing) were intended to restrain pipelines from bidding up prices for new decontrolled supplies and to cushion the impact of higher gas prices on residential and small commercial consumers.

[21] Natural gas in two categories constituting a significant portion of the nation's supplies will be deregulated in 1985 or 1987 only if the gas was not dedicated to interstate commerce on the day before the date of enactment of the NGPA—natural gas from new on-shore production wells, and natural gas selling for more than $1.00 on December 31, 1964.

[22] However, the Commission recognizes that the price of gas in the market place reflects not only the price paid at the wellhead, but also the costs of transporting and distributing the gas. Moreover, many interstate pipelines have substantial investments in treatment, transportation and storage facilities, including LNG storage facilities. To some extent, differences in these costs and facilities among pipelines may be reflected in their wellhead prices.

III. Discussion

Concern has been expressed by many persons that two purposes of the NGPA, to smooth the transition to partial deregulation in 1985 and to eliminate market disparities, may not be fulfilled. The Commission has become aware of numerous allegations that market distortions are occuring today which may become more serious in the next three years as the Nation moves towards price deregulation of an estimated one-half to two-thirds of its natural gas supplies. In addition, the Commission has been requested in a number of petitions for rulemaking to investigate these allegations and to consider its options under both the NGPA and NGA to alleviate problems found to exist.

The Commission, therefore, is issuing this Notice of Inquiry in order to initiate an investigation into all aspects of these allegations and potential solutions. In an attempt to focus this inquiry and public comments on such issues the notice discusses the allegations and relevant requests for Commission action.

A. Allegations of Current Problems

The concerns expressed in regard to market distortions occurring now focus on the wellhead prices being paid for certain categories of high cost natural gas which were deregulated under section 107 of the NGPA in 1979. This is primarily gas produced from depths below 15,000 feet, and it is estimated that production from these wells currently accounts for less than 5 percent of the Nation's total supplies.[23]

As data in the Commission's own files demonstrate, some of this gas is being purchased at prices in excess of $7.00 per MMBtu and even as high as $10.00 per MMBtu.[24] These prices are sustantially above the current regulated price for new gas qualifying under section 102 of the NGPA, which is $3.093 per MMBtu for April, 1982. It is also above the price of competing fuels, such as the Btu-equivalent No. 6 fuel oil (both high and low sulfur), which is one indication of the market clearing price.[25]

As the People of the State of California and the Public Utilities Commission of the State of California (California) state in their Petition for Rulemaking,[26] the Commission's regulations under the NGA permit interstate pipelines to "roll-in" the price of deregulated gas with the prices of all other supplies. Pipelines usually purchase gas from a variety of sources at a wide range of prices. When the pipeline resells the gas, the price paid by the customer to the pipeline reflects, with rare exception, an average of the prices paid by the pipeline to the producers. In both the interstate and intrastate markets, there are both high and low-priced supplies. The high prices paid by a particular pipeline are "rolled-in," or averaged, with the low prices. These averages are "weighted" in the sense that the volume of gas affects the average. If the volumes of high-priced gas are relatively large, the pipeline's average price is relatively high. Conversely, if the volumes of low-priced gas are relatively large, the pipeline's average price is relatively low. The volumes of low-priced gas within this mix of supplies constitute what has been termed the "gas cushion." [27]

Both California and the Laclede Gas Company (Laclede),[28] a gas distribution company in Missouri, allege that the combination of NGPA price deregulation of a small amount of total supplies and the Commission's historic regulation of pipeline rates under the NGA, which allows averaging, unduly subsidizes the production of deregulated gas to the detriment of the ultimate users. Since the price of this deregulated gas is allowed to be "rolled-in" with the price of less expensive supplies, there is little incentive for the purchasing pipeline to attempt to keep the price low through negotiation, according to California and Laclede. Moreover, the overall average

[23] *EIA Analysis, supra*, Tables 11 and 12.

[24] *See, e.g.*, Semiannual Purchased Gas Adjustment filed November 30, 1981 by Tennessee Gas Pipeline Company, Docket No. TA82-1-9-000 (PGA 82-1, IPR 82-1, DCA 82-1, R&D 82-1 and GRI 82-1) representing five contract prices for deregulated gas in excess of $9.20 per MMBtu; Semiannual Purchased Gas Adjustment filed January 29, 1982 by Transcontinental Gas Pipe Line Corp., Docket No. TA82-1-29-000 (PGA 82-1, IPR 82-1, DCA 82-1) representing contract prices at $8.18, $9.34, and $10.76 per Mcf; Semiannual Purchased Gas Adjustment filed January 15, 1982 by Trunkline Gas Company, Docket No. TA82-1-30-000-1 (PGA82-1, IPR82-1, TT82-1, AP82-1) representing a contract price at $8.47 per MMBtu.

[25] EIA, *Weekly Petroleum Status Report*, (April 16, 1982), at 23.

[26] Petition of the People of the State of California and the Public Utilities Commission of the State of California, Docket No. RM81-30 (filed April 29, 1981).

[27] More precisely, the gas cushion could be defined as the difference between the amount paid by a pipeline for price-regulated gas and the amount the pipeline would pay for the same volume gas in a completely deregulated market.

[28] Petition of Laclede Gas Company, Docket No. RM82-1 (filed October 2, 1981).

price charged by the pipeline to its distributor and industrial customers is raised. The result, they fear, is that the average pipeline price paid by consumers may rise to or above that of alternate fuels. This could cause industrial users, including electric utilities, to switch from natural gas to other fuels, thereby raising total costs to those customers still buying gas, such as residential and small commercial users.

The high prices currently being paid for deregulated gas may have another effect. The State of Louisiana (Louisiana) [26] and others have argued that in some of the intrastate markets, most of the new gas supplies available for purchase are either gas whose price is already deregulated or gas qualifying for an incentive ceiling price under section 107(c)(5) of the NGPA because of its extraordinary production costs or risks. For example, it has been stated that 70 percent of the new supplies available for purchase in South Louisiana is gas which qualifies under one of the categories in section 107 of the NGPA.[29]

Louisiana alleges that many intrastate pipelines are unable to compete for this high priced gas being produced in their own states because they do not have gas cushions large enough to allow them to roll-in the high prices. Louisiana, as well as the *EIA Analysis* and the *DOE Study*, suggest that some interstate pipelines have a significantly larger portion of lower priced gas and, therefore, a larger cushion than most intrastate pipelines.[30] The result is that intrastate pipelines controlling smaller quantities of low priced gas apparently are unable to bid competitively for deregulated gas supplies, and their total supplies appear to be declining.[31] Both Louisiana and others have argued that these conditions may lead to shortages in a few states in the near future. For example, some data indicate that as much as 10 percent of the entire gas market in Louisiana may have been supplied by interstate pipelines on an interruptible basis through off-system sales during much of 1981.[32]

There is also some evidence that such bidding disparities exist among interstate pipelines,[33] which would suggest that some interstate pipelines are not able to compete for new gas supplies. Some, however, dispute this conclusion. The American Gas Association (AGA) suggests that interstate pipelines with smaller cushions of low priced gas are purchasing more volumes of high priced deregulated gas supplies than those pipelines with a larger share of the cushion.[34]

B. Potential Impacts in 1985 and Beyond

Congress expected that the NGPA pricing mechanisms would result in a smooth transition to partial decontrol in 1985. For example, it appears that Congress intended that the prices under the NGPA for certain new supplies would escalate at a rate which would make them equivalent to the price of oil by 1985. However, because of rapid unforeseen increases in world oil prices since passage of the NGPA, many now speculate that the NGPA growth rate will fail by a wide margin to reach a price equivalent to the adjusted price of oil, which is considered by some to be the market clearing price of natural gas. The *EIA Analysis*, the *DOE Study*, as well as recent studies by the AGA and Energy Action Educational Foundation, all project that there will be a sharp increase in average wellhead prices when partial decontrol occurs in 1985.[35] The AGA, for example, estimates that the average price of decontrolled gas will "fly-up" far in excess of market clearing levels, thereby pulling the average price of all gas above market clearing levels. The *DOE Study*, on the other hand, projects a sharp increase in average prices, but only up to market clearing levels. Nevertheless, in all these projections there is a very sharp increase in average wellhead prices occurring immediately after partial decontrol in 1985.[36]

At the same time, the Commission notes that there has been a substantial recent decline in world oil prices which may persist into the future. It is possible, therefore, that the pricing assumptions built into the NGPA in 1978 may turn out to be valid and that no sharp price increase will occur in 1985. For instance, at $28.00 a barrel for crude oil, which some assert is the current spot market price, the market clearing price for gas can be said to be $3.38 per MMBtu.[37] The April, 1982 price for new gas under section 102 of the NGPA is $3.093. Thus the price of new gas is currently only 27 cents per MMBtu less than the price which would be expected to apply if deregulation occurred today. However, it is difficult to predict whether the crude oil price will remain at current levels; political or economic events between now and 1985 could produce another round of sharp increases. Moreover, given previous world oil prices (some in excess of $38.00 per bbl) coupled with gas contract escalators discussed below, questions about the "fly-up" remain.

The potential for a sharp price increase in 1985 may be affected not only by the then existing price of oil, but also by the existence of indefinite price escalation clauses and take-or-pay requirements in gas purchase contracts. Many contracts contain indefinite price escalation clauses of various kinds. Some require that in 1985, the contract price will rise to the price equivalent of 110 percent of No. 2 fuel oil (home heating oil). Other require a price rise to the average deregulated price paid for other gas in the same county or region. When these pricing terms are combined with high take-or-pay contract requirements (which mean that a pipeline does not have the flexibility to avoid paying for high priced gas even through it may not currently need the gas for its customers or may have other, cheaper supplies available), there is great concern by some that the price increase in 1985 will go even beyond the market clearing price creating a temporary "spike" in gas prices. Since prices would be above equilibrium levels, the price most likely would decline eventually as distributors and pipelines attempt to market surplus supplies.

If in fact these projections of a substanial price spike are accurate, there may be serious consequences in

[26] Written and oral statement of David Robinson. Transcript of Public Hearing held April 8, 1982, Docket No. RM82-8, pp. 381-392.

[29] *Id.*

[30] *EIA Analysis, supra*, at 48. See also *DOE Study, supra*, at 11. It is somewhat difficult to draw firm conclusions regarding the interstate pipelines' bidding advantage before January 1, 1985 from the data in these studies. The Commission invites data and analysis on this issue.

[31] *EIA Analysis, supra*, at pp. 37, 40.

[32] *Implementation of Title I of the Natural Gas Policy Act of 1978: Hearings Before the Senate Committee on Energy and Natural Resources*, 97th Cong., 1st Sess. (November 6, 1981) Statement of Donald R. Wills, at 426; Supplemental Comments of Donald R. Wills, Appendix C, at 716. *Also see* Written and Oral Statements of the State of Louisiana, Transcript of Public Hearing held April 8, 1982, Docket No. RM82-8, p. 381-392 stating the difficulty intrastate pipelines are experiencing in obtaining deregulated supplies and section 102 gas.

[33] *See EIA Analysis, supra*, Table 19 at 66.

[34] AGA, *Statistical Analysis of Bidding Trends for Decontrolled Natural Gas Under the NGPA*, March 19, 1982.

[35] AGA, *Consumer Impact of Indefinite Price Escalator Clauses Under Alternative Decontrol Plans*, (November 1981). Energy Action, *The Decontrol of Natural Gas Prices, A Price Americans Can't Afford*, (February 1981).

[36] This increase in wellhead prices would not necessarily result in an equivalent increase in residential prices.

[37] This assumes that the market clearing price is 70 percent of the crude oil price. This is a second measurement that has been used by some to evaluate the price at which gas would be marketable at the wellhead in a decontrolled environment.

1985, although some of these consequence may be to some degree an unavoidable part of any transition to partial decontrol. For example, a Petition for Rulemaking by a number of industrial gas users referred to as the Process Gas Consumers Group, the American Iron and Steel Institute, Associated Tariff Equity, The Brick People, *et al.* and the Georgia Industrial Group (Process Gas)[38] states that these price increases would be severely disruptive to both consumers and interstate and intrastate gas markets, and would substantially affect some of this country's most significant industries. Gas consumers may have little or no time to respond to suden price increases. Abrupt increases could seriously disrupt business plans and operations and cause significant hardhip not only to residential gas consumers, but also to those who rely on employment and products from industries dependent on the natural gas industry. Furthermore, if indefinite price escalator to take-or-pay contract provisions cause average burner tip prices to rise above the market clearing price, Process Gas alleges that some industrial customers may switch to alternate fuels. this load loss could result in higher prices for the remaining customers, who would have to carry a larger share of fixed costs.

Moreover, the burden of any sudden increases may be unevenly distributed, which, as process Gas alleges, may create problems in the form of regional price and supply disparties. Under this market distortion theory, pipelines with large price cushions would be able to average the high cost of deregulated gas into their gas cushions, moderating the price increase for their customers. Pipelines with little or no gas caushion, on the other hand, would be at a competaitive disadvantage in bidding for deregulataed supplies. Their customers would potentially experience substantially larger price increases, which might in turn result in loss of load for those pipelines and a shift of supply to pipelines better endowed with relatively low-priced gas that will remain regulated after 1985. For example, Process Gas states that "the uneven distribution of the cushion of price-controlled gas will tend to create widespread inequities, as some pipelines will have surpluses and possibly growing markets while other face shortages and load losses."[39]

This uneven distribution of cushion gas could impact not only interstate, but also intrastate markets. The *EIA Analysis* projects that interstate pipelines will have over twice as much low-priced gas under price controls after 1985 as will intrastate purchasers.[40] With deregulation of additional gas in July 1987, it is projected that interstate pipelines as a group will have a three-to-one advantage over intrastate pipelines in their volumes of low-price gas.[41]

Although the Commission is not satisfied with the information at this point, the claims described above and currently available information suggest the possibility that bidding disparities between pipelines may result in widely varying natural gas prices between regions and in a misallocation of the nation's supply of natural gas. This misallocation could occur in either of two ways. Pipelines with little or no cushion could find it so difficult to compete for new supplies that they would be forced to curtail some customers. Alternatively, they might be able to match supply to demand, but only because their high average gas costs cause them to lose significant amounts of load. Under either alternative, relatively high-valued uses on these pipelines would go without gas while lower-valued uses on pipeline systems better endowed with regulated low-cost gas were served. This result could raise questions of regional fairness, but, as Laclede states, it would also represent an inefficient use of our limited supply of natural gas.[42]

The potential detrimental economic impact of both the price increase and any bidding disparities could affect other regions not directly experiencing curtailments. Industries requiring process and feedstock gas and located in major gas producing states are generally served by intrastate pipelines. Much of this industry supplies basic manufacturing components to other industries located throughout the nation. For example, 70 percent of the petrochemical capacity in the country is located in Louisiana and Texas. The petrochemical industry manufactures basic products, such as anhydrous ammonia and methanol, which in turn are used to make a broad range of products such as fertilizer, formaldehyde and various plastics. Continued availability of these products is important to the operation of many other areas of the economy, such as farming in the Midwest and the automotive industry in Ohio and Michigan. Disruption in one such segment of the economy could have serious "ripple" effects in many other states and might impair the economic recovery of the nation. Of course, any substantial alteration of the Commission's policies or regulations would also have the potential for economic impact which must be carefully studied prior to taking any such action.

IV. Potential Commission Responses

Based on the available data and concerns that have been expressed, the Commission cannot ignore that operation of the NGPA and the Commission's regulation under the NGA may contribute to the distortions in the production, pricing and distribution of gas, collectively called the "market ordering problem." Because of its statutory responsibilities, the Commission believes it is required to investigate these allegations and to determine what, if any, actions under its NGPA or NGA authorities should be taken.

The Commission acknowledges that numerous persons and groups have requested that the Commission take specific actions. The Process Gas petition recommends that a rulemaking proceeding be opened to address the market distortions it outlines.[43] Specifically they request the Commission to consider taking administrative action, among other things, to (1) modify existing ceiling prices for old, flowing gas qualifying under sections 104, 106, and 109 of the NGPA, (2) develop economic incentives, such as an "incentive rate of return," to assure pipelines will attempt to minimize gas purchase costs, (3) limit the applicability of indefinite escalator and take-or-pay contract requirements, and (4) require the filing of all gas purchase contracts.

Laclede also requests the Commission to revise its pipeline regulations to eliminate rolling-in the costs of sales to low priority users and to adopt what is essentially an incremental pricing rate design policy, allocating the cost of high priced gas to the marginal users of that gas.[44] In addition, they recommend other administrative actions, such as eliminating minimum bill requirements from interstate pipeline tariffs and take-or-pay and indefinite price escalator clauses from producer contracts.

California has requested the Commission to study generally whether the purchase of deregulated gas at

[38] Petition of Process Gas Consumer Group, *et al.*, Docket No. RM82-17 (filed March 1, 1982).
[39] Process Gas Petition, *supra*, at 8.
[40] *EIA Analysis*, *supra*, at 48.
[41] *Id.*
[42] Laclede Petition, *supra*, at 8-9.
[43] Process Gas Petition, *supra*
[44] Laclede Petition, *supra*, at pp. 13-15.

current prices is in the public interest and whether the Commission should revise its interstate pipeline regulations to subject deregulated gas now and after 1985 to market forces.[45]

The National Association of Regulatory Utilities Commissioners (NARUC), a nonprofit organization of governmental bodies engaged in the regulation of utilities, filed two petitions to institute rulemaking proceedings.[46] NARUC, as well as the Associated Gas Distributors [47] request the Commission to promulgate regulations requiring interstate pipelines to file copies of their purchase contracts and ancillary agreements with the Commission. NARUC further requests the Commission to examine the effect of take-or-pay provisions and to promulgate regulations prohibiting automatic passthrough of gas purchase costs above a certain level.

In some cases, the Commission has received responses to the above petitions, some of which support the petitions and raise ancillary issues.[48] The Commission has also received other petitions to institute rulemaking proceedings on issues relating to the market ordering problem and pricing of gas supplies.[49]

In addition, as an informal inquiry into the potential impact of and response to market ordering problems, the Chairman of the Commission requested the staff to study the Commission's legal authority as well as issues arising from the possible elimination of the various levels of ceiling prices applying to old, flowing gas developed prior to enactment of the NGPA (commonly referred to as "vintaging") and increasing the maximum lawful price for all flowing gas under sections 104, 106 and 109 of the NGPA to new just and reasonable rates.

In an effort to coordinate the inquiry into these various proposals, the Commission is issuing this Notice of Inquiry to investigate what actions, if any, it can and should take to help reduce any potential market disorder found as a result of this proceeding. There are a number of options discussed below which the Commission wishes to explore, and the Commission seeks active participation in this proceeding by interested persons. Comments are sought not only as to the existence of market ordering problems, but also as to whether the Commission should take any action in this area and, if so, what alternatives within the Commission's authority may best resolve the identified problems.

A. The Elimination of Vintaging and Establishment of New Just and Reasonable Rates

The first option the Commission wishes comments on is the recommendation that the Commission revise the prices of old, flowing gas supplies. Process Gas has recommended that the Commission consider revising the prices of old, flowing gas. Further, the Commission Staff has analyzed several issues relating to raising the maximum lawful price of old gas as well as eliminating in whole or in part the present vintaging of old gas.[50]

Pursuant to sections 104(b)(2), 106(c), and 109(b)(2) of the NGPA, the Commission is authorized to establish higher just and reasonable rates for gas qualifying under sections 104, 106 and 109. Section 104 applies to gas which was committed or dedicated to interstate commerce on November 8, 1978 (the day before the enactment of the NGPA) and for which a just and reasonable rate was in effect on such date. Section 106 applies to interstate and intrastate rollover contracts. Rollover contracts, generally, are those contracts which follow the expiration of a contract at the end of a fixed term that was in existence on the date of enactment of the NGPA. Whether a rollover contract is an interstate or intrastate rollover contract depends on whether the gas was committed or dedicated to interstate commerce on November 8, 1978. Section 109 generally covers gas which is not covered under any other category under the NGPA.

Both staff and Process Gas state that it is possible by using this authority to reduce potential bidding disparity among interstate pipelines and between interstate and intrastate pipelines and to provide for a smoother transition to partial decontrol in 1985. The staff analysis attached in Appendix A, as well as the Process Gas petition, suggest that currently available evidence indicates the existence of emerging market distortions that could result in widely varying prices for consumers and possible shortages of supply depending in part upon the system characteristics of different pipelines and the region of the country which they serve. By establishing higher just and reasonable rates for gas qualifying under sections 104, 106 and 109, the Commission might be able to gradually reduce the price cushion that may permit certain pipelines to outbid other pipelines for new supplies, and narrow the price gap between natural gas and alternative fuels. In addition, the Commission may have the authority to eliminate vintaging in whole or in part under section 104 and to identify and establish a single maximum lawful price applicable to sections 104, 106 and 109 [51] in order to mitigate potential market ordering problems.

If the Commission were to formally propose the establishment of new just and reasonable rates for flowing gas, with or without eliminating vintaging, the Commission would consider the methodologies developed in the Commission's area and national rate cases under the NGA, at least as a point of comparison. However, because these methodologies [52] were designed in part to provide investors with cost-based incentives necessary to undertake new gas exploration and development, one can question whether the Commission should properly rely on these methodologies to establish new just and reasonable rates for old, flowing gas. Nevertheless, it is recognized that the highest currently allowed rate for old gas was set by the Commission using test period data obtained for the period 1975–76. Accordingly, the Commission desires to obtain current data applicable to previously used methodologies for comparison purposes.

The Commission, therefore, requests comments on the extent of its legal authority to establish new just and

[45] California Petition, *supra*, at pp. 5, 7.

[46] Petition of National Association of Regulatory Utility Commissioners, Docket Nos. RM82–20 (filed March 9, 1982) and RM82–21 (filed March 12, 1982).

[47] Associated Gas Distributors, Docket No. RM81–35 (filed June 1, 1981).

[48] *See, e.g.*, Response of Michigan Wisconsin Pipe Line Company, Docket No. RM81–30 (filed Sept. 14, 1981). Response of Minnesota Public Utilities Commission, Docket No. RM82–1 (filed December 11, 1981). Notice of Intervention filed by the Public Utilities Commission of Ohio, Docket No. RM82–1 (filed November 12, 1981).

[49] *See* Northeast Coalition for Energy Equity, Docket No. RM82–19 (filed March 4, 1982). Process Gas Consumers Group, *et al.*, Docket No. RM81–34 (filed June 11, 1981).

[50] Staff's analysis is contained in Appendix A to this Notice. Briefly stated, that analysis reviews the Commission's legal authority and policy considerations for eliminating vintaging and establishing new just and reasonable rates for gas subject to sections 104, 106 and 109. It also discusses several methodologies for implementing these options, including a formula for phasing in a target price, should the Commission decide to propose such administrative action. The Commission requests comments on all aspects of that analysis.

[51] Any Commission action to establish new just and reasonable rates under section 109 will not apply to natural gas subject to section 109(a)(4), which is gas produced from the Prudhoe Bay Unit of Alaska and transported through the system approved under the Alaska Natural Gas Transportation Act of 1976. The unique statutory framework and economic considerations pertaining to that project make is inappropriate to include that gas within the scope of this inquiry.

[52] See Appendix A for a detailed description of these methodologies.

reasonable rates including the possibility of eliminating vintaging, and the advantages and disadvantages of exericing its discretion. In particular, the Commission draws commentors' attention to the staff analysis in Appendix A and to the questions in Appendix B which describe the comments and data the Commission desires to receive. The staff analysis suggests a range of options for setting new rates for flowing gas, including the possibility of utilizing a hybrid commodity value/cost approach as a new methodology in light of the differences in the regulatory scheme brought about by the NGPA. The Commission hopes that the comments elicited will fully develop the advantages and disadvantages as well as the legal pros and cons of adopting such an approach.

B. Restrictions on Contract Terms

As discussed above, there are allegations that various requirments in producer gas sales contracts may cause or contribute to market disorder now and in 1985. The ones most frequently mentioned are price escalation clauses and take-or-pay requirements. The Commission believes it should consider as part of this inquiry potential administrative responses to these issues.

1. *Price escalation clauses.* The Commission's own files demonstrate that many contracts contain definite or indefinite price escalator clauses which will require the price of natural gas currently under NGPA ceiling prices to be raised once that gas is decontrolled in 1985 or 1987. For example, some clauses are tied to the retail price of fuel oils, either No. 6 or No. 2 fuel oil. Others contain "most favored nation" clauses providing that the price of newly deregulated gas may be no longer than the highest price paid under other contracts in the area.

There is uncertainty as to the effect these price escalator clauses will have on the price of decontrolled gas and the average price of gas after 1985. For example, the AGA believes a projected price "spike" in 1985 above market clearing prices will result from the prevalence of various indefinite price escalator clauses. The *DOE Study*, on the other hand, assumes that no such contract problem will occur. Furthermore, the Commission's own files do not now contain sufficient data to allow the Commission to determine the extent of the clauses and to project their probable effect.

There have been numerous recommendations that the Commission consider taking some administrative action under either the NGPA or NGA to limit the effect of price escalator clauses after partial decontrol in 1985. For example, Process Gas suggests that the Commission could combine an increase in prices for flowing gas to new just and reasonable rates with a condition requiring producers to renegotiate contracts for deregulated gas which contain the escalator clause provisions at issue. Process Gas further believes that the Commission could adopt a rule stating that price escalator clauses which drive individual contract prices above market clearing levels would be considered an abuse under section 601 of the NGPA. Alternatively, they state that the buyer's failure to include a "market-out" clause in a gas sales contract, which would allow a pipeline to insist on renegotiation to prevent derergulated prices from resulting in loss of resale gas markets, could also be considered an abuse under section 601.[53]

Laclede, on the other hand, believes that the Commission has ample authority under sections 5 and 16 of the NGA to prohibit the effectiveness of certain price escalation clauses in gas sales contracts with interstate pipelines. Section 5 states that "[w]henever the Commission * * * shall find that any * * * contract affecting [filed rates] * * * is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable * * * contract to be therefore observed and enforced * * * " Section 16 is the Commission's general rulemaking authority.

2. *Take-or-pay contract requirements.* Take-or-pay requirements of various kinds are also prevalent in producer contracts. There are allegations that high take-or-pay requirements could cause or exacerbate market ordering problems after decontrol by shielding the price of deregulated gas from market constraints. The effects, as alleged, may be to eliminate or reduce the ability of pipelines to restrain decontrolled prices to a level no higher than market-clearing levels and to force pipelines and their customers to pay for supplies even though the high prices of such supplies have caused market losses.

Both Process Gas and Laclede state that the Commission currently has authority under the NGA to restrict the operation of take-or-pay provisions. For example, Process Gas suggests that the Commission may preclude recovery by an interstate pipeline of take-or-pay expenditures unless the gas purchase contract provides some limitation. Process Gas also suggests that the Commission has latitude under section 601 of the NGPA to define excessive take-or-pay obligations as "abusive".

If the allegations of the existence of market ordering problems are accurate, the Commission may wish to consider whether it has any authority under either the NGA or NGPA to mitigate the impact of such contract requirements. At the same time, however, the Commission will need to know as nearly as possible the economic impact and effect that the exercise of any such authority would have on natural gas supplies and production. Hence, the Commission requests comments on the suggestions discussed above. Comments on other potential options are also requested.

C. Revisions to Pipeline Regulation

There are some who believe that the Commission should ascertain whether existing Commission rate policies under the NGA harmonize, to the extent possible, with the operation of the NGPA and, in the alternative, to determine whether changes in the exercise of our section 4 NGA authority would afford a smoother transition to the statutory partial decontrol under the NGPA, either with or without increasing the price of flowing gas. Because the Commission must continue to exercise its NGA ratemaking authority even after wellhead deregulation, it may be appropriate for the Commission to reexamine its ratemaking policies with a view towards possible changes that will more nearly address market reality.

The Commission is responsible for review of rates filed by pipelines under section 4 of the NGA to assure that such rates are "just and reasonable", do not "grant any undue preference or advantage" and do not "subject any person to any undue prejudice or disadvantage." Similarly, the Commission may establish new rates under section 5 of the NGA if it finds the existing rates are "unjust, unreasonable, unduly discriminatory or preferential".

It has been suggested that marginal pricing as opposed to rolled-in pricing for decontrolled gas may bring market pressure to bear on the wellhead purchase price of decontrolled gas. For example, both California and Laclede recommend that the Commission use its authority under section 4 of the NGA to revise the Purchased Gas Adjustment (PGA) regulations [54] and thereby

[53] The Commission notes, however, that Process Gas' suggested reliance on section 601 of the NGPA as a means of dealing with the contract issues is inconsistent with the Commission's current position as outlined in its Statement of Policy on fraud, abuse and similar grounds. Statement of Policy, Docket No. PL82-1-000 (issued February 4, 1982) 47 FR 6253 (February 11, 1982).

[54] 18 CFR 154.38.

prohibit the use of rolled-in pricing for gas above a certain price. These PGA regulations were promulgated pursuant to the Commission's section 4 NGA authority.[55] California argues that the current and projected market situation, indirectly supported by rolled-in pricing, circumvents the intent of Congress that certain deregulated gas supplies be subjected to market forces.[56] They urge the Commission to inquire how to subject deregulated supplies to market pressures and whether rolled-in pricing of deregulated gas is appropriate under the NGPA.

Laclede is also of the view that traditional cost allocation policies have contributed to unusually high prices for deregulated supplies.[57] According to Laclede, high priority residential, commercial and industrial process users are subsidizing boiler fuel users who are demanding more gas under rolled-in pricing than they would demand if required to bear the full incremental deregulated price of that gas. This concern arises, at least in part, from the previously discussed price phenomenon that decontrolled gas is currently commanding prices which exceed a market clearing level. Many observers believe the ability of producers to command these "above-market" prices is aided by the existing Commission policy that allows pipelines to roll-in this high price gas with gas which is price-controlled at below market levels. Stated differently, the argument may be that the cushion of price-controlled gas may subsidize producers' obtaining above market prices for decontrolled gas. To the extent the gas cushion is the cause of any such result, it will not be completely eliminated until all cushion gas is exhausted. It may be that the changes in Commission policy could ease the situation.

Laclede argues that rolled-in pricing maintains and expands what it refers to as low priority boiler fuel markets and provides a profit incentive for pipelines to expand their low priority users by acquiring high-priced deregulated supplies. Laclede suggests that marginal cost pricing principles for all uses of gas by all consumers would be unmanageable, but that there is no reason why such principles could not be applied in a limited fashion to large boiler fuel users.

The Commission invites comments on the need for and advisability of these aspects of California's and Laclede's petitions. Comments are also invited on the extent to which these suggestions would smooth transition through partial to complete wellhead deregulation.

Process Gas recommended that the Commission consider adopting an "incentive rate of return" mechanism that would allow the pipeline's return on equity to be adjusted upward or downward depending on whether its deregulated gas purchases were below or above the market clearing price.[58] Although this recommendation has some interesting possibilities for dealing with potential market ordering problems, the Commission believes that, because of the broad scope of that suggestion as it would be applied to the variety of different fact situations presented in individual pipeline rate cases, it would not be appropriate to consider it in this proceeding. However, to the extent such a position is offered by parties to individual rate proceedings, the incentive rate of return will be considered in the context of those cases where full development of all the relevant facts relating to return can be reviewed.

V. Potential Impact.

The Notice of Inquiry does not propose solutions, but initiates an investigation into the possible existence of a market ordering problem and possible courses of corrective action, should such problem exist. If a market ordering problem does exist, the Commission either could attempt to mitigate market disortion by proposing administrative remedies or recommend to Congress that it enact an appropriate legislative solution, or a combination of both.

Should the Commission decide to initiate some form of administrative action to correct these distortions, that action would probably have various effects on different aspects of the nation. Many questions about the potential impact of an administrative remedy need to be answered before deciding whether to propose such action.

Administrative actions could have a significant impact on the economy. If the allegations about a substantial price "spike" in 1985 are correct, the sudden increase would have an obliviously disruptive effect on consumers individually and on the economy generally. It can be argued that raising prices of flowing gas gradually before 1985 would mitigate that disruption. It would also provide certainty which would assist industrial gas consumers in estimating their energy costs, thereby mitigating the disruptive economic effects of a sudden price increase in 1985. However, it has been argued that increasing the price of flowing gas will have a significant impact on the rate of inflation in general and consumer gas in particular. It has also been argued that such administrative action may have an adverse impact on employment, as businesses attempt to reduce costs to maintain their profit margin. It has also been argued that any inflationary impact could affect both public and private expenditures (including some benefits under social and retirement programs) which are related to the consumer price index or other price indices.

Administrative action affecting gas prices could plausibly affect the ability of America's exports to compete with other products internationally. Prices of exported products that require the use of gas at some stage could increase to the point where they are no longer competitively priced on the international market. On the other hand, if the alleged disordering of the markets is a reality, this same effect could presently be occurring, for example, in petrochemical plants, most of which are located in markets served by intrastate pipelines. Similarly, prices for some domestic products relative to imported products could be adversely affected. Comments and data are invited in connection with these issues.

If the gas cushion is unevenly distributed among pipelines, then raising flowing gas prices or taking other administrative action could mitigate this discrepancy and move towards reducing the bidding disadvantage which some pipelines allegedly will experience. Alternatively, maintaining the existing gas cushion but prohibiting pipelines from rolling-in deregulated prices with their gas cushion (assuming the Commission has such authority) may accomplish the same resutl. In either case, competitive bidding could reduce the price of deregulated supplies. However the potential impact of either administrative action on consumers and on regional discrepancies in supply and price may be quite different.

If deregulated supplies are subjected to competitive bidding either by raising the price of flowing gas or prohibiting the averaging of deregulated prices into gas cushions, lower prices for such gas could affect the incentives to develop those supplies, both in the short and long-term. Prices could decrease to a level where the risks and corresponding returns no longer justify exploratory efforts. Eventually, long-term supplies of gas could be affected as producers invest in other projects with higher returns. It is unclear to what level the

[55] *See* Order No. 452, 47 FPC 1049 (1972); Order No. 452-A, 47 FPC 1510 (1972).

[56] California Petition, *supra*, p. 4.

[57] Laclede Petition, *supra*, p. 3, 8-16.

[58] Process Gas Petition, *supra*, p. 13.

price would have to decrease before producers would begin to consider abandoning those efforts. Comments are invited on all aspects of the potential impact of administrative action on production levels in the short-term, mid-term, and long-term.

Administrative action affecting take-or-pay provisions and most-favored-nation clauses or requiring market-out clauses could affect producres' and pipelines' marketing practices. If the effect varied throughout the industry, it is conceivable that new market distortions could emerge. Comments are invited on the extent to which such action would achieve bidding parity without resulting in new distortions.

The Commission believes that it has an obligation to consider the potential impact on all aspects of the nation prior to proposing any administrative action to reduce the market ordering problem. Commentors are invited to submit data and to discuss all aspects of the potential effects of such administrative action. Such data and discussion may include the issues discussed above and, among other things, any other impacts on regional distortions, allocation of supplies, oil imports, fuel switching, entitlement programs and economic recoverys.

VI. Request for Public Comment

A. Written Comments

The Commission recognizes that the issues discussed in this notice may have a significant impact on the gas industry, its consumers, small entities and other segments of the economy. The Commission urges all interested persons to submit written comments, data, views, or arguments on issues raised in this notice. Commenters are invited to address any particular issue or all aspects of the notice and the staff analysis as they find appropriate. In addition, Appendix B contains a list of more specific questions on these issues on which the commenters may focus in responding. To the extent that several groups or individuals may have similar interestss, they are encouraged to file joint comments.

B. Procedures for Filing Written Comments

In view of the breadth and complexity of the issues raised by this notice, the Commission will provide ample time and opportunity for comments from interested members of the public. Accordingly, all initial comments received by the Commission prior to 4:30 p.m. e.d.t. on August 26, 1982, will be considered. Comments should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 and should reference Docket No. RM82–26–000. An original and 14 copies should be filed.

All comments will be placed in the public file which has been established in this docket and which is available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. during regular business hours. In addition, copies of all timely filed comments will be available for purchase at the Commission's Division of Public Information by September 15, 1982.

C. Public Hearings

The Commission is considering providing the opportunity for an oral presentation of views at one or more public hearings. The data and location of any public hearings will be noticed in the **Federal Register.**

(Natural Gas Act, as amended, 15 U.S.C. 717, Natural Gas Policy Act of 1978, Pub. L. 95–621, 92 Stat. 3350, 15 U.S.C. 3301)

List of Subjects

18 CFR Part 154

Natural gas.

18 CFR Part 271

Natural gas; High-cost gas, Tight formations.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

Appendix A.—Staff Analysis

The Notice of Inquiry states that the Commission invites comments on the possible revision to prices for certain categories of gas. Should the Commission consider eliminating vintaging, either in whole or in part, and establishing a single national rate for gas qualifying for sections 104, 106 and 109, staff believes there are certain issues the Commission should consider. The following is staff's analysis of those issues.

A. Elimination of Vintaging and Establishment of New Just and Reasonable Rates

Pursuant to sections 104(b)(2), 106(c) and 109(b)(2) of the NGPA, the Commission is authorized to establish higher just and reasonble rates for gas qualifying for sections 104, 106 and 109. Those sections have identical language, which states,

The Commission may, by rule or order, prescribe a maximum lawful ceiling price, applicable to any first sale of any natural gas (or category thereof, as determined by the Commission) otherwise subject to the preceding provisions of this section, if such price is—

(A) Higher than the maximum lawful price which would otherwise be applicable under such provisions; and

(B) Just and reasonable within the meaning of the Natural Gas Act.

It is possible that under this authority the Commission could reduce possible bidding disparity among interstate pipelines and between interstate and intrastate pipelines and provide for a smoother transition to partial decontrol in 1985. By establishing higher just and reasonable rates for gas qualifying for sections 104, 106 and 109, the price cushion that may permit certain pipelines to outbid other pipelines for new supplies could gradually be reduced, and the price gap projected by some between natural gas and alternative fuels could be narrowed. Specifically, there may be authority to eliminate "vintaging" in whole or in part and to identify and establish a single maximum lawful price applicable to sections 104, 106 and 109 [1] in order to satisfy the Commission's objectives.

"Vintaging" refers to the practice historically followed by the Commission of establishing higher ceiling prices for more recently developed wells. Under that practice, gas from older wells was generally kept at lower ceiling prices. Section 104 applies to gas which was committed or dedicated to interstate commerce on November 8, 1978 (the day before the date of enactment of the NGPA) and for which a just and reasonable rate was in effect on such date. Section 106 applies to interstate and intrastate rollover contracts. Rollover contracts, generally, are those contracts which follow the expiration, at the end of a fixed term, of a contract that was in existence on the date of enactment of the NGPA. Whether a rollover contract is an interstate or intrastate rollover contract depends on whether the gas was committed or dedicated to interstate commerce on Novembr 8, 1978. Section 109 generally covers gas which is not covered under any other category under the NGPA.

1. *Elimination of vintaging.* Given the Commission's statutory authority under

[1] Should the Commission establish new just and reasonable rates under section 109, it may wish to consider excluding from its rule natural gas subject to section 109(a)(4), which is gas produced from the Prudhoe Bay Unit of Alaska and transported through the system approved under the Alaska Natural Gas Transportation Act of 1976. The unique statutory framework and economic considerations pertaining to that project may justify excluding such gas from consideration.

sections 104(b)(2), 106(c) and 109(b)(2) to set higher just and reasonable rates for gas qualifying for those sections, the Commission probably has the legal authority to eliminate vintaging, if such elimination is found to be just and reasonable, by setting a single just and reasonable rate for all gas currently vintaged. The Commission alternatively embraced and backed away from vintaging throughout the 1960's and 1970's. The elimination of vintaging has, therefore, been considered by the Commission and reviewed by the courts on several occasions.

The use of vintaging appears to have been primarily the result of a Commission policy decision to avoid raising consumer rates by limiting the so-called "windfalls" to producers of low-cost gas properties. Just what constitutes a windfall is somewhat unclear. Generally, windfalls have been equated with some level of "excessive profits."[2] In Opinion No. 770, in which the Commission abandoned its previously announced policy to eliminate vintaging, the Commission expressed concern that it should "preclude the exaction of excessive and unjustifiable economic rent from flowing gas."[3] However, the desire to limit windfalls has always had to be weighed against the counter-balancing goal of insuring adequate future gas supplies.

For example, in 1972, the Commission recognized that vintaging may be inappropriate.

> We believe vintaging is an anachronism which we should now eliminate. Vintaging operates to discourage development of the full productive capacity of acreage committed to the interstate market, for even though much developmental drilling is undertaken at current costs, gas production obtained thereby is priced at the *lower* of two rates, when it is the *higher* of the two that is Commission-designed to provide the incentive for development of additional gas supplies.[4]

When the Commission established the first national gas rates in Opinion No. 699–H, it again decided that there was no rational basis for imposing vintaging in the long term.[5] On judicial review of Opinion No. 699–H, the Court recognized that the Commission was not bound by its previous vintaging policies, but that the Commission should "be permitted latitude to evaluate old experiments and modify or abandon them when [its] best judgment require[s] such course of action."[6]

The Commission abandoned its goals of eliminating vintaging in Opinion Nos. 770 and 770–A in a period of rapidly rising costs for equity reasons.[7] In affirming the Commission's authority to reinstate vintaging, the Court recognized that it "was within the policy latitude of the Commission, in its balance of interests," to minimize the harmful economic dislocation due to increased rates.[8] This same policy latitude which permitted the former Commission to institute and eliminate vintaging may permit the Commission to again address the issue.

There are strong policy reasons which suggest that the Commission should consider eliminating vintaging, if it is determined that there are market ordering problems caused or exacerbated by uneven gas cushions and the potential for a substantial price increase in 1985. First, the primary policy rationale that historically has supported vintaging may have been undermined. If the projections of market clearing prices in 1985 are correct, consumers will not benefit from the continuation of vintaging after 1985. Competitors for deregulated gas may bid the price of newly deregulated gas up so high that the weighted average price of all gas may reach or go above the market-clearing level.[9] In that case, the weighted average price of natural gas at the wellhead, when added to the cost of transmission and distribution, could be approximately equal to the price of alternative fuels, and consumers would receive no benefits from the continuation of controls on vintage gas in 1985. For the same reason, the elimination of vintaging would have little or no direct effect on the price of gas sold to consumers because of this averaging process. Therefore, after partial deregulation in 1985, the principal difference between eliminating vintaging and not eliminating vintaging would not be the average price paid by consumers, but the distribution of wealth among producers[10] and the ability of interstate and intrastate pipelines to compete with and among one another for new supplies.

Second, the elimination of vintaging may be appropriate because, combined with partial decontrol, it may be a major factor exacerbating the market ordering problem. Some interstate pipelines may have acquired, in varying degrees, a bidding advantage in competing for deregulated supplies. Those pipelines with the largest volumes of low-priced vintaged gas may compete most successfully for deregulated gas.[11] Thus, a combination of vintaging and the availability of newly deregulated supplies in 1985 may skew the distribution of gas supplies in favor of those pipelines with large price cushions.

Finally, vintaging may discriminate unreasonably against customers of pipelines that have a much smaller price cushion. If pipelines with low weighted average costs are in a better position to obtain new supplies, their customers are more certain of delivery of their supplies and lower prices. This advantage is the result of a pipeline's historical, fortuitous opportunities to contract for large volumes of low-priced vintaged gas and bears no rational relationship to its customers' demands or priority uses.

If the Commission were to eliminate vintaging and establish a new just and reasonable rate, that rate could be collected only if there is adequate contractual authority. This is consistent with section 101(b)(9) of the NGPA which, briefly stated, provides that the maximum lawful price does not supersede the price established under any contract, so long as the contract price does not exceed the applicable maximum lawful price. Thus, those prices would operate only as ceiling prices and could be charged and collected only if permitted by the applicable agreement.

2. *New just and reasonable rates.* It may also be appropriate to consider the establishment of new just and reasonable rates for gas qualifying for sections 104, 106 and 109. Congress did not provide extensive guidance regarding the scope of the Commission's authority to establish just and reasonable rates under sections 104(b)(2), 106(c) and 109(b)(2). Clearly, however, the rates prescribed under those sections must be just and

[2] *See American Public Gas Association* v. *FPC*, 567 F.2d 1016, 1033 (D.C. Cir. 1977), *cert. denied*, 435 U.S. 907 (1978).

[3] Opinion No. 770, 56 FPC 509, 521 (footnote omitted).

[4] 48 FPC 1299, 1309 (1972) (emphasis in original).

[5] 52 FPC 1604, 1637–8 (1974).

[6] *Shell Oil Co.* v. *FPC*, 520 F.2d 1061, 1077–8 (5th Cir. 1975) *cert. denied*, 426 U.S. 941 (1976).

[7] Opinion No. 770–A, 56 FPC 2698, 2705 (1976), *aff'd American Public Gas Association* v. *FPC*, *supra*.

[8] *American Public Gas Association* v. *FPC*, *supra*, at 1034.

[9] *DOE Study*, *supra*, at 8. *See also* H.R. Rep. No. 95–496, Part IV, *supra*, at 119.

[10] Under complete regulation, producers receive approximately the same price for the most part; under partial deregulation in 1985, producers of gas still subject to regulation receive less than producers of deregulated gas.

[11] *See* Statement of Policy, Docket No. PL82–1–000, (issued February 4, 1982) *mimeo.* at p. 19–20, 47 FR 6253 (February 11, 1982). But see AGA, *Statistical Analysis of Bidding Trends for Decontrolled Natural Gas Under the NGPA*, March 19, 1982.

reasonable "within the meaning of the Natural Gas Act."

Under the Natural Gas Act, the Commission used a variety of approaches to prescribe just and reasonable rates for producer sales. Although the Commission began by pricing gas from each producer on a traditional cost-of-service basis, that approach proved unworkable because of the large number of producers involved. The Commission then initiated proceedings to establish area rates applicable to entire producing regions. In *Permian I*[12] the first of the area rate cases, the Commission established the basic methodology employed in all subsequent area and national rate cases. The basic methodology developed in *Permian I* was adjusted and altered as the Commission gained experience with it and attempted to resolve a growing supply problem for the interstate market.

Permian I and each of the subsequent methodologies adopted by the Commission was challenged and tested in the courts. Although the Commission's attempts to respond to supply problems were not affirmed at every turn, the methodologies adopted for Permian Basin, the first national rate case in Opinion No. 699–H,[13] and the subsequent national rate case in Opinion Nos. 770 and 770–A[14] were affirmed.[15] The *Permian I* methodology was based on cost-based price principles, but was also designed to provide investors with the incentives necessary to undertake new gas exploration and development projects and, thereby, increase the discovery of gas reserves.

Basically, the *Permian I* methodology attempted to estimate the average unit cost per Mcf of the gas produced from successful gas wells during a selected test period. This unit cost was derived by dividing the cost per foot of drilling and equipping the average successful gas well by its estimated productivity. Estimated productivity was derived by dividing the additions to non-associated gas reserves by related gas well footage.[16] The costs incurred in unsuccesful wells were treated as expenses, and were not included in the investment rate base. The methodology also provided for a rate of return based on average investment recovered over the depletion life of the average gas well.

On June 21, 1974, the Commission issued Opinion No. 699, its first nationwide rate order. The method employed in that opinion was essentially the same as the one used in *Permian I* except that it further emphasized consideration of the need to include non-cost factors to provide production incentives. In Opinion No. 699–H issued December 4, 1974, substantive changes were made to the *Permian I* method. The changes permitted expenditures for unsuccessful ventures to be included in the investment rate base, adopted discontinued cash flow (DCF) analysis to improve the accuracy of the rate of return calculation, and considered the effects of the federal income tax in computing the costs. Specifically, the DCF analysis recognized that the value of an investment extends over time and that the present value of the cash flow from that investment must yield a rate of return comparable to other investments with similar risk. By examining the cash flow of the investment over the life of the project, the DCF analysis was able to account for cost of capital for invested funds, including dry hole expenditures, and variations in cash flow. By viewing the project in its entirety, the DCF analysis permitted the Commission to set a rate of return that compensated investors for their risks and encouraged future drilling efforts.

Opinion No. 770, issued July 27, 1976, and Opinion No. 770–A, issued November 5, 1976, established gas prices based on the cost methods employed in Opinion No. 699–H except for a significant modification caused by admendments to the Internal Revenue Code. The Tax Reduction Act of 1975, 89 Stat. 26, Pub. L. 94–12, for the most part, repealed the depletion allowance for natural gas production. The Commission found it necessary to factor into the Opinion No. 699–H cost model both tax savings and tax liabilities. It also considered the cost-based price in relation to other economic factors, such as market values, inflation, supply and demand, and the costs of alternative fuels. Specifically, it examined the commodity value of gas in the energy market and the possible effects of raising gas to that price.[17]

In Opinion No. 770–A, the last national rate opinion, the Commission again included non-cost factors to support increased exploration and development of new reserves. The Commission examined, among other things, the relationship of its cost-based rate to intrastate gas prices, the commodity value of substitute fuels, and the cost to consumers of using alternate fuels if natural gas supplies were not increased. It also examined the allocation of gas supplies between the interstate and intrastate market and recognized the need to raise prices to mitigate an uneven distribution of gas supplies between the two markets.[18]

To arrive at a just and reasonable rate, as the courts have interpreted that term under the Natural Gas Act, it would be necessary to balance the interests of the investors and the consumer, and serve the public interest. *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968); *City of Detroit* v. *FPC*, 238 F. 2d 810 (D.C. Cir. 1955), *cert. denied* 352 U.S. 829. In *FPC* v. *Hope Natural Gas Co.* 320 U.S. 591, 602 (1944) the Supreme Court recognized that it is the end result, and not the formula used to obtain that result, that is examined in determining whether the rate is just and reasonable. The Court stated:

> [T]he Commission was not bound to the use of any single formula or combination of formulae in determining rates. Its ratemaking function, moreover, involves the making of "pragmatic adjustments." * * * Under the statutory standard of "just and reasonable" it is the result reached not the method employed which is controlling. It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important. (citations omitted).

The staff is mindful that producer rate orders issued by the Commission and substained by the courts have been justified primarily by cost-based calculations. On two occasions when the Commission attempted to rely entirely on market forces to define the just and reasonable rates, the Commission was reversed. In one case, the Supreme Court held that the Commission's indirect regulation of small producers was invalid, not because the scheme was outside the Commission's statutory authority, but because the order was too ambiguous to satisfy the standard of clarity that an administrative order must exhibit. *FPC* v. *Texaco*, 417 U.S. 380 (1974). Nevertheless, the Court recognized that

[12] Opinion No. 468, 34 FPC 159 (1965).

[13] 52 FPC 1604 (1974).

[14] Opinion No. 770, 56 FPC 509 (1976). Opinion No. 770–A 56 FPC 2698 (1976).

[15] *See, Respectively, Permian Basin Area Rate Cases*, 390 U.S. 747 (1968(*Shell Oil Co.* v. *FPC*, 520 F. 2d 1061 (5th Cir. 1975), *cert. denied* 426 U.S. 941 (1976); and *The Second National Natural Gas Rate Cases*, 567 F. 2d 1016 (D.C. Cir. 1977), *cert den.* 435 U.S. 907 (1978).

[16] *See* Opinion Nos. 770 and 770–A, *supra*, for more detailed descriptions of the derivation of each cost element.

[17] Opinion No. 770, 56 FPC 509, 582–3.

[18] Opinion No. 770–A, 56 FPC 2698, 2768.

the Commission lacks authority to rely exclusively on market forces to set just and reasonable rates. *Id.*, at 400.[19] In the other case, the D.C. Circuit reached a similar conclusion in response to the Commission's efforts to rely on "field" or "commodity" prices to determine just and reasonable rates for pipeline production. *Detroit, supra.* The Court recognized that while a rate determined by commodity value is not necessarily prohibited by the just and reasonable standard, the Commission must demonstrate that such a rate is no higher than that reasonably necessary to satisfy the purposes advanced for the rate. *Id.*, at 817. The Court also indicated that, although a conventional rate base methodology is not the only methodology authorized by the statute, it must be used, at least, as a "basis of comparison," or "point of departure." *Id.*, at 818–9.

Subsquent decisions reviewing rates set for independent producers under the Natural Gas Act have recognized the importance of considering non-cost factors. As stated by the Supreme Court in *Permian Basin, supra,* at 815, affirming the FPC's first experiment in setting area-wide rates,

> The Commission's responsibilities oblige it to give continuing attention to values that may be reflected only imperfectly by producers' costs; *a regulatory method that excluded as immaterial all but current or projected costs could not properly serve the consumer interests placed under the Commission's protection.* (emphasis added).

In combination with these perspectives on methodologies for rate regulation, some courts have recognized the changing perspectives of producer regulation itself. For example, in *Permian Basin, supra* at pp. 756–7, the Supreme Court viewed producers of natural gas as something other than traditional public utilities when it stated,

> Producers of natural gas cannot usefully be classed as public utilities. They enjoy no franchises or guaranteed area of service. They are intensely competitive vendors of a wasting commodity they have acquired only by costly and often unrewarded search. Their unit costs may rise or decline with the vagaries of fortune. The value to the public of the services they perform is measured by the quantity and character of the natural gas they produce, and not by the resources they have expended in its search; the Commission and the consumer alike are concerned principally with "what [the producer] gets out of the ground, not * * * what he puts into it * * *" *FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591, 649 (separate opinion).

More recently, it has been recognized that Congress, by enacting the NGPA, apparently no longer views producers as monopolists who should be subjected to traditional public utility regulation. In *Pennzoil Co.* v. *FERC*, 645 F. 2d 360, 378–9, (5th Cir. 1981) the court stated,

> * * * Congress apparently decided that gas producers do not have "natural" monopoly power; that is, the industry does not possess the inherent technical characteristics that prevent its efficient and economical operation unless operated as a monopoly. Therefore, the theory that a regulatory agency is necessary to represent consumers when they bargain on rates with a natural monopolist like a utility no longer applies to gas production. (footnote and cite omitted.)

These cases indicate that gas producers may no longer be considered to comprise a traditional class of public utilities and that effective rate regulation of that industry may bear little or no resemblance to traditional cost-based rates. In view of the scheme of partial deregulation that Congress chose to enact in the NGPA, such traditional cost-based regulation may in fact be conterproductive. In order to accomplish the goals of the NGPA, it may be necessary for the Commission to abandon such traditional methodologies and rely on other standards for setting rates. In view of Congress' changing perspective of producer regulation, Congress may have intended that this standard be modified in accordance with its views.

Based on these perspectives, the Commission now may have the authority to set rates based on commodity value alone, authority that the Commission probably did not have prior to the enactment of the NGPA. Such authority may permit the Commission to raise the price of gas subject to sections 104, 106 and 109 to a just and reasonable rate that reflects the commodity value of gas. If there is such authority, Mr. Justice Jackson's observation in his concurring opinion in *Colorado Interstate Gas Co.* v. *FPC*, 324 U.S. 581, 612 (1954) was prescient when he stated, "[f]arsighted gas regulation will concern itself with the present and future, rather than with the past, as the rate-base formula does."

Commenters are invited to comment on this analysis and on all aspects of the Commission's authority to set just and reasonable rates, especially the extent to which cost-based methodologies may be abandoned in setting just and reasonable rates. In addition, the staff seeks to determine the rates that the *Permian I* and subsequent methodologies would yield if they were adjusted to reflect current cost and production data. Comments and information which will aid the staff in reaching this determination are specifically invited. Such information includes, for example, costs of production facilities, lease acquisition, dry holes, exploration and drilling, and current productivity. Should the Commission consider establishing a new just and reasonable rate for section 104, 106 and 109 gas, it would be appropriate to apply one of the methodologies to current costs and productivity. The use of such a methodology would establish a just and reasonable rate and could serve as a point of comparison even if it were decided to adopt an entirely new rationale, such as commodity value.

B. Implementation of Methodologies

The previously approved methodologies of *Permian I*, Opinion No. 699–H, and Opinion Nos 770 and 770–A can be used as a tool to estimate a just and reasonable rate based on current cost data. These methodologies, together with any other methodology developed (including, for example, the economic model considered in Opinion No. 770–A), hopefully would provide a range or zone which could be used as a basis for selecting an appropriate rate or rates for gas otherwise priced under sections 104, 106 and 109. Determination of an appropriate price and methodology would depend on the final assessment of the nature and extent of the market ordering problems, as well as an assessment of the Commission's legal authority.

There are numerous options which are available to the Commission to implement the above-discussed considerations. Some of the options that are available are summarized below.

First, it is possible that the desired goals may be achieved by raising the ceiling price for all pre-1973 vintage gas subject to Opinion No. 749 to the cost-based rate determined for 1973–1974 vintage gas.[20] Although this option is available to address the potential market ordering problems, this approach could be justified even without those objectives. The rates determined in Opinion No. 749 were based on average costs for all pre-1973 wells. Since the issuance of Opinion No. 749, however, many of the older, low-cost wells have been depleted so that the average costs

[19] It is arguable that this holding may no longer apply to producer regulation. By enacting the NGPA and its scheme of partial deregulation, Congress arguably abandoned the view that field pricing of natural gas is subject to monopolistic forces an relied on other motives in maintaining controls on other categories of gas. These changed circumstances may support the view that the Commission can rely on market forces to achieve a smooth transition to decontrol. *See* appendix, *infra.*

[20] Opinion No. 699–H established the cost-based rate for 1973–1974 vintage gas. Opinion No. 770–A revised that rate upward.

for pre-1973 wells are now weighted by higher cost wells, *i.e.*, pre-1973 wells that principally have higher operating costs and higher average unit costs. This fact alone could justify a price adjustment for pre-1973 wells.

Second, the rates set in Opinion No. 770–A for post-1974 gas could be revised. At the time Opinion No. 770–A was promulgated, estimates were used for several variables (*e.g.*, productivity, well costs, etc.) which had an important impact on the computation of price. Actual data are not available and could be used to revise the applicable just and reasonable rate for post-1973 gas. This approach closely follows past Commission procedures whereby prior rates for earlier biennia were raised because of the availability of actual cost data.[21] However, because this approach would only affect a limited quantity of vintaged gas, it is possible it would not accomplish the desired goals. Alternatively, the actual 1975–1976 cost and production data could be used in conjunction with the Opinion No. 770–A methodology to compute a ceiling price not only for Post-1974 gas, but also all other section 104 gas and section 106 and 109 gas. It is possible that this option would significantly mitigate any market ordering problems.

Third, the maximum lawful price for all gas subject to section 104 and 106 could be raised to the highest price now available for section 104, the post-1974 vintage price. That price, which is also equal to the section 109 price, is closer to the commodity value of natural gas and would better recognize the replacement cost of gas supplies. Alternatively, the price of such gas could be raised to its commodity value. The commodity value in 1985 has been estimated to be approximately 70 percent of the Btu-equivalent price of crude oil.[22]

Fourth, it is possible that raising the price of section 104, 106 and 109 gas to the section 103 price would accomplish the goals of this proposal. Alternatively, current cost data could be used in the previously approved methodologies (*Permian I*, Opinion No. 699–H and Opinion No. 770–A) to compute rates necessary to mitigate market ordering problems.

Regardless of the methodology and price that may be selected, it may be desirable to phase it in gradually. There are a number of ways this could be done. The phase-in period, for example, could extend from the effective date of the final rule to 1985 or some other date beyond 1985. One such methodology could use the following pricing formula:

$$R_m+1=R_m+(TP-R_m)/(k-m)$$

where R_m is the just and reasonable rate for any month; TP is the target price which is the just and reasonable rate that the Commission determines will achieve its goals; k is the number of months between the effective date of the final rule and 1985; and m is an integer running from O through k–1.[23]

A hypothetical example may illustrate the operation of this pricing formula. Assume that the ceiling price for a vintage of old interstate gas is $0.50 per MMBtu. Also assume that the just and reasonable rate that would accomplish the Commission's goals is determined to be $2.50 per MMBtu and the phase-in period is 24 months. The ceiling price for January, 1983 would be computed as follows:

$$R_1=\$0.50+\frac{\$2.50-.50}{24}$$

$$R_1=\$0.50+\frac{\$2.00}{24}$$

$$R_1=\$0.583$$

The ceiling price for February, 1983 then becomes:

$$R_2=R_1+\frac{\$2.50-R_1}{24-1}$$

$$R_2=\$0.583+\frac{\$2.50-0.583}{23}$$

$$R_2=\$0.666$$

If it were decided to phase in a price set at the commodity value of gas using the pricing formula, the target price would be set at that value. Under previous market conditions, the commodity value has been estimated to be 70 percent of the price of crude oil measured by the average domestic refiner acquisition cost of crude oil.[24] Under changing market conditions, this relationship may change.

In order to smooth out variations in the price of crude oil, a "rolling" six-month average could be used. For example, if the commodity value were 70 percent of the price of crude oil as measured by refiner acquisition costs (defined as "C"), the commodity value price could be revised each month, using only the most recent six-month period. Under the proposed formula, the target price would be set equal to 0.7C, and the difference between the target price and the just and reasonable rate for gas for the preceding month would be phased in over k-m months. Therefore, the just and reasonable rate R_{m+1} for month m+1 would be:

$$R_{m+1}=R_m+(0.7C-R_m)/(k-m)$$

where R_m is the just and reasonable rate for the preceding month. Decreases or increases in crude oil prices would be reflected by a decrease or increase in the rolling six-month average (C). At the end of the phase-in period, the just and reasonable rate for qualifying gas would be equal to 70 percent of the average refiner acquisition cost of crude oil.

Comments and data are invited on all these options and any others considered relevant.

Appendix B—Questions and Issues

The Commission recognizes that, consistent with its legal authority, any action it may take must be based upon the Commission's assessment of any market ordering problems, the impact of the Commission's action(s) on consumers, industry, and the nation, and, whether the actions suggested would resolve or alleviate the alleged market ordering problem. Accordingly, the Commission urges members of the public to participate in this proceeding by submitting comments, views and suggestions on the matters set forth in this notice. In particular, the Commission specifically seeks responses to the following questions and issues.

1. The Commission is interested in assessing the degree to which the market ordering problems discussed in the Notice currently exist or are expected to develop in 1985 and beyond. All commenters are invited to submit information and views regarding the existence of market ordering problems. Information is specifically requested, among other things, on the extent to which (a) regional price and supply disparities exist and (b) some pipelines have a bidding advantage compared to other pipelines for new supplies. Interstate and intrastate pipelines are invited to submit data on their volumes of old low-price gas and their weighted average cost of gas.

2. If market ordering problems do exist, what type of administrative action to mitigate the problems should the Commission consider?

[21] *See* Opinion No. 770 in which the Commission revised the 1973–1974 biennium rates.

[22] *See DOE Study, supra*, at 8.

[23] For example, if a final rule were issued and effective on January 1, 1983, k could equal 24 months (the number of months between January 1, 1983 and January 1, 1985), and m would run from 0 to 23.

[24] *See DOE Study, supra*, at 8.

(a) Because pipelines presently are permitted to average high-price and low-price supplies, pipelines with large gas cushions may have a bidding advantage. To what extent would market ordering problems be mitigated if this averaging process were prohibited? Are there any policy reasons for retaining this averaging process? If the averaging process were eliminated, should it be eliminated only for deregulated supplies? It the averaging process were to be eliminated how could this be accomplished?

(b) Certain institutionalized practices such as take-or-pay provisions, indefinite price escalators, most favored nation clauses, minimum bill requirements and long-term contracts may be aggravating market ordering problems. Does the Commission have the authority to suspend, either temporarily or permanently, in whole or in part, the operation of such contract provisions? Does the Commission have the authority to impose so-called "market-out clauses?"

What is the Commission's legal authority under section 501(a) or other law to take any such action? Should the Commission take any such action?

(c) If it is true that a bidding advantage is conferred on some interstate pipelines by virtue of the large gas cushion they possess, would reducing the size of the cushion held by some interstate pipelines more towards bidding parity among interstate pipelines and between interstate and intrastate pipelines? Is it possible that reducing the size of the cushion could reverse the alleged bidding disparity in favor of intrastate pipelines?

(d) To what extent would market ordering problems be reduced if vintaging were eliminated and a single national rate established for gas qualifying for sections 104, 106 and 109 of the NGPA? Approximately what rate would accomplish this result?

(e) Does the Commission have the legal authority to eliminate vintaging and establish a single national rate for section 104, 106 and 109 gas? To what extent is the Commission legally limited to rates based solely on a cost-based methodology?

Can the Commission lawfully set ceiling prices for gas subject to sections 104, 106 and 109 at its replacement value or commodity value? Can such rates legally be set higher than the rates established by other sections of the NGPA, such as sections 102, 103 and 108?

(f) If the Commission were to establish a new just and reasonable rate for flowing gas, should it require that the sales contract contain a clause specifically allowing payment of the new rate, along the lines of the contract provision recently upheld in *Pennzoil Co.* v. *FERC*, No. 80–2174 (5th Cir. March 22, 1982).

(g) To what extent would any of the Commission's potential regulatory responses activate the kinds of contract provisions in question 2(b) above? What would be the effect of such activation?

3. Section 315(c) of the NGPA authorizes the Commission to require any first sale purchaser of natural gas under a new contract, a successor to an existing contract, or a rollover contract to file with the Commission a copy of such contract, all ancillary agreements and any existing contract applicable to such gas. Should the Commission require the filing of such contracts not presently on file with the Commission?

4. The commission believes it should consider the potential impact that any administrative action reducing the potential market ordering problems would have on the Nation. Comments are invited on all aspects of potential impact of such administrative action including the following questions.

(a) What effect would the various administrative actions discussed in this Notice have on consumer gas prices? To what extent would such action alleviate present and future regional disparities in price and availability of supplies?

(b) What impact would the various administrative actions have on gas supplies, both short-term and long-term? If administrative action were to establish bidding parity among pipelines, what effect would this have on the price of gas already deregulated by section 107 of the NGPA? If competitive bidding reduced the price for those supplies, would the incentive to explore for and develop those supplies be adversely affected?

(c) What is the potential impact of the various administrative actions on both public and private expenditures (including some benefits under social and retirement programs) which are related to the consumer price index or other price indices?

(d) To what extent would an increase in gas prices affect the ability of American products to compete with foreign products both abroad and domestically?

5. Many of the problems now apparent in the NGPA arise from the inability of the NGPA to respond to unexpected changes in the price of oil. The duration of the current softening of oil markets and the attendant destabilizing effect on oil prices in not known. Oil prices may rise or fall over the next year. How could the Commission formulate any administrative responses to be responsive to unstable oil markets?

6. If the Commission is to consider adequately the option of eliminating vintaging and establishing a new just and reasonable rate, the following issues need to be addressed:

(a) The Commission is interested in determining the price that prior methodologies used to compute just and reasonable rates would yield if current cost data were used. Producers are invited to submit current cost data for use in those models.

(b) It is possible that a new ceiling price computed for sections 104, 106 and 109 gas could be higher than the ceiling prices for some other sections of Title I of the NGPA. If this is the case, what is the legal effect of section 101(b)(5) of the NGPA? That section provides that the maximum lawful price is the highest applicable price if the gas qualifies for more than one category. If the Commission implemented new just and reasonable rates for sections 104, 106 and 109 gas, should it impose a "cap" on such rates at some lower level?

(c) If the Commission adopted a single just and reasonable rate applicable to sections 104 and 106(a), should the rate be applied to gas subject to section 106(b)? What effect will this have on (1) eliminating the price cushion, and (2) alleviating the price increase in 1985?

(d) It is appropriate to use the *Permian I*, Opinion No. 699–H or Opinion No. 770–A methodology for computing new ceiling prices? In view of the enactment of the NGPA, should these methodologies be used to compute ceiling prices for wells spudded on or after February 19, 1977? Commenters are invited to submit specific data for use in the DCF methodology, including current information as to each of the relevant cost items.

(e) Should the Commission use a pricing formula to phase in any new ceiling prices that it adopts? If so, would the pricing formula outlined in this notice be an appropriate formula for phasing in a target price? What target price would accomplish the goals of ordering the national gas market? Should the phase-in period extend beyond 1985?

In order to assist commenters in focusing on these issues, the Commission staff in the near future will make available a technical report setting forth presently available information concerning costs, reserves, the distribution of the cushion of price-controlled gas and similar matters. In addition, copies (in IBM EBCDIC punched-card format) of the DCF models utilized in Opinions Nos. 770 and 770–A

will be made available for purchase by the public in the Division of Public Information.

[FR Doc. 82-12042 Filed 5-3-82; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Grand Portage National Monument Snowmobile Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed regulation is necessary to designate the location on the Grand Portage National Monument where snowmobiles may be used for recreational purposes. It is the objective of this proposed regulation to provide for the preservation and enjoyment of the Monument in a way consistent with both the snowbile policy of the National Park Service and the off-road vehicle policy of the Department of the Interior.

DATES: Written comments, suggestions, or objections, or objections will be accepted until June 3, 1982.

ADDRESS: Comments should be directed to: Superintendent Grand Portage National Monument, Box 66, Grand Marais, Minnesota 5604.

FOR FURTHER INFORMATION CONTACT: Anthony L. Andersen, Superintendent, Grand Portage National Monument, Telephone: (218) 387-2788.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 11644 (Use of Off-Road Vehicles on Public Lands) issued on February 9, 1972, 37 FR 2877, directed Federal land managing agencies to develop unified regulations and to designate areas of use for off-road vehicles. Such areas must meet criteria which minimize resource damage, harassment of wildlife, disruption of wildlife habitat, and, in the case of national parks, not adversely affect scenic, natural, and aesthetic values.

In response to Executive Order 11644, the Secretary of the Interior issued a Departmental memorandum on May 5, 1972, to assure full compliance with the Order and to provide policies and procedures for its implementation. The National Park Service, as required by the above directive, promulgated 36 CFR 2.34 on April 1, 1974, which closed all National Park System areas to snowmobile use except those specifically designated as open by Federal Register notice or special regulation.

In order to comply with the requirements of Executive Order 11644 and 36 CFR 2.34, the National Park Service developed a Servicewide policy revision which was published in the Federal Register on August 13, 1979 (44 FR 47412). This policy provides for the use of snowmobiles in units of the National Park System as a mode of transportation to provide the opportunity for visitors to see, sense, and enjoy the special qualities of the park's natural, cultural, scenic, and aesthetic values; safety considerations; park management objectives; and not disturb the wildlife or damage other park resources.

The policy further provides that, where permitted, snowmobiles shall be confined to properly designated routes and water surfaces which are used by motorized vehicles or motorboats during other seasons. Routes and water surfaces to be designated for snowmobile use shall be promulgated as special regulations in the "Code of Federal Regulations."

This proposed regulation is necessary to comply with Servicewide policy. Its promulgation also responds to public interest in recreational opportunities in designated portions of the Grand Portage National Monument where snowmobiles may be used. The Grand Portage Trail which bisects the Grand Portage Indian Reservation land has a number of roads and trails crossing it to other areas of the reservation. At the present time these roads and trails (including the proposed snowmobile route) are being used during the summer season by several types of motorized vehicles to traverse the area included within the Grand Portage National Monument. This usage is permitted in accord with section 7 of the Act of September 2, 1958, 72 Stat. 1753 authorizing the establishment of Grand Portage National Monument. Section 7 provides that "Recognized members of the Minnesota Chippewa Tribe shall not be denied the privilege of traversing the area included within the Grand Portage National Monument for the purpose of logging their land, fishing or boating, or as a means of access to their homes, businesses, or other areas of use and they shall have the right to traverse such area in pursuit of their traditional rights to hunt and trap outside the monument: *Provided,* that in order to preserve and interpret the historic features and attractions within the monument, *the Secretary may prescribe reasonable regulations under which the monument may be traversed.*" (emphasis added) Therefore, these proposed regulations will not effect present practices of snowmobile use on reservation lands.

Public Participation

The policy of the National Park Service is, wherever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding this proposed regulation to the address noted at the beginning of this rulemaking.

Drafting Information

The following persons participated in the writing of this regulation: Anthony Andersen, and Bernard Gestel, Grand Portage National Monument.

Compliance With Other Laws

Pursuant to the National Environmental Policy Act, 42 U.S.C. 4332, the Service has prepared an Environmental Assessment. Copies of this Assessment are available for public review and comment in the Office of the Park Superintendent.

This rulemaking contains no provisions that would entail the collection of information in such manner as would be subject to the Paperwork Reduction Act, 94 Stat. 2812, 44 U.S.C. 3501 *et seq.*

The Service has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (February 19, 1981). It has further determined that this rule will not have a "significant economic effect on a substantial number of small entities," that will require the preparation of a regulatory analysis within the meaning of the Regulatory Flexibility Act, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*

Authority

Section 3 of the Act of August 25, 1916, 39 Stat. 535 as amended, 16 U.S.C. 3; section 7 of the Act of September 2, 1958, 72 Stat. 1753.

List of Subject in 36 CFR Part 7

National Parks.

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

In consideration of the foregoing, it is proposed to amend Title 36 Code of Federal Regulations by the addition of a new section § 7.59 as follows:

* * * * *

§ 7.59 Grand Portage National Monument.

Snowmobiles. After consideration of existing special situations i.e., depth of snow, and depending on local weather

conditions, the superintendent may permit the use of snowmobiles on the following designated routes within the National Monument:

(a) The trail from County Road 73 (near the Grand Portage Trading Post) which moves across the Grand Portage Trail to County Road 17 near the Catholic Church.

(b) The powerline right-of-way road from County Road 73 which moves across Grand Portage Trail to the access road of the M. Gagnon and D. Porter residences.

(c) The logging road which moves across the Grand Portage Trail in NE¼, SE¼, Section 32, T64N, R6E.

(d) Abandoned Highway 61 which moves across the Grand Portage Trail.

(e) Logging road which moves across the Grand Portage Trail in SE¼, NW¼, Section 25 T64N, R5E.

Dated: April 6, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-12070 Filed 5-3-82; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[W-9-FRL 2118-3]

California Division of Oil and Gas; Underground Injection Control; Primacy Application

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period and of public hearings.

SUMMARY: The purpose of this notice is to announce that: (1) The Environmental Protection Agency (EPA) has received a complete application from the California Division of Oil and Gas requesting approval of its Underground Injection Control program; (2) the application is available for inspection and copying; (3) public comments are requested; and (4) public hearings will be held.

This notice is required by the Safe Drinking Water Act as a part of the response to the States complying with the statutory requirement that there be an Underground Injection Control program in designated States.

The proposed comment period and public hearings will provide EPA the breadth of information and public opinion necessary to approve, disapprove, or approve in part and disapprove in part the application from the California Division of Oil and Gas to regulate all Class II oil and natural gas related injection wells in California.

DATES: Two Public Hearings will be held. A single session will be held on June 1, 1982, 7:30 p.m. Two sessions will be held on June 3, 1982, one beginning at 10:00 a.m. and a second at 7:30 p.m. Comments must be received by May 19, 1982.

ADDRESSES: Comments should be mailed to Nathan Lau, Water Management Division, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, California 94105. Copies of the application and pertinent material are available from to 8:30 a.m. and 4:00 p.m., Monday through Friday at the following locations:

Environmental Protection Agency, Region IX Library, 6th Floor, 215 Fremont Street, San Francisco, California 94105, (415) 974-8076

California Division of Oil and Gas, 1416 9th Street, Room 1310, Sacramento, California 90804, (916) 445-9686

and at the Division's district offices located at:

5199 E. Pacific Coast Hwy., Suite 309-N, Long Beach, California 90804, (213) 590-5311

146 S. Ojai Street, P.O. Box 67, Santa Paula, California 93060, (805) 525-2105

301 W. Church Street, P.O. Box 227, Santa Maria, California 93454, (805) 925-2686

4800 Stockdale Hwy., Suite 417, Bakersfield, California 93309, (805) 322-4031

466 N. Fifth Street, P.O. Box 616, Coalinga, California 93210, (209) 935-2941

117 W. Main Street, Suite 11, Woodland, California 95695, (916) 662-4683

The June 1st hearing will be held at the Bakersfield City Council Chamber, City Hall, 1501 Truxtun Avenue, Bakersfield, California. The June 3rd public hearing will be held at the Environmental Protection Agency, Nevada Room, 6th Floor, 215 Fremont Street, San Francisco, California.

FUR FURTHER INFORMATION CONTACT: Nathan Lau, Water Management Division, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, California 94105, (415) 974-8274.

SUPPLEMENTARY INFORMATION: The application from the California Division of Oil and Gas is for the regulation of all oil and natual gas related injection wells in the State. The application includes a description of the State Underground Injection Control program, copies of all applicable rules and forms, a statement of legal authority and a memorandum of agreement between the California Division of Oil and Gas and the Region IX office of the Environmental Protection Agency.

Dated: April 29, 1982.

Frederick A. Eidsness, Jr.,

Assistant Administrator for Water.

[FR Doc. 82-12229 Filed 5-3-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6303]

Proposed Special Flood Hazard Areas for Laramie County, Wyoming; Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed special flood hazard areas as described below.

The proposed special flood hazard areas are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed special flood hazard areas are available for review at the Office of the County Engineer, 706 West 19th Street, Cheyenne, Wyoming.

Send comments to: Mr. Dean Fogg, Chairman, Board of Commissioners, Laramie County, P.O. Box 608, Cheyenne, Wyoming 82001.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed special flood hazard areas for Laramie County, Wyoming in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added

Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

The special flood hazard areas, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be constrtued to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed special flood hazard areas will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed special flood hazard areas, identified as Zone A, on Panels 655 and 660, are being added along a tributary to Crow Creek. In addition, the corporate limits are being adjusted to reflect annexations by the City of Cheyenne, and has generally resulted in a deletion of flooding within the County.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

(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; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 26, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82–11970 Filed 5–3–82; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FEMA–6295]

National Flood Insurance Program; Proposed Base Flood Elevations and Zone Designations for the City of Lehi, Utah County, Utah

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations as described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flodd-prone areas and the proposed base flood elevations and zone designations are available for review at the Office of the Building Official, 5th West and 3rd North, Lehi, Utah.

Send comments to: Honorable A. E. Allison, Mayor, City of Lehi, 51 North Center Street, Lehi, Utah 84043.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Office of Natural and Technological Hazards, Federal Emergency Management Agency, Washington, DC 20472, (202) 287–0216.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and zone designations for the City of Lehi, Utah in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These base flood elevations and zone designations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, flood plains.

The proposed base flood elevations and zone designations are as follows:

Source of flooding	Location	Elevation (feet) national geodetic vertical datum	Zone designation
Dry Branch	At the westernmost corporate limits	4,663	A5.
	At the easternmost corporate limits	4,698	A5.
Dry Creek	Approximately 100 feet upstream of Frontage Road.	4,594	A5.
	At the northernmost corporate limits	4,595	A5.

The remaining annexed areas have been identified as Zones B and C. The floodway delineation has been added along the aforementioned reaches of Dry Branch and Dry Creek.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(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; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 13, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11974 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6294]

National Flood Insurance Program; Proposed Base Flood Elevations, Zone Designations and Special Flood Hazard Areas for the Town of Rangely, Rio Blanco County, Colorado

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations, zone designations and special flood hazard areas as described below.

The proposed base flood elevations, zone designations and special flood hazard areas are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations, zone designations and special flood hazard areas are available for review at the Office of the Town Clerk, Municipal Building, 209 East Main Street, Rangely, Colorado.

Send comments to: Honorable Peggy Rector, Mayor, Town of Rangely, Municipal Building, 209 East Main Street, Rangely, Colorado 81648.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Office of Natural and Technological Hazards, Federal Emergency Management Agency, Washington, DC 20472, (202) 287-0216.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations, zone designations and special flood Hazard areas for the Town of Rangely, Colorado in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

These base flood elevations, zone designations and special flood hazard areas, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations, zone designations and special flood hazard areas will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, flood plains.

The proposed base flood elevations and zone designations in recently annexed areas are as follows:

Source of flooding	Location	Elevation (feet) national geodetic vertical datum	Zone designation
Dragon Wash	At a point located approximately 150 feet upstream of the limit of detailed study.	5,233	A1.
	At a point located approximately 700 feet downstream of Stanolind Avenue.	5,240	A1.
	At Stanolind Avenue	5,247	A1.
	At a point located approximately 150 feet downstream of Sunset Avenue.	5,250	A1.
	At Grand Avenue	5,252	A1.

Also along Dragon Wash, between the confluence with the White River and the limit of detailed study, the proposed special flood hazard area, identified as Zone A, is being added. Along the White River, in the northwesternmost portion of the Town, the proposed special flood hazard area, identified as Zone A, is being added. All the remaining annexed areas have been identified as Zone C. The proposed floodway delineation is being added along the White river, in the northeasternmost portion of the Town.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(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); E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 19, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11976 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6243]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Cincinnati, Hamilton County, Ohio, previously published at 45 FR 3383 on January 25, 1982.

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 correction to the Notice of proposed Determinations of base (100-year) flood elevations for selected locations in the City of Cincinnati, Hamilton County, Ohio, previously published at 45 FR 3383 on January 25, 1982, in accordance with

section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

The elevation for the location "within the community" on "Little Miami River" was changed from 502 to 501 in order to reflect the backwater from the Ohio River present on the Little Miami River. In the location "at confluence of East Fork Mill Creek" on "Mill Creek," east replaced west to avoid confusion with a location on the "West Fork". The source of flooding named "West Fork Mill Creek" was changed to "West Fork" to reflect the correct topographic name of the stream. On the "West Fork," the location "at confluence with Mill Creek" added the description "(near Geringer Street)" in order to clarify possible confusion with the confluence of West Fork Mill Creek, which is a different stream. The new location for "Congress Run," "about 700 feet upstream of Ridgeway Avenue" and the new elevation 542, were corrected so that it would be within the corporate limits.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the (proposed) flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the 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.

List of Subjects in 44 CFR Part 67

Flood insurance, flood plains.

The listing appears correctly as follows:

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Ohio	(C) Cincinnati Hamilton County	Little Miami River	Within community	*501
			Just upstream of confluence with Ohio River	*497
		Mill Creek	At confluence of East Fork Mill Creek	*539
			At confluence with Mill Creek (near Geringer Street)	*485
		West Fork	At confluence with Little Miami River	*501
		Clough Creek	At confluence with Little Miami River	*501
		Duck Creek	At confluence with Mill Creek	*520
		Congress Run	About 700 feet upstream of Ridgeway Avenue	*542

(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: April 19, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11971 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6246]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 47 FR 5023 on February 3, 1982. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Borough of Rumson, Monmouth County, New Jersey.

EFFECTIVE DATE: May 4, 1982.

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Borough of Rumson, Monmouth County, New Jersey, previously published at 47 FR 5023 on February 3, 1982, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the 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.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The following location descriptions have been amended to read as follows: The remainder of the Notice of Proposed Base Flood Elevations remains unchanged.

Source of Flooding	Location	Elevation in feet. National geodetic vertical datum
Shrewsbury River....	Rumson Road extended to approximately 1,100 feet east of Two Rivers Avenue extended.	*10
	Approximately 1,100 feet east of Two Rivers Avenue extended to approximately 750 feet west of Two Rivers Avenue extended.	*11
	Approximately 750 feet west of Two Rivers Avenue extended to approximately 1,125 feet west of Clubway extended.	*12

(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; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: April 14, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82–11972 Filed 5–3–82; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FEMA–6246]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 47 FR 5022 on February 3, 1982. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Borough of Little Silver, Monmouth County, New Jersey.

EFFECTIVE DATE: May 4, 1982.

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Borough of Little Silver, Monmouth County, New Jersey, previously published at 47 FR 5022 on February 3, 1982, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the 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.

List of Subjects in 44 CFR Part 67

Flood Insurance, Flood plains.

The following location descriptions have been amended to read as follows. The remainder of the Notice of Proposed Base Flood Elevations remains unchanged.

Source of flooding	Location	Elevation in feet, National geodetic vertical datum
Parker Creek	Shoreline from western corporate limits to approximately 100 feet south of Breezy Point extended.	*9
	Shoreline from approximately 100 feet south of Breezy Point extended to confluence with Shrewsbury River.	*10
Little Silver Creek	Shoreline from confluence with Shrewsbury River to approximately 175 feet east of Borden Place extended.	*12
	Shoreline from approximately 175 feet east of Borden Place extended to approximately 240 feet northwest of Borden Place extended.	*10
	Shoreline from approximately 240 feet northwest of Borden Place extended to upstream side of Willow Drive.	*9
Town Neck Creek...	Shoreline from confluence with Shrewsbury River to approximately 220 feet south of Battle Row extended.	*11
	Shoreline from approximately 220 feet south of Battle Row extended to the end of Town Neck Creek.	*9
Little Silver Tributary 1.	Shoreline from confluence with Little Silver Creek to downstream side of Prospect Avenue.	*9

(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; E. O. 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: April 14, 1982.

Lee M. Thomas,

Associate Director State and Local Programs and Support.

[FR Doc. 82–11973 Filed 5–3–82; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FEMA–6296]

National Flood Insurance Program; Proposed Zone Designations, Base Flood Elevations, Corporate Limits and Floodway for the City of Tonawanda, New York

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed zone designations, base flood elevations, corporate limits and floodway described below.

The proposed zone designations, base flood elevations, corporate limits and floodway will be the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Map and other information showing the detailed outlines of the floodprone areas and the proposed zone designations, base flood elevations, corporate limits and floodway are

available for review at the Mayor's Office.

Send comments to: Honorable G. Delwin Hervey, Mayor, City of Tonawanda, City Hall, 200 Niagara Street, Tonawanda, New York 14150.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed zone designations, base flood elevations, corporate limits and floodway (100 year flood) for the City of Tonawanda, New York in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

The proposed zone designations, base flood elevations, corporate limits and floodway together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. The proposed zone designations, base flood elevations, corporate limits and floodway will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, flood plains.

The proposed zone designations, base flood elevations, corporate limits and floodway for selected locations are:

Source of flooding	Location	Elevation (NGVD)	Zone designation
Erie Canal	Approximately 50 feet west of the eastern corporate limit.	572	A3.
Erie Canal	Approximately 50 feet east of Young Street Arterial	572	A3.
Erie Canal	Approximately 750 feet west of Stark Street	571	A2.

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 this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated Special Flood Hazard Areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective Janaury 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 Associate Director, State and Local Programs and Support)

Issued: April 13, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11975 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6281]

National Flood Insurance Program; Proposed Zone Designations and Base Flood Elevations for the City of Redlands, San Bernardino County, Calif.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed zone designation and base flood elevations as described below.

The proposed zone designations and base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for zone designations and base review at the Office of the City Clerk, City Hall, 30 Cajon Street, Redlands, California.

Send comments to: Honorable Charles G. DeMirjyn, Mayor, City of Redlands, P.O. Box 280, Redlands, California 92373.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Office of Natural and Technological Hazards, Federal Emergency Management Agency, Washington, DC 20472, (202) 287–0216.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed zone deisgnations and base flood elevations for the City of Redlands, California in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 86 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These zone designations and base flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed zone designations and base flood elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, flood plains.

The proposed zone designations and base flood elevations are as follows:

Source of flooding	Location	Elevation, national geodetic vertical datum (feet)	Zone designation
The Zanja	At Wabash Street	1,616	A3.
Santa Ana River	At the westernmost corporate limits	1,081	A12.

Also along The Zanja, between the westernmost corporate limits and a point approximately 700 feet downstream of Tennessee Street, the proposed zone deisgnation has been identified as Zone A. All the remaining annexed areas have been identified as Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(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; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support.)

Issued: April 13, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11987 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6300]

National Flood Insurance Program; Proposed Base Flood Elevations and Zone Designations for the City of Rifle, Garfield County, Colo.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed zone designation and base flood elevations as described below.

The proposed zone designations and base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed based flood elevations and zone designations are available for review at the Office of the City Manager, City Hall, 337 East Avenue, Rifle, Colorado.

Send comments to: Honorable George Mitchell, Mayor, City of Rifle, P.O. Box 1908, Rifle, Colorado 81650.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Divisions Federal Emergency Management Agency; Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and zone designations for the City of Rifle, Colorado, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These base flood elevations and zone designations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculated the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, flood plains.

The proposed base flood elevations and zone designations are as follows:

Source of flooding	Location	Elevation, national geodetic vertical datum (feet)	Zone designation
Colorado River	At the easternmost corporate limits	5,309	A6.
	Just upstream of Taugherbaugh Blvd	5,303	A6.
	At a point located approximately 1,450 feet downstream of Taugherbaugh Blvd.	5,298	A6.
	At a point located approximately 3,200 feet downstream of Taugherbaugh Blvd.	5,292	A6.
	At the westernmost corporate limits	5,278	A6.
Rifle Creek	Just downstream of 10th St. extended	5,360	A10
	Just upstream of 10th St. extended	5,362	A18.
	At a point located approximately 200 feet upstream of 12th St.	5,371	A18.
	At 20th St. extended	5,397	A10.
	At the easternmost corporate limits	5,403	A10.

In addition along Government Creek, south of 24th Street extended, the special flood hazard areas, identified as Zone A, are being added. All the remaining annexed areas have been identified as Zones B and C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(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; E. O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 26, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11980 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6301]

National Flood Insurance Program; Proposed Base Flood Elevations and Zone Designations For The City of Wheat Ridge, Jefferson County, Colo.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations as described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed base flood elevations and zone designations are available for review at the Community Development Department, City Hall, 7500 West 29th Avenue, Wheat Ridge, Colorado.

Send comments to: Honorable Frank Stites, Mayor, City of Wheat Ridge, P.O. Box 638, Wheat Ridge, Colorado 80033.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and zone designations for the City of Wheat Ridge, Colorado in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

These base flood elevations and zone designations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entites. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base flood elevations and zone designations are as follows:

Source of flooding	Location	Elevation (feet) national geodetic vertical datum	Zone designation
Clear Creek	At the northwestern most corporate limits	5,280	A10.
	At Pierce Street extended	5,290	A10.
	Just upstream of Wadsworth Boulevard	5,312	A10.
	Just downstream of Garrison Street extended	5,345	A10.
	Just downstream of Hoyt Court extended	5,350	A9.
	Just upstream of Kipling Street	5,362	A9.
	Just upstream of Tabor Street	5,404	A8.
	Just downstream of Youndfield Street	5,427	A8.

Pursuant to the provisions of 5 U.S. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of techical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(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; E.O. 12127, 44 FR 19367; and delegation of authority to the Accociate Director, State and Local Programs and Support)

Issued: April 26, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11981 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6293]

National Flood Insurance Program; Proposed Zone Designation Determinations for the Village of Atwood, Piatt and Douglas Counties, Ill.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed zone designations described below.

The proposed and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at 110 West Central, Atwood, Illinois.

Send comments to: Mr. Horace W. Romine, Village President, Village of Atwood, 110 West Central, Atwood, Illinois 61913.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support gives notice of the proposed zone designations for the Village of Atwood, Illinois, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood

Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These zone designations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, flood plains.

The proposed zone designations are as follows:

Zone A and Zone C along Lake Fork in the area south of a line following West Birch Avenue, South Main Street, and U.S. Route 36.

Zone C at all other locations in the community than those above.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(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; E.O. 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)
Issued: April 19, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11977 Filed 5-3-82; 8:45 am]
BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6302]

National Flood Insurance Program; Proposed Base Flood Elevations and Zone Designations for the City of Iola, Allen County, Kansas

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations as described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to quality or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at the Office of the City Clerk, City Hall, 2 West Jackson Avenue, Iola, Kansas.

Send comments to: Honorable John L. Carder, Mayor, City of Iola, 2 West Jackson Avenue, Iola, Kansas 66749.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and zone designations for the City of Iola, Kansas in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These base flood elevations and zone designations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed based flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance; Flood plains.

The proposed base flood elevations and zone designations in the recently annexed areas are as follows:

Source of flooding	Location	Elevation (NGVD) (feet)	Zone Designation
Rock Creek	At easternmost corporate limits	962	A5.
Coon Creek	At a point approximately 200 feet downstream of the Atchison Topeka and Santa Fe Railroad	958	A4.
	At a point approximately 700 feet downstream of the Atchison Topeka and Santa Fe Railroad	956	A4.

All the remaining annexed areas have been identified as Zones B and C. The proposed floodway delineation has been added along Coon Creek.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of

technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(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; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 26, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11982 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6280]

National Flood Insurance Program; Proposed Base Flood Elevations and Zone Designations for the City of Crystal City, Jefferson County, Mo.

AGENCY: Federal Emergeny Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zones designations as described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at the Office of the City Clerk, City Hall, 450 Bailey Road, Crystal City Missouri.

Send comments to: Honorable Boston N. Richards, Jr., Mayor, City of Crystal City, 450 Bailey Road, Crystal City, Missouri 63019.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Office of Natural and Technological Hazards, Federal Emergency Management Agency, Washington, DC 20472, (202) 287–0216.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and zone designations for the City of Crystal City, Missouri, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These base flood elevations and zone designations, together with flood plain management measures required by § 60.3 of the program regulations, are the minimum that are requried. It should not be construed to mean the community must change any existing ordiances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new building and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base flood elevations and zone designations are as follows:

Source of flooding	Location	Elevation national geodetic vertical datum (feet)	Zone designation
Plattin Creek	Approximately 1,000 feet upstream of the St. Louis San Franciso Railroad.	411	A18.
	At the southeasternmost corporate limits	411	A18.
"A" Creek	Approximately 1,000 feet downstream of the confluence of "B" Creek.	411	A18.
	At the western corporate limits	411	A18.
"B" Creek	Approximately 300 feet downstream of the St. Louis San Francisco Railroad.	411	A4.

All the remaining annexed areas have been identified as Zone C. The proposed floodway has been added along the above tabulated portions of Plattin Creek and "A" Creek.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, heregy certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1069 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E. O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 13, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11986 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6284]

National Flood Insurance Program; Proposed Extraterritorial Jurisdiction Limits and Special Flood Hazard Areas for the City of Lumberton, N.C.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed extraterritorial jurisdiction limits and Special Flood Hazard Areas described below.

The proposed extraterritorial jurisdiction limits and Special Flood Hazard Areas will be the basis for the flood plain management measures that the community is required to either adopt of show evidence of being already in effect in order to qualify or remain qualified for participation in the

National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Map and other information showing the detailed outlines of the flood-prone areas and the proposed extraterritorial jurisdiction limits and Special Flood Hazard Areas are available for review at the Mayor's Office.

Send comments to: Honorable F. K. Biggs, Mayor, City of Lumberton, City Hall, 501 East 5th Street, Lumberton, North Carolina 28358.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Chief, Engineering Branch, Natural Hazards Division, State and Local Programs and Support, Federal Emergency Management Agency, Room 514, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed extraterritorial jurisdiction limits and Special Flood Hazard Areas (100-year flood) for the City of Lumberton, North Carolina in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

The extraterritorial jurisdiction limits and Special Flood Hazard Areas together with the flood plain management measures required by section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed extraterritorial jurisdiction limits and Special Flood Hazard Areas will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed extraterritorial jurisdiction limits and Special Flood Hazard Areas for selected locations are:

Source of flooding	Location	Zone designation	Elevation (national geodetic vertical datum)
Fivemile Branch	The confluence with the Lumber River to approximately 9,800 feet north of the confluence.	A10	124
Lumber River	Approximately 6,600 feet north of the corporate limits between Cottonwood Street and Powell Branch and approximately 5,150 feet west of Cottonwood Steet.	A10	124–127
Lumber River	South of the corporate limits between Route 2289 and 2204 and at various points along Jacob Swamp and Little Jacob Swamp to the extraterritorial limits.	AH	115
Lumber River	Approximately 4,000 feet south of the corporate limits between Routes 2289 and 2202.	A10	116–118
Lumber River	At a point approximately 4,000 feet south of the corporate limits between Routes 2289 and 2202 to the extraterritorial limits.	A4	106–115

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 this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated Special Flood Hazard Areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(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; E.O. 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)

Issued: April 13, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82–11988 Filed 5–3–82; 8:45 am]

BILLING CODE 6718–03–M

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44 CFR Part 67

[Docket No. FEMA–6282]

National Flood Insurance Program; Proposed Base Flood Elevations and Zone Designations for the City of Spokane, Spokane County, Wash.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations as described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at the Office of the City Clerk, City Hall, West 808 Spokane Falls Boulevard, Spokane, Washington.

Send comments to: Honorable James Chase, Mayor, City of Spokane, P.O. Box 29, Spokane, Washington 99201–3333.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Office of Natural and Technological Hazards, Federal Emergency Management Agency, Washington, DC 20472, (202) 287–0216.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and zone designations for the City of Spokane, Washington in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These base flood elevations and zone designations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact

stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base flood elevations and zone designations in recently annexed areas are as follows:

Source of flooding	Location	Elevation, national geodetic vertical datum (feet)	Zone designation
Hangman Creek	Approximately 850 feet upstream of the confluence with Marshall Creek.	1,800	A8.
	Approximately 2,400 feet upstream of the confluence with Marshall Creek.	1,806	A8.
	Approximately 7,500 feet upstream of the confluence with Marshall Creek.	1,824	A8.
	Approximately 6,550 feet downstream from the southernmost corporate limits.	1,836	A8.
	At the southernmost corporate limits	1,844	A8.
Marshall Creek	The area located southwest of U.S. Route 195 and southeast of Cheney-Spokane Road.	1,797	All.
Spokane River	At the westernmost corporate limits	1,664	A6.
	Approximately 1,300 feet upstream of the westernmost corporate limits.	1,666	A6.

The remaining annexed areas have been identified as Zone C. The floodway delineation has also been added in the recently annexed areas of Hangman Creek.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communitites.

(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; E. O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 13, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11989 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6285]

National Flood Insurance Program; Proposed Zone Designation Determinations for Manitowoc County, Unincorporated Area, Wis.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed zone designations as described below.

The proposed zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed zone designations are available for review at 1010 South Eighth Street, Manitowoc, Wisconsin.

Send comments to: James M. Hendricks, Chairman, Manitowoc County Board of Supervisors, 1010 South Eighth Street, Manitowoc, Wisconsin 54220.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed zone designations for the Manitowoc County, Wisconsin, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 86 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These zone designations and base (100-year) flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed zone designations are as follows:

Source of flooding	Location	Zone designation
West Twin River	Portions of area bounded on the north by Manitour Drive and County Highway B, on the south and east by the West Twin River, and on the west by East Shore Road and County Highway VV.	A6, B, C.
Manitowoc River	Portions of Tract Number 2 of Lot Number 4 of Manitowoc Mill Villa Subdivision in the Town of Manitowoc Rapids, Manitowoc County, Wisconsin, Section 26, T19N-R23E (Town of Manitowoc Rapids).	C.

Pursuant to the provision of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood areas on the basis of updated information and imposes no new requirements or

regulations on participating communities.

(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; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support.

Issued: April 13, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support)

[FR Doc. 82-11979 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6297]

National Flood Insurance Program; Proposed Zone Designation and Base Flood Elevations Determinations for the City of Norton, Independent City, Va.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at City Hall, 618 Virginia Avenue, N.W., Norton, Virginia.

Send comments to: G. M. Newman, City Manager, City of Norton, P.O. Box 618, Norton, Virginia 24273.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support gives notice of the proposed base flood elevations and zone designations for the City of Norton, Virginia, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These zone designations and base (100-year) flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed zone designations and base flood elevations are as follows:

Source of flooding	Location	Elevation, national geodetic vertical datum (feet)	Zone designation
Benges Branch	Between Laurel Avenue and confluence with unnamed tributary Benges Branch.		A, C.
	Two reservoirs upstream of confluence with unnamed tributary Benges Branch.		C.
Guest River	Portions of area bounded by two lines parallel to and approximately 100 feet northwest and 200 feet southeast of Kentucky Avenue, respectively in the vicinity of the confluence of Clear Creek and the Guest River, and by two lines perpendicular to Kentucky Avenue located approximately 300 feet on either side of the Kentucky Avenue bridge over the Guest River immediately downstream of the confluence of Clear Creek and the Guest River.	2,073	A7.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(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; E. O. 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)

Issued: April 13, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11984 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6298]

National Flood Insurance Program; Proposed Zone Designation and Base Flood Elevation Determinations for the Town of Mitchell Heights, Logan County, W. Va.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations as described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety-days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at 305 Central Avenue, Logan, West Virginia.

Send comments to: Honorable Melvin Triolo, Mayor, Town of Mitchell Heights, 305 Central Avenue, Logan, West Virginia 25601.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support gives notice of the proposed base flood elevations and zone designations for the Town of Mitchell Heights, West Virginia, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 86 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These zone designations and base (100-year) flood elevations, together with the flood plain management measures required by section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed zone designations and base flood elevations are as follows:

Source of flooding	Location	Elevation, national geodetic vertical datum (feet)	Zone designation
Guyandotte River	Downstream Corporate Limits	652	A17, B.
	Upstream Corporate Limits	653	A17, B.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(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; E. O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support.)

Issued: April 13, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11985 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6304]

National Flood Insurance Program; Proposed Special Flood Hazard Area Determinations for the City of Rock Springs, Sweetwater County, Wyo.; Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed special flood hazard areas as described below.

The proposed special flood hazard areas are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed special flood hazard areas are available for review at the Public Works Department, City Hall, 212 "D" Street, Rock Springs, Wyoming.

Send comments to: Honorable C. Keith West, Mayor, City of Rock Springs, P.O. Box 698, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed special flood hazard areas for the City of Rock Springs, Wyoming, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128. and 44 CFR Part 67.

These special flood hazard areas, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed special flood hazard areas will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed special flood hazard areas, identified as Zone A, have been added along Killpecker Creek and Bitter Creek, due to recent annexations. The special flood hazard area has been added along Killpecker Creek between the limit of detailed study and the northeastern corporate limits. The special flood hazard area has been added along Bitter Creek at the western most corporate limits. All the remaining annexed areas have been identified as Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency

Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

(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; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support.)

Issued: April 26, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82–11983 Filed 5–3–82; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FEMA–6283]

National Flood Insurance Program; Proposed Base Flood Elevations and Zone Designations for the City Of Buffalo, Johnson County, Wyo.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations as described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at the Office of the City Clerk, City Hall, 46 North Main Street, Buffalo, Wyoming.

Send comments to: Honorable Emil O. Hecht, Mayor, City of Buffalo, P.O. Box 1009, Buffalo, Wyoming 82834.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Office of Natural and Technological Hazards, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0216.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and zone designations for the City of Buffalo, Wyoming in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Indurance 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.

These base flood elevations and zone designations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base floor elevations and zone designations for recently annexed areas are as follows:

Source of flooding	Location	Elevation, national geodetic vertical datum (feet)	Zone designation
Clear Creek	At a point approximately 200 feet upstream of Route 252.	4583	A3.
	At a point approximately 350 feet upstream of Route 252.	4585	A3.

In the northeastern most portion of the City, the proposed special flood hazard area, identified as Zone A, has been added. All the remaining annexed areas have been identified as Zone C. The proposed floodway delineation has been added along the aforementioned reach of Clear Creek.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(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; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support.)

Issued April 13, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82–11990 Filed 5–3–82; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FEMA–6292]

National Flood Insurance Program; Proposed Base Flood Elevations and Zone Designations for the City of San Pablo, Contra Costa County, Calif.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations as described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the

National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at the Office of the City Clerk, City Hall, One Alvarado Square, San Pablo, California.

Send comments to: Honorable Kathryn Carmignani, Mayor, City of San Pablo, City Hall, One Alvarado Square, San Pablo, California 94806.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Office of Natural and Technological Hazards, Federal Emergency Management Agency, Washington, DC 20472, (202) 287–0216.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and zone designations for the City of San Pablo, California, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These base flood elevations and zone designations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base flood elevations and zone designations in the recently annexed area, are as follows:

Source of flooding	Location	Elevation, national geodetic vertical datum (feet)	Zone designation
Rheem Creek	At Giant Road	23	A4.
	At a point located approximately 400 feet upstream of Giant Road.	24	A4.
	At a point located approximately 250 feet downstream of 11th Street.	25	A4.

In addition, the area located southeast of Church Lane and northeast of Willow Road has been revised from Zone B to Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(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; E. O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support.)

Issued: April 19, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11978 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 21, 22, 81, 87, 90, and 95

[General Docket No. 82-181; RM-3248, FCC 82-145]

Amendment of the Commission's Rules To Provide Additional Spectrum Between 72 and 76 MHz for the Control of Model Aircraft, Boats, Cars, and Other Similar Devices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission seeks information from the public regarding the proposed allocation on a secondary basis of additional spectrum in the 72–76 MHz band for the radio control of model aircraft, boats, cars and other similar devices. This proceeding is in response to a petition filed by the Academy of Model Aeronautics. This proposed action would provide spectrum relief to the operators of radio control models without impacting the existing primary users of this spectrum.

DATES: Comments must be submitted on or before May 13, 1982, and reply comments on or before May 28, 1982.

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

FOR FURTHER INFORMATION CONTACT: Donald Draper Campbell, Office of Science and Technology, 202–653–8177.

SUPPLEMENTARY INFORMATION:

List of Subjects Affected In

47 CFR Part 2

Frequency Allocation, Radio, Communications Equipment, Radio Control, Personal Radio.

47 CFR Part 21

Communications Common Carriers, Microwave Radio.

47 CFR Part 22

Communications Common Carriers, Mobile Radio.

47 CFR Part 81

Marine Safety.

47 CFR Part 87

Air Transportation.

47 CFR Part 90

Business and Industry.

47 CFR Part 95

Radio.

Notice of Proposed Rulemaking

Adopted: April 1, 1982.

Released: April 13, 1982.

In the matter of Amendment of Parts 2, 21, 22, 81, 87, 90 and 95 of the Commission's Rules to provide additional spectrum between 72 and 76 MHz for the radio control of model aircraft, boats, cars and other similar devices.

By the Commission:

Introduction

1. On 17 November 1978, the Commission received a petition (RM-3248) from the Academy of Model Aeronautics, Inc. (Academy) requesting that the Commission amend Parts 2 and 95 of the Commission's Rules to provide additional spectrum for the radio control of model airplanes, boats and cars. The Academy stated that additional spectrum is needed in order to cope with the anticipated expansion in model activities during the next ten years, and to compensate for diminished use of the existing thirteen frequencies in the 26.99 to 27.26 MHz and 72.0 to 76.0 MHz bands to due to interference caused by other operations in those bands.

2. The Academy states in its petition that because of spectrum congestion and high power operation on the forty Citizen Band Radio Service frequencies between 26.96 and 27.41 MHz (the 26–27 MHz band), the six interleaved channels in that band which are allocated to the Radio Control Radio Service are nearly useless for radio control operators.

3. Currently, the Academy notes, the only other Spectrum available to the Radio Control Radio Service is on seven channels in the 72–76 MHz band; however, this use is secondary to operational fixed stations in the Industrial, Land Transporation and Public Safety Services as well as to low power land mobile stations in the Manufacturers Radio Service. According to the Academy, there are a number of cities (e.g. Houston, TX; Tampa, FL; etc.) in which only a few of the seven 72–76 MHz radio control channels are available due to interference from fixed and land mobile operations of industrial users; and the use of this spectrum by the land mobile services is growing.

4. In addition to the need to find replacement frequencies for the 26–27 MHz and the 72–76 MHz channels, the Academy states that there is a need for some 20 to 25 additional channels to support the growth of the Radio Control Radio Service over the next ten years.

5. As to where the additional radio control channels requested might be found, the Academy suggests secondary use of the ten 72–76 MHz channels currently allocated to low power (1 watt or less) land mobile operations in the Special Industrial, Manufacturers and Railroad Radio Services along with the eleven 'guard band' channels separating the Government and non-Government allocations between 30 and 42 MHz. The Academy also asks if spectrum might be found in the 222–224 MHz, the 450–460 MHz and the 900 MHz bands.

6. A series of meetings were held during the fall of 1979 [1] between members of the Commission's Staff, the Petitioner and representatives of several manufacturers of radio control equipment to discuss spectrum requirements. The manufacturers felt that because of the wide separation between the eleven 'guard band' channels between 30 and 42 MHz, these channels would not be well suited for the radio control of models. The Commission's staff pointed out that the 222–224 MHz band was allocated in part to the Amateur Radio Service and that any attempt to re-allocate that spectrum would encounter much resistance from the amateur community. The staff also pointed out that heavy usage was being made of the 450 to 460 MHz band. Thus, those channels might not be readily available. With respect to spectrum at 900 MHz, the Academy indicated that a long term solution might be the use of spectrum at 900 MHz; however, considerable testing would be required before a formal request could be made.[2]

7. As a result of this series of meetings, the Petitioner indicated that the near term (10 to 20 years) spectrum requirements could best be served by the allocation of additional spectrum in the 72–76 MHz band. To this end, the Petitioner established a Joint Academy-Industry Committee to study the viability of expanded radio control operations on the interlaced, 'odd', 20 KHz channels in the 72–76 Mhz band (i.e. 72.01, 72.03, 72.05 MHz, etc.) and to establish the technical parameters of a workable 72–76 MHz assignment plan. On 11 September 1980, the Academy submitted to the Commission the findings and recommendations of the Joint Committee in *Report on 72–76 MHz Radio Control Systems*, dated September 1980, which was later modified by a letter dated 15 July 1981.

8. The Academy Report proposes implementation of additional 72–76 MHz frequencies as follows:

(a) Model aircraft only: fifty 8 kHz channels, starting at 72.010 MHz and proceeding every 20 kHz through 72.990 MHz.

(b) Terrestrial models only: twenty-three 8 kHz channels, starting at 75.410 MHz and proceeding every 20 kHz through 75.850 MHz.

(c) Phase out existing seven 72–76 MHz frequencies within five years.

(d) Permit any type of emission to be used.

9. The current rules restrict the type of emission employed by radio control stations to amplitude modulation. The Academy feels that operations in the 72–76 MHz band should not be restricted to using only amplitude modulation. They point out that frequency (or phase) modulation is used in other countries and may prove beneficial if permitted in this country.

Discussion

10. The Commission's licensing records indicate that there has been considerable growth in the Radio Control Radio Service over the last fifteen years; particularly in the last five years, as can be seen in TABLE 1 attached hereto. This growth trend tends to support the Academy's contention that there is a need for additional spectrum to support the anticipated expansion of model activities over the next ten years.

11. At present, the Radio Control Radio Service licensees have access to thirteen 8 kHz channels, six in the 26–27 MHz band [3] and seven in the 72–76 MHz band [4], for the control of models. Of the thirteen channels, only four [5] are restricted solely to the control of model aircraft. The Academy claims that because of the sheer number of licensees and high power operations on the forty Citizens Band Radio Service channels at 27 MHz, the six interleaved radio control channels are nearly useless for radio control operation, particularly for the control of model aircraft in suburban and urban areas.

12. The Academy also claims that, in many areas, the signal level of fixed stations operating in the 72–76 MHz band precludes the use of some of the 72–76 MHz radio control channels. Because of the growth of the land mobile radio service with which these 72–76 MHz fixed operations are associated, the Academy feels that the number of radio control channels precluded from use because of interference from facilities supporting land mobile operations will drastically increase unless some relief is forthcoming. The Academy suggests that one form of relief would be to expand the radio controllers' access to the 72–76 MHz band.

13. In the United States, the band segments 72.0–73.0 MHz and 75.4–76.0

[1] October 26, November 17, and December 12, 1979.

[2] To this end, the Academy applied for an experimental license (Part 5) on August 19, 1980, file number 8272–ER–PL–80, to operate on four 900 MHz frequencies. An experimental license, KK2XFZ, was issued on January 28, 1981.

[3] 26.995, 27.045, 27.095, 27.145, 27.195 and 27.255 MHz. This latter frequency is shared with other services.

[4] 72.08, 72.16, 72.24, 72.32, 72.40, 72.96 and 75.64 MHZ.

[5] 72.08, 72.24, 72.40 and 75.64 MHz.

MHz (the 72–76 MHz band) are currently allocated on a primary basis to the non-Government Fixed Service. [6] In this band, a 20 kHz channelling plan, which begins at 72.02 MHz and proceeds to 72.98 MHz and then from 75.60 through 75.98 MHz, has been established. The following 'FCC radio services' are permitted access to this sepctrum: Alaska-Public Fixed Service, Aviation Service, Domestic Public Fixed Radio Service, Domestic Public Land Mobile Radio Service, Industrial Radio Services, Land Transportation Radio Services, Maritime Service and Public Safety Radio Services. Non-Government footnote 49 (NG49) permits low power (1 watt or less) non-Government mobile service use of a limited number of the same 72–76 MHz channels by several of the Industrial and Land Transportation Sub-Radio Services.[7] Additionally, non-Government footnote 56 (NG56) permits, on a secondary basis, the low power (1 watt or less) mobile service use of seven channels for the control of models by licensees in the Radio Control Radio Service.[8] All operations in this band are subject to the condition that no interference is caused to the reception of signals of television channels 4 and 5.

14. The 72–76 MHz frequencies are predominantly used by licensees in the private (Part 90) and common carrier (Parts 21 and 22) radio services for control of remote transmitters operating in the 30–50 MHz, 152–162 MHz or 450–470 MHz bands; both are services with high growth rates. Developments are likely to increase demand for 72–76 MHz transmitter control links for the land mobile service. Telephone-company-supplied wireline control circuits, which 72–76 MHz systems can replace, have both increased in cost and declined in availability. The metallic copper pairs traditionally used for transmitter control circuits are not available in a number of areas, as carrier, digital and fiber optical technolgy has come into use. Even where wireline control circuits are available, prices have increased to the point where the cost of a 72–76 MHz radio system is matched in a relatively short time by savings of leased telephone line charges. The trend in the common carrier paging service is, moreover, to multiple site, simulcast operations. Control of simulcast transmitters, which requires precise matching of the amplitude and phase of audio signals applied to the individual transmitters, is difficult, at best, to achieve using wire line control circuits due to day-to-day variations in frequency or phase response of the circuit. However, control of simulcast transmitters is easily achieved with radio circuits.

15. The reallocation of twenty 35–43 MHz channels for common carrier paging, Report and Order (FCC 81–296, adopted 30 June 1981) in CC Docket 80–189, and the proposed allocation of up to one hundred twenty 900 MHz paging channels for both common carrier and private systems, General Docket 80–183: Notice of Proposed Rule Making (FCC 80–231, adopted 24 April 1980) and Supplemental Notice of Proposed Rule Making (FCC 80–510, adopted 21 October 1980), can be expected to place an even greater demand upon frequency resources in the 72–76 MHz band for transmitter control purposes. Thus, additional Channels will be precluded from use by possibilities for interference from these transmitter control operations.

16. In justifying its request for additional spectrum for the control of models, the Academy states that experience has shown that when more than fifteen models are operated simultaneously in any given location, operator confusion becomes a major problem; therefore, for safety purposes, the number of models in operation at any given location is practically limited to fifteen or less. Additionally, the Academy states that it is desirable to have an additional five channels for testing of the models. Thus, at any given modelling area, the total number of desired interference free channels would be twenty.

17. In areas where fixed stations are operating on the "even" channels (i.e. 72.02, 72.04 . . . . 72.96, 72.98 MHz and 75.42, 75.44 . . . . 75.96, 75.98 MHz), mobile use of the adjacent channels (i.e. 72.01, 72.03 . . . . 72.97, 72.99 MHz and 75.41, 75.43 . . . . 75.97, 75.99 MHz) would also be precluded because of the potential of interference being caused to the model's receiver by the fixed station. The size of the area involved is dependent primarily upon the fixed station transmitter power and the amount of natural radio shielding betwen the fixed transmitter and the model's receiver. Thus, to provide the requested twenty interference free channels at any given location, the modeler would need access to a block of significantly more than twenty channels.

18. The Academy feels that if modelers are permitted access to fifty channels for the control of airborne models between 72.0 and 73.0 MHz and twenty-three channels between 75.40 and 75.86 MHz for the control of terrestrial models, they will be able to obtain twenty interference free channels at all locations.

19. The Academy proposal would make available an additional seventy-three new channels for the control of models, however, not all of them would be useable at any given location. Some would be excluded due to interference caused by continued use over the next several years of the existing seven 72–76 MHz radio control channels; while others would be excluded due to interference caused by fixed stations and television broadcast stations operating on TV channels 4 and 5. Additionally, intermodulation (IM) products caused by the use of an intermediate frequency (IF) of 455 kHz may preclude the use of spectrum between 72.00–72.52 and 75.86–76.00 MHz until such time as equipment manufacturers can develop receiving systems which employ a different IF frequency.[9]

20. The potential of harmful interference being caused by mobile radio model control transmitters to fixed land mobile control stations is slight. First, there is a 10 kHz separation between the model transmitter frequency and the control station receiver frequency. Second, the model control station has a transmitter output power of about 0.5 watts and utilizes a single "vertical" radiator of

[6] See § 2.106 of the Commission's rules.

[7] "NG49 The following frequencies may be authorized for low-power (1 watt input) mobile operations in the radio services shown subject to the condition that no interference is caused to the reception of television stations operating on channels 4 and 5:

[MHz]

Manufacturers Radio Service				
72.02	72.10	72.18	72.26	72.34
72.04	72.12	72.20	72.28	72.36
72.06	72.14	72.22	72.30	72.38
72.08	72.16	72.24	72.32	72.40
Special Industrial Radio Service, Manufacturers Radio Service, Railroad Radio Service				
72.44	72.52	72.60	75.48	75.56
72.48	72.56	75.44	75.52	75.60"

[8] "NG56 The frequencies 72.08, 72.16, 72.24, 72.32, 72.40, 72.96, and 75.64 MHz may be authorized for low power (1-watt input) mobile operations in the Personal Radio Services for radio control of models subject to the condition that interference will not be caused to remote control of industrial equipment operating on the same or adjacent frequencies and to the reception of television stations operating on Channels 4 or 5. TV interference shall be considered to occur whenever reception of regularly used television signals is impaired or destroyed, regardless of the strength of the television signals or the distance to the television station.".

[9] No doubt it is for this reason the Academy has not requested access to the band segment 75.86–76.00 MHz.

approximately a quarter wavelength with the ground plane consisting of the transmitter box. The fixed land mobile control station commonly operates with an output power of 50 to 100 watts and employs directional antennas at both the receiving and transmitting stations. The fixed stations thus operate at a power level in excess of 20 dB above that used for the control models. This combined with directional characteristics of fixed station antennas, should reduce the possibility of interference problems occurring.

21. There is also slight potential of harmful interference being caused by mobile radio, model control transmitters to television reception on channels 4 (66–72 MHz) or 5 (76–82) MHz). In general, the television station transmitter output power is in excess of 1 kilowatt. Therefore, the ratio between the model transmitter signal and the television transmitter signal is over 30 dB. To date there have been no recorded cases of interference to television reception caused by radio control of models in the seven channels currently used at 72–76 MHz.

Proposal

22. The Academy's request for additional mobile service spectrum and use of frequency (or phase) modulation as well as amplitude modulation for the control of models does have merit. Therefore, the Commission proposes to amend its Rules and make available the band segments 72.0–73.0 and 75.4–76.0 MHz, and permit both amplitude and frequency (or phase) modulation for the control of models in accordance with the proposed rule changes outlined in the Appendix.

23. In addition to footnote NG49 in § 2.106, we are now also incuding the mobile service allocation in column 8 for the bands 72–73 and 75.4–76.0 MHz to reflect the actual use of these frequency bands. This parallels the fixed service allocation which is both covered by footnotes NG1 and NG3, and included in the Table. Footnote NG49 is also being amended to specifically reflect its current primary status in the 72–73 and 75.4–76.0 MHz band. This action is simply editorial in nature.

Regulatory Flexibility Act of 1980 Initial Analysis

24. *Reason for action:* This proceeding is in response to a petition for rule making requesting additional spectrum for the radio control of models.

25. *The objectives:* The Commission desires comments on this proposal to provide expanded access to the 72–76 MHz band for the radio control of models.

26. *Legal basis:* The action proposed is in furtherance of Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, which permits the Commission to make such rules and regulations, not inconsistent with law, as may be necessary in the execution of its functions, with the additional view of the public welfare.

27. *Descriptions, potential impact and number of small entities affected:* Implementation of the proposed rules would provide spectrum relief to these licensees and we perceive no adverse impact on other licensees. It is mainly individuals who are engaged in the radio control of models and at present there are over 200,000 valid licenses in force. It could possibly increase radio control equipment sales as well as sales of the models using this radio equipment.

28. *Recording, record-keeping and other compliance requirements:* No additional requirements would be imposed if proposed rule changes are adopted.

29. *Federal rules which overlap, duplicate or conflict with these proposed rules:* None.

30. *Any significant alternatives minimizing impact on small entities and consistent with the stated objective:* None.

31. In accordance with the requirements of The Regulatory Flexibility Act of 1980, Pub. L. 96–354, 19 September 1980, Section 603(a), the Secretary is directed to transmit a copy of the initial analysis to the Chief Counsel for Advocacy of the Small Business Administration.

32. Authority for issuance of this Notice is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i) and 303(r). Pursuant to procedures set out in § 1.415 of the Commission's Rules and Regulations, 47 CFR 1.415, interested persons may file comments on or before: May 13, 1982 and reply comments on or before: May 28, 1982. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into account information and ideas not contained in the comments, provided that such informatin 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.

33. In accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and five (5) copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and eleven (11) copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one (1) copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters located at 1919 M Street, NW., Washington, DC.

34. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

35. For further information concerning procedures to follow with respect to this rule making proceeding contact Donald Draper Campbell, FCC, Office of Science and Technology, Spectrum Planning Branch, Washington, DC 20554, telephone (202) 653–8177.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

TABLE 1.—NUMBER OF RADIO CONTROL RADIO SERVICE LICENSES IN FORCE (YEAR END FIGURES)

Year	No. of licenses
1966	30,300
1967	35,695
1968	31,721
1969	32,600
1970	37,598
1971	39,094
1972	39,514
1973	37,736
1974	36,774
1975	[1] 53,325
1976	86,916
1977	[2] 156,801
1978	191,577
1979	214,314
1980	226,364
1981	219,387

NOTES: [1] In March 1975, the license fee was reduced from $20.00 to $4.00.
[2] In January 1977, the license fee was eliminated.

Appendix

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

A. Part 2 of Chapter I of Title 47 of the Code of Federal Regulations would be amended, as follows:

§ 2.106 [Amended]

1. In § 2.106, the Table of Frequency Allocations, between 72 to 73 and 75.4 to 76.0 MHz, columns 7 through 11 would be revised to read as follows:

FEDERAL COMMUNICATIONS COMMISSION

Band (MHz) (7)	Service (8)		Class of Station (9)	Frequency (MHz) (10)	Naure of Services of stations (11)
*	*	*	*	*	*
72-73	FIXED	(NG1)	Land mobile	72.02-72.98 (NG32)	Operational fixed.
		(NG3)	Fixed		Radio control.
	MOBILE	(NG49)	Operational fixed		
		(NG56)			
*	*	*	*	*	*
75.4-76	FIXED	(NG1)	Land mobile	75.42-75.98 (NG32)	Operational fixed.
		(NG3)	Fixed		Radio control.
	MOBILE	(NG49)	Operational fixed		
		(NG56)			

* * * * *

2. In § 2.106, the text of non-Government footnote 49 (NG49) would be revised to read as follows:

NG49 The following frequencies may be authorized on a primary basis for low-power (1 watt input) mobile operations in the radio services shown subject to the condition that no interference is caused to the reception of television stations operating on channels 4 and 5:

Manufacturers Radio Service

MHz

72.02	72.14	72.28
72.02	72.16	72.30
72.04	72.18	72.32
72.06	72.20	72.34
72.08	72.22	72.36
72.10	72.24	72.38
72.12	72.26	72.40

Special Industrial Radio Service, Manufacturers Radio Service, Railroad Radio Service

MHz

72.44	72.60	75.56
72.48	75.44	75.60
72.52	75.48	
72.56	75.52	

* * * * *

3. In Section 2.106, the text of non-Government footnote 56 (NG56) would be revised to read as follows:

NG56 In the bands 72.0–73.0 and 75.4–76.0 MHz, the mobile radio remote control of models is on a secondary basis to all other fixed and mobile operations. Such operations are subject to the condition that interference will not be caused to remote control of industrial equipment operating in the 72–76 MHz band and to the reception of television signal on channels 4 (66–72 MHz) or 5 (76–82 MHz). Television interference shall be considered to occur whenever reception of regularly used television signals is impaired or destroyed, regardless of the strength of the television signal or the distance to the television station.

* * * * *

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

B. Part 21 of Chapter I of Title 47 of the Code of Federal Regulations would be amended, as follows:

1. Section 21.103 would be amended by adding paragraph (g) to read as follows:

§ 21.103

§ 21.103 Standards and limitations governing authorization and use of frequencies in the 72–76 MHz band.

* * * * *

(g) Mobile radio remote control of models may be found operating on frequencies 10 kHz removed from those frequencies authorized for fixed operation in the 72–76 MHz band. Such use by model radio remote control of models is secondary to operations of fixed stations as provided for by this section.

* * * * *

PART 22—PUBLIC MOBILE RADIO SERVICES

C. Part 22 of Chapter I of Title 47 of the Code of Federal Regulations would be amended, as follows:

1. Section 22.103 would be amended by adding paragraph (g) to read as follows:

§ 22.103 Standards and limitations govering authorization and use of frequencies in the 72–76 MHz band.

* * * * *

(g) Mobile radio remote control of models may be found operating on frequencies 10 kHz remove from those frequencies authorized for fixed operation in the 72–76 MHz band. Such use by model radio remote control of models is secondary to operations of fixed stations as provided for by this section.

* * * * *

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA—PUBLIC FIXED STATIONS

D. Part 81 of Chapter I of Title 47 of Code of Federal Regulations would be amended, as follows:

1. Section 81.603 would be amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 81.603 Operational fixed frequencies in the band 72–76 MHz.

(a) The following frequencies in the 72–76 MHz band may be assigned to

operational fixed stations. These frequencies are available on a share basis with the Land Mobile and Aviation Radio Service:

MHz	
72.02	72.80
72.04	72.82
72.06	72.84
72.08 [1]	72.86
72.10	72.88
72.12	72.90
72.14	72.92
72.16 [1]	72.94
72.18	72.96 [1]
72.20	72.98
72.22	75.42
72.24 [1]	75.46
72.26	75.50
72.28	75.54
72.30	75.58
72.32 [1]	75.62
72.34	75.64 [1]
72.36	75.66
72.38	75.68
72.40 [1]	75.70
72.42	75.72
72.46	75.74
72.50	75.76
72.54	75.78
72.58	75.80
72.62	75.82
72.64	75.84
72.66	75.86
72.68	75.88
72.70	75.90
72.72	75.92
72.74	75.94
72.76	75.96
72.78	75.98

(b) * * *

(c) Radio remote control of models is permitted on frequencies 10 kHz removed from these frequencies authorized for fixed and mobile operations in the 72–76 MHz band. Radio remote control operations are secondary to operation of fixed and mobile stations as provided for in this section.

PART 87—AVIATION SERVICES

E. Part 87 of Chapter I of Title 47 of the Code of Federal Regulations would be amended, as follows:

1. Section 87.463 would be amended by revising paragraph (a) and adding paragraph (b) to read as follows:

§ 87.463 Frequencies available to fixed stations.

* * * * *

(a) The frequencies listed in this paragraph may be assigned under the conditions set forth in subparagraph (1) through (6) of this paragraph. These frequencies are available on a shared basis with the Land Mobile and Stations on Land in the Maritime Services. (Stations authorized to operate in the band 73–74.6 MHz as of December 1, 1961, may continue to operate in this band and are not required to afford protection to the radio astronomy service.)

MHz	
72.02	72.80
72.04	72.82
72.06	72.84
72.08 [1]	72.86
72.10	72.88
72.12	72.90
72.14	72.92
72.16 [1]	72.94
72.18	72.96 [1]
72.20	72.98
72.22	75.42
72.24 [1]	75.46
72.26	75.50
72.28	75.54
72.30	75.58
72.32 [1]	75.62
72.34	75.64 [1]
72.36	75.66
72.38	75.68
72.40 [1]	75.70
72.42	75.72
72.46	75.74
72.50	75.76
72.54	75.78
72.58	75.80
72.62	75.82
72.64	75.84
72.66	75.86
72.68	75.88
72.70	75.90
72.72	75.92
72.74	75.94
72.76	75.96
72.78	75.98

(b) Mobile radio remote control of models may be found operating on frequencies 10 kHz removed from these frequencies authorized for fixed and mobile operations in the 72–76 MHz band. Such use by the mobile radio remote control of models is secondary to operation of fixed and mobile stations as provided for in this section.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

F. Part 90 of Chapter I of Title 47 of the Code of Federal Regulations would be amended, as follows:

1. Section 90.257 would be amended by revising paragraph (a)(1) and adding paragraph (c) to read as follows:

§ 90.257 Assignment and use of frequencies in the band 72–76 MHz.

(a) * * *

(1) The following frequencies in the band 72–76 MHz may be used for fixed operations:

MHz	
72.02	72.30
72.04	[1] 72.32
72.06	72.34
[1] 72.08	72.36
72.10	72.38
72.12	[1] 72.40
72.14	72.42
[1] 72.16	72.46
72.18	72.50
72.20	72.54
72.22	72.58
[1] 72.24	72.62
72.26	72.64
72.28	72.66
72.68	75.58
72.70	75.62
72.72	[1] 75.64
72.74	75.66
72.76	75.68
72.78	75.70
72.80	75.72
72.82	75.74
72.84	75.76
72.86	75.78
72.88	75.80
72.90	75.82
72.92	75.84
72.94	75.86
[1] 72.96	75.88
72.98	75.90
75.42	75.92
75.46	75.94
75.50	75.96
75.54	75.98

[1] These frequencies are shared, on a Secondary basis, by the Radio Control Radio Service until (5 years after the effective date of the rule change).

* * * * *

(c) Radio remote control of models is permitted on frequencies 10 kHz removed from these frequencies authorized for fixed and mobile operations in the 72–76 MHz band. Remote control operations is secondary to operation of fixed and mobile stations as provided for in this section.

PART 95—PERSONAL RADIO SERVICES

G. Part 95 of Chapter I of Title 47 of the Code of Federal Regulations would be amended, as follows:

1. Section 95.216 (R/C Rule 16) would be amended by revising paragraphs (a) and (d), and adding paragraph (e) to read as follows:

§ 95.216 (R/C Rule 16) On what channels may I operate?

(a) Your R/C station may transmit only on the following channels (frequencies):

Frequency (MHz)	To operate
26.995	Any kind of device (any object or apparatus except an R/C transmitter).
27.045	
27.095	
27.145	
27.195	
27.255	
26.995	A model aircraft device (any small imitation of an aircraft).
27.045	
27.095	
27.145	
27.195	
27.255	
72.01	
72.03	
72.05	
72.07	
72.08	[see paragraph (e)].
72.09	
72.11	
72.13	
72.15	
72.16	[see paragraph (e)].

72.17
72.19
72.21
72.23
72.24
[see paragraph (e)].
72.25
72.27
72.29
72.31
72.32
[see paragraph (e)].
72.33
72.35
72.37
72.39
72.40
[see paragraph (e)].
72.41
72.43
72.45
72.47
72.49
72.51
72.53
72.55
72.57
72.59
72.61
72.63
72.65
72.67
72.69
72.71
72.73
72.75
72.77
72.79
72.81
72.83
72.85
72.87
72.89
72.91
72.93
72.95
72.96
[see paragraph (e)].
72.97
72.99
75.64
[see paragraph (e)].
26.995 A model surface craft device (any small imitation of a boat, car or vehicle (except aircraft) for carrying people or objects).
27.045
27.095
27.145
27.195
27.255
72.16
[see paragraph (e)].
72.32
[see paragraph (e)].
72.96
[see paragraph (e)].
75.41
75.43
75.45
75.47
75.49
75.51
75.53
75.55
75.57
75.59
75.61
75.63
75.64
[see paragraph (e)].
75.65
75.67
75.69
75.71
75.73
75.75
75.77
75.79
75.81
75.83
75.85
75.87
75.89
75.91
75.93
75.95
75.97
75.99

* * * * *

(d) Your R/C station must stop transmitting if it interferes with:

(1) Authorized radio operations in the 72–76 MHz band; *OR*

(2) Television reception on TV channels 4 or 5.

(e) Your R/C station must not transmit on the following frequencies after (5 years after the effective date of the rule change): 72.08, 72.16, 72.24, 72.32, 72.40, 72.96 or 75.64 MHz

* * * * *

3. Section 95.219 (R/C Rule 19) would be amended by revising the section to read as follows:

§ 95.219 (R/C Rule 19) How much power may my R/C station use?

Your R/C station transmitter power output must not exceed the following values:

Channel	Transmitter power (carrier power)
27.255 MHz	25 watts.
26.995–27.195 MHz	4 watts.
72–76 MHz	0.75 watts.

4. Section 95.220 (R/C Rule 20) would be amended by revising paragraph (c) to read as follows:

§ 95.220 (R/C Rule 20) What communications may my R/C station transmit?

* * * * *

(c) Your R/C station may only transmit non-voice:

(1) Amplitude modulated emissions (A9);

(2) Unmodulated on-off emissions (A9); *AND*

(3) Frequency (or phase) modulated emissions (F9) on the 72–76 MHz channels only.

* * * * *

H. Subpart E. Part 95 of Chapter I of Title 47 of the Code of Federal Regulations would be amended as follows:

1. Section 95.611 would be amended by revising paragraph (c) to read as follows:

§ 95.611 Availability of frequencies.

* * * * *

(c) R/C stations.

(1) The following frequencies are authorized for R/C stations (see Subpart C, Part 95, for specific usages):

(i) MHz: 26.995, 27.045, 27.095, 27.145, 27.195, 27.255, 72.01, 72.03, 72.05, 72.07, 72.09, 72.11, 72.13, 72.15, 72.17, 72.19, 72.21, 72.23, 72.25, 72.27, 72.29, 72.31, 72.33, 72.35, 72.37, 72.39, 72.41, 72.43, 72.45, 72.47, 72.49, 72.51, 72.53, 72.55, 72.57, 72.59, 72.61, 72.63, 72.65, 72.67, 72.69, 72.71, 72.73, 72.75, 72.77, 72.79, 72.81, 72.83, 72.85, 72.87, 72.89, 72.91, 72.93, 72.95, 72.97, 72.99, 75.41, 75.43, 75.45, 75.47, 75.49, 75.51, 75.53, 75.55, 75.57, 75.59, 75.61, 75.63, 75.65, 75.67, 75.69, 75.71, 75.73, 75.75, 75.77, 75.79, 75.81, 75.83, 75.85, 75.87, 75.89, 75.91, 75.93, 75.95, 75.97, 75.99.

(ii) MHz: 72.08, 72.16, 72.24, 72.32, 72.40, 72.96 and 75.64. All operations on these frequencies must cease on or before [5 years after the effective date of the rule change].

* * * * *

2. Section 95.617 would be amended by revising paragraph (b) to read as follows:

§ 95.617 Emission limitations.

(a) * * *

(b) The authorized emission bandwidth of any transmitter:

(1) Employing amplitude modulation shall be 8 kHz for double sideband and 4 kHz for single sideband;

(2) Employing frequency or phase modulation:

(i) At a station in the Radio Control Radio Service shall be 8 kHz (72-76 MHz);

(ii) At a station in the General Mobile Radio Service shall be 20 kHz.

* * * * *

[FR Doc. 82-12065 Filed 5-3-82; 8:45 am]
BILLING CODE 6712-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Parts 8 and 32

Acquisition of Utility Services and Progress Payments Based on Costs

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) on the acquisition of utility services and progress payments based on costs. 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 July 1, 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.

List of Subjects in 48 CFR Parts 8 and 32

Government procurement.

The following part of the draft Federal Acquisition Regulation is available upon request for public and Government agency review and comment.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 8.3—Acquisition of Utility Services

This part prescribes policies and procedures for the acquisition of utility services. It covers GSA area-wide contracts and GSA delegation of authority to agencies for acquisition of utility services. It also covers required reviews and reporting, capital credits, and consolidated purchase, joint use, and cross-service.

PART 32—CONTRACT FINANCING

Subpart 32.5—Progress Payments Based on Costs

This subpart prescribes policies, procedures, formats, solicitation provisions, and contract clauses for providing contract financing through progress payments based on costs. It does not apply to payments under cost-reimbursement contracts other than reimbursement of the contractor's progress payments to subcontractors and suppliers or to progress payments based on a percentage or stage of completion.

Dated: April 29, 1982.

LeRoy J. Haugh,

Associate Administrator for Procurement System Implementation.

[FR Doc. 82-12088 Filed 5-3-82; 8:45 am]

BILLING CODE 3110-01-M

Notices

Federal Register
Vol. 47, No. 86
Tuesday, May 4, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

1981 Corn and Sorghum 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 Corn and Sorghum.

SUMMARY: This notice is to announce the revised national program acreages and the determination of the program allocation factors for the 1981 crops of corn and sorghum. The national program acreages were originally published on November 21, 1980 (45 FR 77095). The national program acreages which were announced for corn and sorghum were 90.1 and 15.4 million acres, respectively. The revised national program acreages are 80.5 and 14.3 million acres, for corn and sorghum, respectively. Based upon these revised national program acreages, the program allocation factor is 97.0 percent for corn and 99.0 percent for sorghum. These actions are taken in accordance with applicable provisions of the Agriculatural 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 corn and sorghum.

EFFECTIVE DATE: May 3, 1982.

FOR FURTHER INFORMATION CONTACT: Orville I. Overboe, Agricultural Economist, Analysis Division, ASCS–USDA, 3746 South Building, P.O. Box 2415, Washington, D.C. 20013, Telephone (202) 447–4417. This Notice of Determination serves as an economic impact analysis.

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 program that this notice applies to are: 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 ares 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 corn and sorghum first proclaimed on November 21, 1980, and (2) to determine the national program allocation factors for such commodities. Section 105A(d)(1) and (2) of the Agricultural Act of 1949, as amended, authorize the Secretary to make such determinations. In accordance with these provisions, the Secretary may revise the national program acreages first proclaimed for any crop year for the purpose of determing the allocation factor if the Secretary determines it necessary based upon the latest information. In addition, the Secretary is required to proclaim such revised national program acreage as soon as it is determined.

The national program acreages for corn and sorghum are revised to reflect the most recent 1981/82 marketing year utilization estimates. Based on these estimates the revised 1981 National Program Acreage for corn will be 80.5 million acres and for sorghum 14.3 million acres.

Based upon these revised national program acreages, it has also been determined that the program allocation factors for the 1981 crops of corn and sorghum will be 97.0 percent and 99.0 percent, respectively.

Since the revised national program acreage and the determination of the program allocation factor impact upon the calculations of the deficiency payment which may be made for the 1981 crop of sorghum, 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. Thus, this notice of determination shall become effective May 3, 1982.

Accordingly, the final national program acreages and allocation factors for the 1981 crops of corn and sorghum are determined to be the following:

Final Determinations

1. Revised National Program Acreages

It is hereby proclaimed that the final revised national program acreages for the 1981 crops of corn and sorghum shall be 80.5 and 14.3 million acres, respectively. The revised national program acreages are based on the following data:

	Corn	Sorghum
(a) Estimated domestic use, 1981–82 (million bushels)	5,035	411
(b) Plus estimated silage use, 1981–82 (million bushels)	639	50
(c) Plus estimated exports, 1981–82 (million bushels)	2,125	300
(d) Minus estimated imports, 1981–82 (million bushels)	−1	0
(e) Plus or minus adjustment for carryover to desired level [1] (million bushels)	+426	+76
(f) Divided by national weighted average farm program yield (bushels/acre)	102.1	58.5
(g) Equals: 1980 national program acreage (million acres)	80.5	14.3

[1] 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 737.6 million metric toms (MMT) (737.6×0.067=49.4 MMT (maximum level of U.S. feed grain carryover stocks)). The corn compo-

nent of the feed grain total has been determined to be 1,460 million bushels (37.1 MMT×39.368). 1981–82 carryin corn stocks were 1,034 million bushels resulting in a 426 million bushels stock adjustment. The sorghum component of the feed grain total has been determined to be 185 million bushels (4.7 MMT). 1981–82 carryin sorghum stocks were 109 million bushels resulting in a 76 million bushel stock adjustment.

2. Program Allocation Factors

It is hereby proclaimed that the 1981 crop program allocation factors shall be 97.0 percent for corn and 99.0 percent for sorghum, based on the following data:

	Corn	Sorghum
(a) National Program Acreage (million acres)	80.5	14.3
(b) Divided by harvested acreage (million acres)[1]	83.2	14.5
(c) Equals 1981 program allocation factor (percentage)[2]	97.0	99.0

[1]Based on corn and sorghum harvested acreage as reported in "Crop Production", dated January 15, 1982.
[2]The program allocation factor shall not be less than 80 percent or more than 100 percent.

Signed at Washington, D.C., on April 28, 1982.

John R. Block,

Secretary.

[FR Doc. 82-12041 Filed 5-3-82; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

Cooperative Gypsy Moth Suppression and Regulatory Program—1982; Decision Notice

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of a record of decision for a gypsy moth treatment area in Salem, Oregon.

SUMMARY: This gives notices that a decision has been made to cooperate with the State of Oregon on the gypsy moth suppression program. Oregon has decided to use carbaryl for the Salem, Oregon, treatment area. Based on an evaluation of the Programmatic Environmental Impact Statement (PEIS) and a site-specific environmental analysis for the proposed Salem, Oregon, treatment area, the Animal and Plant Health Inspection Service (APHIS) has determined that this treatment method poses no significant adverse impact on the environment of the area.

FOR FURTHER INFORMATION CONTACT: Gary Moorehead, Staff Officer, Pest Program Development Staff, Plant Protection and Quarantine, APHIS, USDA, Federal Building, Room 630, Hyattsville, MD 20782, (301) 436–8745.

SUPPLEMENTARY INFORMATION: A notice of the availability of a site-specific environmental analysis document proposed for the Salem, Oregon, treatment area for the USDA Cooperative Gypsy Moth Suppression and Regulatory Program was published in the **Federal Register** on April 14, 1982 (47 FR 16057).

On April 14, 1982, the Oregon Department of Agriculture decided to conduct a treatment program using carbaryl.

Based on the Department's review of the PEIS and the site-specific analysis, and in accordance with the National Environmental Policy Act and the Department's PEIS, the Department has decided to cooperate with the State of Oregon in the conduct of this program.

The decision conforms with the APHIS mission as outlined in the Plant Quarantine Act of 1912, as amended (7 U.S.C. 151–165, 167), the Federal Plant Pest Act of 1957, as amended (7 U.S.C. 150aa–150jj), and the Organic Act of September 21, 1944, as amended (7 U.S.C. 147a). These authorities authorizes APHIS cooperative State suppression and regulatory programs to retard the artificial, long-range spread of the gypsy moth and to eradicate isolated infestations of the pest.

Carbaryl, in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*), is registered by the Environmental Protection Agency (EPA) for use against gypsy moth. It will be applied according to the label directions and APHIS operating procedures. Appropriate public involvement, notification and utilization of insecticide treatment measures will further reduce human exposure during periods of application.

Implementation may take place immediately after the date of this decision. This decision is not subject to administrative review pursuant to 36 CFR 211.19.

Done at Washington, D.C., this 28th day of April 1982.

Murray T. Pender,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 82-12038 Filed 5-3-82; 8:45 am]

BILLING CODE 3410-34-M

Supplement to the Final Programmatic Environmental Impact Statement; USDA Cooperative 1981 Gypsy Moth Suppression and Regulatory Program; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of a supplement to the final Programmatic Environmental Impact Statement (PEIS) for the USDA Cooperative Gypsy Moth Suppression and Regulatory Program; correction.

SUMMARY: This document corrects a notice of a supplement to the final PEIS for the USDA Cooperative Gypsy Moth Suppression and Regulatory Program which was published in the **Federal Register** on April 14, 1982 (47 FR 16057). The action is necessary in order to more accurately describe the document available for the USDA Cooperative Gypsy Moth Suppression and Regulatory Program for the proposed Salem, Oregon, treatment area.

FOR FURTHER INFORMATION CONTACT: Gary Moorehead, Staff Officer, Pest Program Development Staff, Plant Protection and Quarantine, APHIS, USDA, Federal Building, Room 630, Hyattsville, MD 20782, (301) 436–8745.

The following corrections are made in FR Doc. 82–10214 appearing on page 16057 in the issue of April 14, 1982:

1. At the top of column one, the Subject HEADING, "Supplement to the Final Programmatic Environmental Impact Statement; USDA Cooperative 1981 Gypsy Moth Suppression and Regulatory Program" is corrected to read "Availability of a Site-Specific Environmental Analysis for the USDA Cooperative Gypsy Moth Suppression and Regulatory Program."

2. In column one, the **ACTION**, "Notice of a supplement to the final Programmatic Environmental Impact Statement (PEIS) for the USDA Cooperative Gypsy Moth Suppression and Regulatory Program (USDA FS FEIS 81–01)" is corrected to read "Notice of the availability of a site-specific environmental analysis for the proposed Salem, Oregon, treatment area."

3. In column one, the **SUMMARY**, "This gives notice of a document which supplements the final PEIS for the USDA Cooperative Gypsy Moth Regulatory Program to include a site-specific environmental analysis for the Salem, Oregon, proposed treatment area" is corrected to read "This gives notice of the availability of a site-specific environmental analysis for the proposed Salem, Oregon, treatment area."

4. In column one, the **ADDRESS**, "Requests for a copy of this supplement * * *" is corrected to read "Requests for a copy of this document * * *."

5. In column two, **SUPPLEMENTARY INFORMATION**, the third paragraph, third sentence, "The final PEIS * * *" is corrected to read "The final Programmatic Environmental Impact Statement (PEIS) * * *."

6. In column two, **SUPPLEMENTARY INFORMATION**, the third paragraph, fifth sentence, "The PEIS discussed the national Gypsy Moth Suppression and Regulatory Program and noted that it would be supplemented with annual

site-specific environmental documents." is corrected to read "The PEIS discussed the national Gypsy Moth Suppression and Regulatory Program and noted that annual site-specific environmental documents would be prepared for the proposed treatment areas."

Done at Washington, D.C., this 28th day of April 1982.

Murray T. Pender,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 82-12039 Filed 5-3-82; 8:45 am]

BILLING CODE 3410-34-M

Foreign Agricultural Service

User Fees for Distribution of Attache Commodity Reports to the Private Sector

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public that copies of attache commodity reports, previously obtained free of charge from the Foreign Agricultural Service, will now be available to the public for a reasonable user fee to cover the costs of duplication, handling and mailing.

EFFECTIVE DATE: May 4, 1982.

FOR FURTHER INFORMATION CONTACT: H. Lee Schatz, Reports Officer, Foreign Agricultural Service, U.S. Department of Agriculture, Room 6526, South Agriculture Building, Washington, D.C. 20250; Telephone: (202) 382-8924.

SUPPLEMENTARY INFORMATION: Copies of attache commodity reports, previously made available free of charge to the general public by the Foreign Agricultural Service, will now be subject to a reasonable user fee to cover the cost of duplication, handling and mailing. The following indicates the twelve month fee to cover the receipt of all reports by specified commodity series:

Report codes		Picked up	Mailed
02	Cocoa	$10.00	$20.00
03	Coffee	40.00	80.00
04	Cotton	52.50	105.00
05	Dairy, livestock, poultry	87.50	175.00
06	Oilseeds and products	80.00	160.00
07	Fibers	7.50	15.00
08	Citrus and products	12.50	25.00
09	Fresh deciduous fruit	42.50	85.00
10	Dried fruit	5.00	10.00
11	Grain and feed	150.00	300.00
12	Hops	2.75	5.50
14	Tree nuts	16.00	32.00
16	Canned deciduous fruits	4.00	8.00
17	Fresh and concentrated pineapple	4.50	9.00
18	Pepper	2.00	4.00
19	Sugar and molasses	59.00	118.00
20	Tea	3.00	6.00
21	Tobacco	71.00	142.00
22	Canned tomato products	4.50	9.00
23	Potato, onion, garlic	9.00	18.00
24	Agricultural Situation	218.00	436.00
25	Honey	3.50	7.00
31	Olives	.50	1.00
32	Strawberries	.50	1.00
33	Canned mushrooms	1.00	2.00
34	Ginseng	.50	1.00
35	Mint oil	1.00	2.00
36	Concentrated fruit and vegetable pack	1.50	3.00
37	Avocados	2.00	4.00

For special requests, the current fee is $.05 per page if picked up in the Reports Office, and $.10 per page if the copies are mailed.

Anyone interested in obtaining copies of attache reports should send their written request to: Director of Information, Foreign Agricultural Service, U.S. Department of Agriculture, Room 5074, Washington, D.C. 20250.

(Sec. 1121 of the Agricultural and Food Act of 1981, Pub. L. 97-98)

Richard A. Smith,

Administrator.

April 27, 1982.

[FR Doc. 82-11877 Filed 5-3-82; 8:45 am]

BILLING CODE 3410-10-M

Forest Service

Breitenbush II Geothermal Area; Willamette National Forest and Mt. Hood National Forest Linn and Marion Counties, Oreg.; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an environmental impact statement for geothermal leasing in the Breitenbush Geothermal Area on the Detroit Ranger District.

In April 1978, the decision was made on Geothermal Development in the Breitenbush Area, Willamette and Mt. Hood National Forests. That decision provided for geothermal leasing on 27,058 acres but omitted 17,225 acres from the initial leasing proposal.

The 17,225 acres previously omitted, plus 35,771 additional adjacent areas are now being analyzed. The environmental analysis concerns a proposal to lease for exploration and development of geothermal energy.

A range of alternatives for geothermal leasing will be considered. One of these will be no leasing. Other alternatives will consider leasing with different levels or types of restrictions.

Early in the environmental analysis, Federal, State and local agencies, lease applicants and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process, which includes: (a) identification of those issues to be addressed; (b) identification of issues to be analyzed in depth; and, (c) elimination of insignificant issues, or those which have been covered in a previous environmental review.

Jeff M. Sirmon, Regional Forester, Pacific Northwest Region, Portland, Oregon, is the responsible official.

The analysis is expected to take about 7 months. The draft environmental impact statement should be available for public review by July 1982. The final environmental impact statement is scheduled to be completed in November 1982.

Questions about the proposed action and environmental impact statement should be directed to Conny Frisch, Energy Coordinator, Willamette National Forest, Eugene, Oregon, telephone number—503-687-6480.

Written comments and suggestions concerning the analysis should be sent to Michael A. Kerrick, Forest Supervisor, Willamette National Forest, P.O. Box 10607, Eugene, Oregon by May 15, 1982.

Dated: April 23, 1982.

James F. Torrence,

Acting Regional Forester.

[FR Doc. 82-12101 Filed 5-3-82; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

French Broad Electric Membership Corp., Marshall, N.C.; Proposed Loan Guarantee

Under the authority of Pub. L. 93-32 (87 STAT. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22, (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America in the approximate amount of $7,000,000 to French Broad Electric Membership Corporation, Marshall, North Carolina. These loan funds will be used to finance the construction of a hydroelectric generation facility with a nameplate rating of 3 MW. The proposed generating plant will be constructed at Marshall, North Carolina.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed project from Mr. Charles R. Tolley, Manager, French Broad Electric

Membership Corporation, P.O. Box 9, Marshall, North Carolina 28753.

In order to be considered, proposals must be submitted by June 3, 1982, to Mr. Tolley. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received as French Broad Electric Membership Corporation and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with REA.

Copies of REA Bulletin 20–22 are available from the Director, Office of Information and Public Affairs, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850 Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 28th day of April 1982.

Harold V. Hunter,

Administrator, Rural Electrification Administration.

[FR Doc. 82–12040 Filed 5–3–82; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The New England Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265), will meet to discuss reports of the herring oversight committee; the ad hoc committee on joint ventures, governing international fishery agreements and observers; the Scientific and Statistical Committee; the State Fish and Wildlife Directors, as well as discuss the hearing on the Fishery Conservation and Management Act amendments and discuss other business.

DATES: The public meetings will convene on Monday, May 24, 1982, at approximately 10 a.m., and will adjourn on Tuesday, May 25, 1982, at approximately 5 p.m. The meetings may be lengthened or shortened or agenda items rearranged depending upon progress on the agenda. The meetings will take place at the Newport Treadway Inn, Newport, Rhode Island.

FOR FURTHER INFORMATION CONTACT:

New England Fishery Management Council, Suntaug Office Park, Five Broadway—Route One, Saugus, Massachusetts 01906; Telephone: (617) 231–0422.

Dated: April 29, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82–12063 Filed 5–3–82; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Cordis Corporation having a place of business in Miami, Florida 33152 an exclusive right in the United States to manufacture, use and sell products embodied in the invention, Optical Sensor of Plasma Constituents, U.S. Patent Application No. 930,659 (dated August 2, 1978) and Patent Application No. 6–144,043 (dated April 28, 1980). The availability of this invention for licensing was announced in the **Federal Register** (45 FR 70958, October 27, 1980). Copies of the Patent Applications may be obtained from the Office of Government Inventions and Patents, NTIS, Box 1423, Springfield, VA 22151. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be loyalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101–4.1. The proposed license may be granted unless, within sixty days from the date of this Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Government Inventions and Patents, NTIS, at the address above. NTIS will maintain and make available for public inspection a file containing all inquiries, comments and other written materials received in response to this Notice and a record of all decisions made in this matter.

Dated: April 27, 1982.

Douglas J. Campion,

Office of Government Inventions and Patents, National Technical Information Service, Department of Commerce.

[FR Doc. 82–12100 Filed 5–3–82; 8:45 am]

BILLING CODE 3510–04–M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts will next meet in open session on Tuesday, May 18, 1982 at 10:00 a.m. in the Commission's offices at 708 Jackson Place, N.W., Washington, D.C. 20006 to discuss various projects affecting the appearance of Washington, D.C.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address.

Dated in Washington, D.C. April 28, 1982.

Charles H. Atherton,

Secretary.

[FR Doc. 82–12099 Filed 5–3–82; 8:45 am]

BILLING CODE 6330–01–M

COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar, and Cocoa Exchange, Inc.; Proposed Amdts. Relating to the No. 12 Sugar Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The Coffee, Sugar, and Cocoa Exchange, Inc. ("CSCE" or "Exchange") has submitted a proposal to amend the differentials for departures from the par standards for moisture, ash content, grain size and color in its Number 12 sugar contract. The Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before June 3, 1982.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581.

Reference should be made to the Coffee, Sugar, and Cocoa Exchange, Inc., Rule 12.16.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Division of Economics and Education, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C., (202) 254–6990.

SUPPLEMENTARY INFORMATION: The Coffee, Sugar, and Cocoa Exchange, Inc., is proposing to amend Rule 12.16 of its Number 12 sugar futures contract. Rule 1216 establishes premiums and discounts for departures from the par standards for moisture, ash content, grain size and color. The Exchange's proposed amendments would increase the discounts and/or premiums applied to these quality factors. The Exchange has determined that the differentials should be readjusted to reflect changed circumstances in the spot market. The new differentials would be applied to all outstanding contracts, as well as newly listed contracts, ten business days after Commission approval.

In accordance with Section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (Supp. IV 1980), the Commission has determined that the proposed amendments to the Number 12 sugar contract are of major economic significance. Accordingly, the CSCE's proposed amendments to Rule 12.16 are printed below, using bracketing to indicate deletions and underlining to indicate additions:

Specification

Moisture: Factor of Safety
For each .01 in excess of .30 deduct [0.06] *0.09* percent of basis price.
Ash: Ash Content (Percent of raw sugar)
For each .01 percent of ash content in excess of derived maximum standard ash content deduct [.01] *0.015* percent of basis price; for each .01 percent of ash content below derived minimum standard ash content, add [.005] *0.00625* percent of basis price.
Grain Size: Percent through 28 mesh Tyler (30 mesh U.S.) sieve
For each 1 percent above 52 percent deduct [0.04] 0.06 percent of basis price. For each 1 percent below 22 percent add [0.02] *0.025* percent of basis price.
Color: I.C.U.M.S.A. color units 2 (1958)
For each 1 unit above 210 up to and including 245 deduct [0.01] 0.015 percent of basis price. For each 1 unit above 245 up to and including 280, deduct [0.02] *0.03* percent of basis price. For each 1 unit above 280 up to and including 315, deduct [0.03] *0.045* percent of basis price. For each 1 unit above 315, deduct [0.04] *0.06* percent of basis price.
For each 1 unit below 125 down to and including 105, add [0.005] *0.0625* percent of basis price. For each 1 unit below 105, add [0.0075] *0.009* percent of basis price.

Other materials submitted by the CSCE in support of the proposed rule change may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1981)). Requests for copies of such materials should be made to the FOIA, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, by June 3, 1982. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C. on April 28, 1982.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 82-12105 Filed 5-3-82; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF EDUCATION

National Advisory Committee on Accreditation and Institutional Eligibility; Meeting

AGENCY: Education Department.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the proposed agenda of a policy meeting of the National Advisory Committee on Accreditation and Institutional Eligibility. It also describes the functions of the Committee. Notice of this meeting is required under the Federal Advisory Committee Act (5 U.S.C. Appendix 1, 10(a)(2)). This document is intended to notify the general public of its opportunity to attend and to participate.

DATE: May 21, 1982, 9:00 a.m. to 5:00 p.m. local time. One hour, 2:00 p.m. to 3:00 p.m. will be devoted to oral input from the public. During the hour, speakers will be scheduled to make formal oral presentations in the order in which requests have been received. Written material may be submitted at any time for consideration by the Advisory Committee. It must be relevant to the matters under consideration.

ADDRESS: Room 3000, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Richard J. Rowe, Director, Eligibility and Agency Evaluation Staff, Office of Postsecondary Education, 400 Maryland Avenue, SW. (Room 3030, ROB–3), U.S. Department of Education, Washington, D.C. 20202.

The National Advisory Committee on Accreditation and Institutional Eligibility is authorized by Section 1205 of the Higher Education Act, as amended by Pub. L. 96–375 (20 U.S.C. 1145). The Committee advises the Secretary of Education regarding his responsibility to publish a list of nationally recognized accrediting agencies and associations, State agencies recognized for the approval of public postsecondary vocational education and State agencies recognized for the approval of nurse education. The Committee also advises the Secretary regarding policy affecting recognition of accrediting and approval bodies, and institutional eligibility for participation in Federal funding programs.

The Advisory Committee will review the following matters:

1. Proposed revisions in the criteria for recognition of accrediting agencies and the criteria for the recognition of State agencies for approval of public postsecondary vocational education.

2. What constitutes satisfactory compliance with the criterion which asks agencies to demonstrate that they have a program for the assessment of the validity and reliability of their accreditation standards.

3. Ways in which the Department's recognition and eligibility processes can be strengthened. The role of the triad (accrediting bodies, State agencies, and Federal agencies) in eligibility determination, and termination.

Request for oral presentations should be submitted in writing to Richard J. Rowe (address as above). Requests should include the names of persons, the organization or organizations they represent, and the purpose for which the presentation is requested. Requests must be received on or before May 14, 1982. There is no limit on submission of written material.

A record will be made of the proceedings of the meeting, and will be available for public inspection at the office of the Eligibility and Agency Evaluation Staff.

Signed at Washington, D.C. on April 29, 1982.

Thomas P. Melady,

Assistant Secretary for Postsecondary Education, Department of Education.

[FR Doc. 82-12082 Filed 5-3-82; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Vocational Education; Meeting Changes

AGENCY: National Advisory Council on Vocational Education.

ACTION: Amendment of notice.

SUMMARY: This document is intended to notify the public of changes in the Notice of Meeting of the National Advisory Council on Vocational Education published April 29, 1982 on Page 18407.

The times, location, and agenda remain the same except that the Acting Executive Committee will meet in partially closed session on May 5, 1982 from 1:00 p.m. to 5:00 p.m. at the National Advisory Council on Vocational Education, 425 13th Street, NW, Suite 412, Washington, D.C. The Acting Executive Committee will meet in partially closed session on May 5 to discuss staffing needs, to review applications for Council positions, and review internal personnel procedures.

The Council also will meet in partially closed session at the Capitol Holiday Inn, 500 C Street SW, Washington, D.C. on May 6 from approximately 11:00 a.m. to 1:30 p.m. to discuss staffing needs, including evaluation of current Council staff and internal Council personnel procedures.

These meetings will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix I) and under exemptions (2) and (6) contained in the Government in the Sunshine Act (Pub. L. 94–409, 5 U.S.C. 552b(c) (2) and (6). These discussions will touch upon matters that would disclose information of a personal nature, which disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

Summaries of the activities of the closed sessions and related matters which would be informative to the public consistent with the policy of Title 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting.

Signed at Washington, D.C., on April 30, 1982.

Raymond C. Parrott,

Executive Director.

[FR Doc. 82-12251 Filed 5-3-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Representative Average Unit Costs of Energy

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice.

SUMMARY: In this notice, the Department of Energy is updating the representative average unit costs of four residential energy sources used in the energy conservation program for consumer products. The four sources are electricity, natural gas, No. 2 heating oil and propane. This program was established by the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 917), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619, 92 Stat. 3266).

EFFECTIVE DATE: The representative average unit costs of energy contained in this notice will become effective June 3, 1982, and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Thomas S. Gutman, U.S. Department of Energy, Office of Conservation and Renewable Energy, Buildings Energy Research and Development, Building Equipment Division, Test and Evaluation Branch, Room GH 068, Mail Station CE–113.1, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–9127.

SUPPLEMENTARY INFORMATION: Section 323 of the Energy Policy and Conservation Act (Act)[1] requires that the Department of Energy (DOE) prescribe test procedures for the determination of the estimated annual operating costs and other measures of energy consumption for certain consumer products specified in the Act. DOE has prescribed test procedures for the types of products listed in Section 322(a)(1)–(13) of the Act. Those test procedures are found in 10 CFR Part 430, Subpart B.

Section 323(b) of the Act requires that the estimated annual operating cost of a covered product be calculated from measurements of energy use in a representative average use cycle and from representative average unit costs of the energy needed to operate such product during such cycle. The section further requires DOE to provide information regarding the representative average unit costs. In this notice, DOE is updating representative average unit costs of energy for use wherever such costs are needed to perform calculations in accordance with the test procedures. Most notably, these costs are used under the Federal Trade Commission labeling program established by Section 324 of the Act and in connection with advertisements of appliance energy use and energy costs which are covered by Section 323(c) of the Act.

On July 15, 1977, DOE's predecessor, the Federal Energy Administration, first published representative average unit costs of residential energy for use in the test procedures (42 FR 36549). The first update of the representative average unit costs of energy was published by DOE on June 27, 1979 (44 FR 37534), and the second update was published on December 1, 1980 (45 FR 79575). Effective on June 4, 1982, the cost figures published on December 1, 1980, will be superseded by the cost figures set forth in this notice.

DOE's Energy Information Administration (EIA) has developed the representative average unit costs of energy found in this notice. These costs were generated from the EIA Short-Term Energy Price Projection System, which forecasts prices of selected energy products based on changes in world oil prices, wellhead natural gas prices, seasonal patterns in retail prices and established trends in margins and operating expenses. Development of the representative average unit costs found in this notice is discussed in the November 1981 issue of EIA's quarterly publication of historical and forecasted energy consumption and prices, "Short-Term Energy Outlook," DOE/EIA 0202/8.1. Copies of this report are available at the National Energy Information Center, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

The representative average unit costs stated in Table 1 are provided pursuant to Section 323(b)(2) of the Act and will become effective June 3, 1982. They will remain in effect until further notice.

Issued in Washington, D.C., April 16, 1982.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

[1] References to the "Act" refer to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR 4 RESIDENTIAL ENERGY SOURCES (1982)

Type of energy	In common terms	As required by test procedure	Dollars per million Btu's[1]
Electricity	6.75¢/kWh[2,3]	$ 0.0675/kWh	$19.78
Natural gas	54.8¢/therm[4] or $5.57/MCF[5,6]	0.00000548/Btu	5.48
No. 2 heating oil	$1.23/gallon[7]	0.00000890/Btu	8.90
Propane	79.4¢/gallon[8]	0.00000873/Btu	8.73

[1] Btu stands for British thermal unit.
[2] kWh stands for kilowatt hour.
[3] 1 kWh=3,413 Btu's.
[4] 1 therm=100,000 Btu's.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,016 Btu's.
[7] For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,700 Btu's.
[8] For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,000 Btu's.

[FR Doc. 84-12032 Filed 5-3-82; 8:45am]

BILLING CODE 6450-01

Economic Regulatory Administration

[Docket No. ERA-FC-79-012; FC Case Nos. 55119-9044-01, 02, 03-12]

General Motors Corp.; Proposed Modification of Order Granting Permanent Fuels Mixture Exemptions

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice and proposed modification of order granting permanent fuels mixture exemptions to General Motors Corporation Boilers 1, 2 and 3 installed at the Oklahoma City, Oklahoma Assembly Division Plant.

On September 18, 1980, the Economic Regulatory Administration (ERA) issued an Order granting permanent fuels mixture exemptions to General Motors Corporation (GM) to permit the use of natural gas in a mixture with coal in Boilers 1, 2 and 3 at its Assembly Division Plant in Oklahoma City, Oklahoma. The Order, published in the Federal Register on September 24, 1980, at 45 FR 63330, exempts these three units from the prohibitions of section 202 of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or the Act), which prohibits the use of natural gas or petroleum as a primary energy source by a new major fuel-burning installation (MFBI).

ERA granted the permanent fuels mixture exemptions to GM subject to the terms and conditions required by the final rules which were in effect at that time (45 FR 38276) (June 6, 1980). By letter dated December 8, 1981, GM requested, pursuant to 10 CFR 501.101-501.103, that ERA modify the exemption Order so as to delete the fourth term and condition of the Order (45 FR 6331-32). That term and condition requires GM to file an annual report with ERA regarding its energy usage in the exempt units, as follows:

In accordance with the reporting requirement in 10 CFR 503.38(g), GM will submit an annual report to the Economic Regulatory Administration, Case Control Unit (Fuel Use Act), Box 4629, Room 3214, 2000 M Street, N.W., Washington, D.C. 20461, each year, within one month following each anniversary of the effective date of the exemption granted herein, including the following:

- A certified statement of the percentage of natural gas used in each exempted unit (boilers 1, 2 and 3) by identifying the actual quantities of coal (in tons) and natural gas (in MCF) used during the reporting year, as well as the higher heating value (in Btu's per lb., per MCF) of those fuels.

* * * * *

The certification of fuel use must be executed by a duly authorized representative of GM.

GM states that this reporting requirement is unduly burdensome and could lead to the release of proprietary business data. Further, GM states that ERA's revised final rules (46 FR 59872, December 7, 1981) no longer require that the recipient of a permanent fuels mixture exemption under 10 CFR 503.38(d) submit an annual fuel use report.

Based upon its review of GM's December 8, 1981 request and the record in this matter, ERA has determined to commence a proceeding to modify the above-described exemption Order. Further, ERA agrees that the revision of its final rules so as to delete the annual fuel use reporting requirement from 10 CFR 503.38(d) constitutes "significantly changed circumstances" with respect to the applicability of these exemptions to GM, as provided for in 10 CFR 501.102(b).

This Notice and Proposed Modification will serve as notice under 10 CFR 501.101(d) of ERA's proposed action with respect to the Order to the person upon whom the Order was served in the original proceedings. A person who was a party to the original proceedings culminating in the Order may file a written response to this Notice within 30 days of its publication in the Federal Register (June 3, 1982). If ERA receives no response, the proposed modification will become effective, without further action on the part of ERA, 30 days after the date of the publication in the Federal Register.

ADDRESS: All comments should be addressed to Public Hearing Management, Docket No. ERA-FC-79-012, Department of Energy, Room 7146, 12th Street and Pennsylvania Avenue, NW., Washington, D.C. 20461.

Issued in Washington, D.C. April 26, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82-12031 Filed 5-3-82; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders, Week of March 22 Through March 26, 1982

During the week of March 22 through March 26, 1982, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, New Post Office Building, 12th and Pennsylvania Avenue N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 26, 1982.

Monsanto Company, BEE-1618

Monsanto Company filed an Aplication for Exception from the provisions of 10 CFR 211.67. The exception request, if granted, would result in the issuance of additional entitlements to the firm with respect to the crude oil inventory which the firm states it established for a new refinery located at Lake Charles, Louisiana. On March 25, 1982, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Frank Rofinot, HEE-0010

Frank Rofinot filed an Application for Exception from the requirement to file Form EIA-9A, No. 2 Distillate Price Monitoring Report. The exception request, if granted, would permit Rofinot to be relieved of the obligation to file Form EIA-9A. On March 23, 1982, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

[FR Doc. 82-12029 Filed 5-3-82; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of March 19, Through March 26, 1982

During the week of March 19, through March 26, 1982, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205 any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

April 26, 1982.

George B. Brezany,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Mar. 19 through Mar. 26, 1982]

Date	Name and location of applicant	Case No.	Type of Submission
Mar. 19, 1982	Office of Special Counsel (Arco) Washington, D.C.	HRZ-0034	Interlocutory Order. If granted: Atlantic Richfield Company would be compelled to produce further discovery pursuant to the June 10, 1981 Decision and Order (Case No. BRD-1234) issued to the firm by the Office of Hearings and Appeals.
Mar. 19, 1982	T & S Refining Company, Washington, D.C.	HRD-0039	Motion for Discovery. If granted: Discovery would be granted to T & S Refining Company in connection with the Statement of Objections submitted in response to the Proposed Remedial Order (Case No. HRO-0009) issued to the firm.
Mar. 22, 1982	Hamilton Brothers Petroleum Corporation, Houston, Texas	HRH-0008	Request for Evidentiary Hearing. If granted: An evidentiary hearing would be convened in connection with the Statement of Objections submitted by Hamilton Brothers Petroleum Corporation in response to the October 2, 1982, Proposed Remedial Order (Case No. HRO-0008) issued to the firm.
Mar. 22, 1982	Hamilton Brothers Petroleum Corporation, Houston, Texas	HRD-0040	Motion for Discovery. If granted: Discovery would be granted to Hamilton Brothers Petroleum Corporation in connection with the statement of Objections submitted in response to the October 2, 1981, Proposed Remedial Order (Case No. HRO-0008) issued to the firm by the Office of Enforcement.
Mar. 26, 1982	Department of Interior; Reston, Virginia	HEE-0019	Price Exception. If granted: The Department of Interior would be permitted to recertify the crude oil produced from the OSC 797 lease in the Gulf of Mexico to market prices for sales to CPI Refining, Inc.
Mar. 26, 1982	Sierra Club Legal Defense Fund, Inc., Denver, Colorado	HFA-0048	Appeal of an Information Request Denial. If granted: The Information Request Denial issued by the Office of Freedom of Information and Privacy Acts would be rescinded and the Sierra Club Legal Defense Fund, Inc. would receive access to environmental analyses performed by the DOE.
Mar. 26, 1982	Texaco, Inc., White Plains, New York	HRH-0012 HRD-0041	Motion for Discovery and Request for Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Texaco, Inc. in response to the Proposed Remedial Order (Case No. HRO-0012) issued to the firm.

NOTICES OF OBJECTION RECEIVED

[Week of Mar. 19 to Mar. 26, 1982]

Date	Name and location of applicant	Case No.
Mar. 19, 1982	West Coast Oil Company, Los Angeles, CA	BEE-1587.

[FR Doc. 82-12030 Filed 5-3-82; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket Nos. 82-221, 82-822, 82-223, 82-224, and 82-225; File Nos. 21577-CD-P-4-81, 21900-CD-P-4-81, 22209-CD-2-81, 22217-CD-P-2-81, 22215-CD-P-81]

Cullman Mobile Phone, Inc., et al.; Hearing Designation Order

In the matter of applications of Cullman Mobile Phone, Inc. (CC Docket No. 82-221, File No. 21577-CD-P-4-81) for authority to construct additional facilities to operate Station KWU213 on frequencies 454.100 MHz and 454.225 MHz and control and repeater facilities on frequencies 72.32 and 75.54 MHz in the Domestic Public Land Mobile Radio Service at Centerville, Alabama, American Mobilephone of Alabama, Inc. (CC Docket No. 82-222, File No. 21900-CD-P-4-81) for authority to construct additional facilities to operate Station KIJ352 on frequencies 454.100, 454.225, 454.300 and 454.325 MHz in the Domestic Public Land Mobile Radio Service at Birmingham, Alabama, Telpage Limited, Inc. (CC Docket No. 82-223, File No. 22209-CD-P-2-81) for authority to construct additional facilities to operate Station KIE366 on frequencies 454.100 and 454.225 MHz in the Domestic Public Land Mobile Radio Service at Birmingham, Alabama and (CC Docket No. 82-224, File No. 22217-CD-P-2-81) for authority to construct additional facilities to operate Station KIE366 on frequencies 454.300 and 454.325 MHz in the Domestic Public Land Mobile Radio Service at Pell City, Alabama, and Gordon C. Ogletree d.b.a. Sylacauga Paging Service (CC Docket No. 82-225, File No. 22215-CD-P-81) for authority to construct a new two-way station to operate on frequency 454.300 MHz in the Domestic Public Land Mobile Radio Service at Sylacauga, Alabama.

Adopted: April 22, 1982.

Released: April 27, 1982.

1. Presently before the Chief, Mobile Services Division, pursuant to delegated authority are the captioned applications of Cullman Mobile Phone, Inc. (Cullman), American Mobilephone of Alabama, Inc. (American), Telpage Limited, Inc. (Telpage), and Gordon C. Ogletree d.b.a. Sylacauga Paging Service (Sylacauga). Cullman's application for frequencies 454,100 and 454.255 MHz is electrically mutually exclusive with the applications of American and Telpage for these frequencies. American's request for frequency 454.300 MHz is electrically mutually exclusive with the request of Telpage and Sylacauga for this frequency. Lastly, American's and Telpage's proposals to operate on frequency 454.325 MHz are electrically mutually exclusive. Therefore, a comparative hearing will be held to determine which applicant or applicants would better serve the public interest. Except to the extent indicated below, we find that Cullman, American, Telpage and Sylacauga are legally, technically, and otherwise qualified to construct and operate the proposed facilities.

2. After reviewing the need showings of Cullman and Telpage, we are unable to find that need has been demonstrated for the two base station frequencies proposed in each of the applications.

3. *Cullman Need Showing.* Cullman has submitted, in accordance with Section 22.516 of the Rules, data showing actual traffic loading on its existing frequency and stated that it holds 24 orders for additional subscribers. Our review of this data indicates that Cullman has demonstrated a clear need for only one of the two additional frequencies requested.[1] Therefore, we will designate an issue of whether Cullman has demonstrated a need for more than one additional frequency.

4. *Telpage Need Showing.* In both of its applications, Telpage has submitted traffic loading studies and prospective subscriber surveys. Based on our analysis of the traffic loading data and the surveys, we have determined that Telpage has clearly justified only one frequency at each of the proposed locations. The prospective subscriber survey cannot be used to justify more than one additional frequency under the interim need standards adopted in the *Further Notice of Proposed Rulemaking in CC Docket 20870,* 84 FCC 2d 857 (1981). As the Commission indicated in that *NPRM,* an applicant requesting more than an additional frequency is required to demonstrate need based on held orders and not prospective subscriber projections. Since Telpage, in both of its applications, has not demonstrated a need for more than one additional frequency, we will designate an issue of whether Telpage's request for two frequencies in each application should be granted.

5. Accordingly, it is ordered, pursuant to Section 309 of the Communications Act of 1934, as amended, that the applications of Cullman Mobile Phone, Inc., File No. 21577-CD-P-4-81, American Mobilephone of Alabama, Inc., File No. 21900-CD-P-4-81, Telpage Limited, Inc., File Nos. 22209-CD-P-2-81 and 22217-CD-P-2-81, and Gordon C. Ogletree d.b.a. Sylacauga Paging Service, File No. 22215-CD-P-81, are designated for hearing in a consolidated proceeding upon the following issues:

(a) To determine whether Cullman has demonstrated adequate public need for more than one frequency;

(b) To determine whether Telpage, in each of its applications, has demonstrated adequate public need for more than one frequency;

(c) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(d) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free areas within the 39 dBu contours,[2] based upon the standards set forth in Section 22.504(a) of the Commission's Rules,[3] and to determine and compare the relative demand for the proposed services in said areas; and

(e) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience and necessity.

6. It is further ordered, that the burden of going forward with the introduction of evidence and the burden of proof of Issue 5(a) is placed on Cullman and that the burden of going forward with the introduction of evidence and the burden of proof on Issue 5(b) is placed on Telpage.

7. It is further ordered, that, with respect to Issues 5(c) and 5(d), the burden of proof and the burden of proceeding with the introduction of evidence are placed on each of the applicants, as to how issues affect them,

[1] Cullman's application was filed prior to the effective date of the interim need standards adopted in CC Docket 20870. Using our prior standard, we have determined that the additional 24 subscribers can be accommodated by the addition of one channel.

[2] For the purpose of this proceeding, the interference-free area is defined as the area within the 39 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R-6404, equation 8.

[3] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 39 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in two-way communications service on frequencies in the 450 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F (50.50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

and that the ultimate burden of proof with respect to Issue 5(e) is similarly placed on each of the applicants.

8. It is further ordered, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

9. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

10. It is further ordered, that the applicants shall file written notices of appearance under §1.221 of the Commission's Rules within 20 days of the release date of this Order.

11. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

William F. Adler,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 82-12097 Filed 5-3-82; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket Nos. 82-228, 82-229, and 82-230; File Nos. BPH-810226AB, BPH-810313AB, and BPH-810313AC]

Murphy Broadcasting, Inc., et al.; Hearing Designation Orders

In the matter of applications of Murphy Broadcasting, Inc., Needles, California, Req: 97.9 MHz, Channel 250, 50 kW (H&V), minus 281 feet (BC Docket No. 82-228, File No. BPH-810226AB); Colorado River Radio, Inc., Needles, California, Req: 97.9 MHz, Channel 250, 2.8 kW (H&V), 1,573 feet (BC Docket No. 82-229, File No. BPH-810313AB); and Veach and Associates, Needles, California, Req: 97.9 MHz, Channel 250, 14.08 kW (H&V), minus 252 feet (BC Docket No. 82-230, File No. BPH-810313AC).

Adopted: April 22, 1982.

Released: April 27, 1982.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration (i) the above-captioned mutually exclusive applications filed by Murphy Broadcasting, Inc.; Colorado River Radio, Inc.; and Veach and Associates; and (ii) petitions to deny filed by Veach and Associates.[1]

2. *Veach and Associates.* Section 73.1125 of the Commission's Rules requires that the main studio of an FM station be located within the city of license, but that on a showing of good cause the main studio may be located outside that community. Veach and Associates proposes to locate its main studio 1.5 miles NW of Needles on Interstate 40 and has failed to submit the required showing of good cause. Under these circumstances, we believe that adequate justification has not been provided for the proposed studio location. Accordingly, an issue will be specified.

3. Colorado River Radio, Inc. proposes to locate the transmitter for its Needles, California station across the Colorado River in a Class C zone 0.8 miles northeast of Oatman, Arizona. As Colorado River correctly observes, the proposed relocation would as a Class C FM station, result in substandard mileage separation to one station, whereas based on the Class B to Class C spacing requirements, its proposed facility would not be short-spaced to any station. In order to obviate this situation, we have, as a matter of policy waived §§ 73.206(b)(1) and 73.207(b) of our Rules and permitted an FM station similarly situated to locate its antenna-transmitter site in a Class C zone conditioned on maintaining Class B facilities. *Doubleday Broadcasting Co., Inc.*, 46 RR 2d 1577 (1980). This would avoid the substandard mileage separation. Colorado River has stated that it will accept a grant of its application with a condition that it maintain equivalent Class B facilities. Accordingly, Colorado River's request for waiver of §§ 73.206(b) and 73.207(b) is granted and a condition on the grant of its application, if it wins the hearing, will state that it will operate as a Class B station.

4. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas, and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issues, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to the proposal of Veach and Associates, whether good cause exists for locating the main studio outside the city of license, within the meaning of Section 73.1125 of the Commission's Rules.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, that, in the event that the application of Colorado River Radio, Inc. is granted, it will be conditioned upon Colorado River maintaining the station as a class B facility.

8. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

9. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division.

[FR Doc. 82-12098 Filed 5-3-82; 8:45 am]

BILLING CODE 6712-01-M

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[1] Both petitions to deny are essentially petitions to specify issues. Murphy Broadcasting, Inc.'s application was tendered for filing on February 26 1981. Colorado River Radio, Inc. and Veach and Associates tendered their applications on March 13, 1981. Accordingly, the predesignation issue pleading procedures of former Sections 1.522 and 1.584 of the Rules are not applicable. Since the Commission's *Report and Order* in re *Revised Procedures for the Processing of Contested Broadcasting Applications; Amendments of Part 1 of the Commission's Rules*, 72 FCC 2d 202, 45 RR 2d 1220 (1979), directed the deletion of all issue pleadings in pending cases, the matters sought to be raised in these petitions have not been considered. Accordingly, an opportunity to raise any allegations contained therein will be afforded the parties post-designation pursuant to § 1.229.

FEDERAL HOME LOAN BANK BOARD

[No. AC-169]

Provident Federal Savings & Loan Association Lincoln, Nebraska; Final Action Approval of Conversion Applications

April 29, 1982.

Notice is hereby given that on April 15, 1982, the Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation"), by Resolution No. 82-286 approved the application of Provident Federal Savings and Loan Association, Lincoln, Nebraska ("Association"), for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, N.W., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Topeka, No. 3 Townsite Plaza, 120 East 6th Street, Topeka, Kansas 66603.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-12096 Filed 5-3-82; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shippipng Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10327; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before May 24, 1982. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No. T-2598-2.

Filing party: Mr. Charles M. Rowland, Port Director, Canaveral Port Authority, P.O. Box 267, Cape Canaveral, Florida 32920.

Summary: Agreement No. T-2598-2, between the Canaveral Port Authority (CPA) and Eller & Company, Inc. (Eller) modifies the basic agreement between the parties under which CPA grants Eller the exclusive right to perform handling, loading or unloading of cargo (exclusive of stevedoring services) on unleased Port property. The purpose of the modification is to remove certain facilities and land areas owned by CPA from the basic agreement.

Agreement No. T-3065-3.

Filing party: Mr. Einar C. Petersen, Senior Deputy, City of Long Beach, P.O. Box 570, Long Beach, California 90801.

Summary: Agreement No. T-3065-3 between the City of Long Beach (City) and Great Lakes Carbon Corporation (GLCC) modifies the basic agreement between the parties which provides for the lease to GLCC of certain premises at Long Beach, California, to be used to conduct a proprietary dry bulk petroleum derivative stockpiling and storage operation thereon. The purpose of the modification is to adjust the rental as provided in the lease to provide that GLCC shall pay to the City $6,732 per month for the leased premises.

Agreement No. T-4042.

Filing party: Mr. J. H. Fox, Director Marine Services, Port of Seattle, P.O. Box 1209, Seattle, Washington, 98111.

Summary: Agreement No. T-4042 is a Prefential Assignment Agreement between the Port of Seattle (Port) and Seattle Stevefore Company (SSC), and provides for the lease by the Port to SSC of 31.622 acres of black-topped land within the Terminal 18/20 complex. The premises are to be used by SSC for container and/or breakbulk operation, storage and other necessary functions for a marine yard. The term of the Agreement is for one year and shall be automatically renewed for 4 one-year periods, unless terminated by either party. As compensation SSC shall pay to the Port an annual sum of $1,018,660. If SSC receives in excess of the annual sum in any year, in wharfage and dockage charges assessed on the cargo handled at the premises, the Port shall receive in addition 50 percent of said excess charges.

Agreement No. 6190-35.

Filing party: Nathan J. Bayer, Esquire, Freehill, Hogan & Mahar, 80 Pine Street, New York, New York 10005.

Summary: Agreement No. 6190-35 of the United States Atlantic & Gulf/Venezuela Conference would amend Article 10(f) of the basic agreement to change the telephone polling procedures.

By Order of the Federal Maritime Commission.

Dated: April 28, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-12023 Filed 5-3-82; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1641]

Basa Cargo Services, Inc.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Basa Cargo Services, Inc., P.O. Box 520827, Miami, FL 33152 was cancelled effective April 24, 1982.

By letter dated April 5, 1982, Basa Cargo Services, Inc., was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1641 would be automatically revoked unless a valid surety bond was filed with the Commission.

Basa Cargo Services, Inc., has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 10.01(f) dated November 12, 1981;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 1641 be and is hereby revoked effective April 24, 1982.

It is ordered, that Independent Ocean Freight Forwarder License No. 1641 issued to Basa Cargo Services, Inc. be

returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the Federal Register and served upon Basa Cargo Services, Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification & Licensing.

[FR Doc. 82-12025 Filed 5-3-82; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 996-R]

Gen-Trans International, Inc.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Gen-Trans International, Inc., 3521 Coral Kay West, Virginia Beach, VA 23452 was cancelled effective April 16, 1982.

By letter dated March 30, 1982, Gen-Trans International, Inc. was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 996-R would be automatically revoked unless a valid surety bond was filed with the Commission.

Gen-Trans International, Inc. has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 10.01(f) dated November 12, 1981;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 996-R be and is hereby revoked effective April 16, 1982.

It is ordered, that Independent Ocean Freight Forwarder License No. 996-R issued to Gen-Trans International, Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the Federal Register and served upon Gen-Trans International, Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification & Licensing.

[FR Doc. 82-12022 Filed 5-3-82; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate [Casualty]

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Holland America Cruises, N.V. and Holland Amerika Lijn, N.V. c/o Holland America Cruises, Two Pennsylvania Plaza, New York, New York 10001.

Dated: April 28, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-12020 Filed 5-3-82; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate [Casualty]

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Prince of Fundy Cruises Limited and Transworld Steamship Company Panama) Inc. c/o Prince of Fundy Cruises Limited, P.O. Box 4216 Station A, Portland, Maine 04101.

Dated: April 28, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-12024 Filed 5-3-82; 8:45 am]

BILLING CODE 6730-01-M

United States Great Lakes/South and East Africa Rate Agreement; Notice of Cancellation

Filing Party: John D. Straton, Jr., Director, Rates and Conferences, Moore McCormack Lines, Inc., 2 Broadway, New York, New York 10004.

Agreement No. 9509.

Summary: On April 27, 1982, the Commission received notice to cancel Agreement No. 9509, the United States Great Lakes/South and East Africa Rate Agreement. The agreement will be cancelled effective April 27, 1982, the date the notice of cancellation was received by the Commission.

By Order of the Federal Maritime Commission.

Dated: April 28, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-12021 Filed 5-3-82; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Representatives of Consumer and Industry Interests on Public Advisory Committees or Panels

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for consumer and industry representatives to serve on certain public advisory committees or panels of the Bureau of Medical Devices. Nominations will be accepted for current vacancies and for those that will or may occur during the next 12 months. FDA has a special interest in ensuring that women, minority groups, the physically handicapped, and small businesses are adequately represented on advisory committees and, therefore, extends particular encouragment to nominations for appropriately qualified female, minority, and physically handicapped candidates, and nominations from small businesses that manufacture medical devices subject to the regulations.

DATE: Nominations should be received by June 18, 1982 for vacancies listed in this notice.

ADDRESSES: All nominations and curricula vitae for consumer representatives must be submitted in writing to Naomi Kulakow, Office of Consumer Affairs (HFE-40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. All nominations and curricula vitae (which includes nominee's office address and telephone number) for industry representatives must be submitted in writing to Kay A. Levin, Bureau of Medical Devices (HFK-50), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: For Consumer Interests: Naomi Kulakow, Office of Consumer Affairs (HFE-40), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

For Industry Interests: Mary Jo Lyons, Bureau of Medical Devices (HFK–401), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8162.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members representing consumer and industry interests for the following committee, panel and sections of panels:

Committee, panel and section	Approximate date representative needed	
	Consumer	Industry
1. Device Good Manufacturing Practice Advisory Committee.	NV	May 31, 1982.
2. Circulatory Systems Devices Panel.	June 30, 1982	June 30, 1982.
3. Clinical Chemistry and Hematology Devices Panel:		
a. Clinical Chemistry Device Section.	Feb. 28, 1983	NV.
b. Hematology and Pathology Device Section.	Immediately	NV.
c. Clinical Toxicology Device Section.	Feb. 28, 1983	NV.
4. General Medical Devices Panel: a. General Hospital and Personal Use Device Section.	Dec. 31, 1982	NV.
5. Immunology and Microbiology Devices Panel:		
a. Immunology Device Section.	Immediately	NV.
b. Microbiology Device Section.	Feb. 28, 1983	NV.
6. Obstetrics-Gynecology and Radiologic Devices Panel:		
a. Obstetrics-Gynecology Device Section.	NV	Jan. 31, 1983.
b. Radiology Device Section.	Jan. 31, 1983	NV.
7. Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel: a. Dental Device Section.	Oct. 31, 1982	NV.

NV=No vacancy.

Device Good Manufacturing Practice Advisory Committee

In accordance with section 520(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(f)) (the act), the function of the Device Good Manufacturing Practice Advisory Committee is to review regulations proposed for promulgation regarding good manufacturing practices governing the methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of devices, and make recommendations to the Commissioner of Food and Drugs regarding the feasibility and reasonableness of those proposed regulations. The committee also advises the Commissioner with regard to any petition submitted by a manufacturer for an exemption or variance from good manufacturing regulations.

Medical Devices Panels

The functions of the medical devices panels and sections listed above are to (1) review and evaluate available data concerning the safety and effectiveness of devices currently in use, (2) advise the Commissioner of Food and Drugs regarding recommended classification of these devices into one of three regulatory categories, (3) recommend the assignment of a priority for the application of regulatory requirements for devices classified in the standards or premarket approval category, (4) advise on any possible risks to health associated with the use of devices, (5) advise on formulation of product development protocols and review premarket approval applications for those devices classified in the premarket approval category, (6) review classification of devices to recommend changes in classification as appropriate, (7) recommend exemption to certain devices from the application of portions of the act, (8) advise on the necessity to ban a device, and (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

Consumer and Industry Representation

Section 513 of the act (21 U.S.C. 360c) provides that each medical device panel include as members one nonvoting representative of consumer interests and one nonvoting representative of interests of the device manufacturing industry. Each of the sections identified in this notice will have a representative of consumer interests and a representative of industry interests. Section 520(f) of the act (21 U.S.C. 360j(f)) provides that the Device Good Manufacturing Practice Advisory Committee will have two voting members to represent the device manufacturing industry and two voting members to represent the general public.

Nomination Procedure

Any interested person may nominate one or more qualified persons as a member of a particular advisory committee, panel, or section to represent consumer interests as identified in this notice. Any organization in the medical device manufacturing industry ("industry interests") wishing to participate in the selection of an appropriate member of a particular committee, panel, or section may nominate one or more qualified persons to represent industry interests. Persons who nominate themselves as industrial representatives will not participate in the selection process. It is, therefore, recommended that all nominations be made by an organization or firm. Nominations shall include a complete curriculum vitae of each nominee and shall state that the nominee is aware of the nomination, is willing to serve as a member, and, in the case of consumer representative, appears to have no conflict of interest. The nomination should state whether the nominee is interested only in a particular advisory committee, panel, or section or in any advisory committee, panel, or section. The term of office is approximately 3 years.

Selection Procedure

Selection of members representing consumer interests is conducted through procedures developed under 21 CFR 14.84(b) and available upon request from the contact person for consumer interests listed above. The procedures include use of a consortium of consumer organizations which recommends two candidates to the agency for the agency's selection.

Regarding nominations for members representing the interests of the device manufacturing industry, a letter will be sent to each organization that has made a nomination, and to those organizations indicating an interest in participating in the selection process, together with a complete list of all such organizations and the nominees. This letter will state that it is the responsibility of each organization to consult with the others in selecting a single member representing industry interests for that particular committee within 60 days after receipt of the letter.

This notice is issued under the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)) and 21 CFR Part 14, relating to advisory committees.

Dated: April 20, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–11879 Filed 5–3–82; 8:45 am]

BILLING CODE 4160–01–M

Request for Nominations for Voting Members on Public Advisory Committees or Panels

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on certain public advisory committees or panels of the Bureau of Medical Devices. Nominations will be accepted for current vacancies and those that will or may occur during the next 12 months. FDA has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 4 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESS: All nominations and curricular vitae must be sent to: Kay A. Levin, Bureau of Medical Devices (HFK–50), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mary Jo Lyons, Bureau of Medical Devices (HFK–401), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8162.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting members as follows:

1. Circulatory Systems Devices Panel: 2 vacancies immediately; 1 vacancy 6/30/82.

2. Clinical Chemistry and Hematology Devices Panel:

a. Clinical Chemistry Device Section: 1 vacancy immediately; 4 vacancies 2/28/83.

b. Clinical Toxicology Device Section: 3 vacancies immediately; 2 vacancies 2/28/83.

3. General Medical Devices Panel:

a. General Hospital and Personal Use Device Section: 2 vacancies immediately; 1 vacancy 12/31/82.

b. Gastroenterology and Urology Device Section: 3 vacancies 12/31/82.

4. Immunology and Microbiology Devices Panel:

a. Immunology Device Section: 1 vacancy immediately.

b. Microbiology Device Section: 2 vacancies 2/28/83.

5. Obstetrics-Gynecology and Radiologic Devices Panel:

a. Obstetrics-Gynecology Device Section: 2 vacancies immediately.

b. Radiology Device Section: 3 vacancies immediately.

6. Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel:

a. Ophthalmic Device Section: 1 vacancy 10/31/82.

b. Dental Device Section: 1 vacancy immediately; 1 vacancy 10/31/82.

7. Respiratory and Nervous Systems Devices Panel:

a. Anesthesiology Device Section: 2 vacancies immediately; 2 vacancies 11/30/82.

b. Neurological Device Section: 1 vacancy immediately; 1 vacancy 11/30/82.

8. Surgical and Rehabilitation Devices Panel: a. General and Plastic Surgery Device Section: 2 vacancies 8/31/82.

Device Good Manufacturing Practice Advisory Committee

In accordance with section 520(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(f)) (the act), the function of the Device Good Manufacturing Practice Advisory Committee is to review regulations proposed for promulgation regarding good manufacturing practices governing the methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of devices, and make recommendations to the Commissioner of Food and Drugs regarding the feasibility and reasonableness of those proposed regulations. The committee also advises the Commissioner with regard to any petition submitted by a manufacturer for exemption or variance from good manufacturing practice regulations.

Medical Devices Panels

The functions of the medical devices panels and sections are to (1) review and evaluate available data concerning the safety and effectiveness of medical devices currently in use, (2) advise the Commissioner of Food and Drugs regarding recommended classification of these devices into one of three regulatory categories, (3) recommend the assignment of a priority for the application of regulatory requirements for devices classified in the standards or premarket approval category, (4) advise on any possible risks to health associated with the use of devices, (5) advise on formulation of product development protocols and review premarket approval applications for those devices classified in the premarket approval category, (6) review classification of devices to recommend changes in classification as appropriate, (7) recommend exemption to certain devices from the application of portions of the act, (8) advise on the necessity to ban a device, and (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

Qualifications

Persons nominated for membership on these medical devices panels or sections shall have adequately diversified experience appropriate to the work of the committee, panel, or section in one or more fields such as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the committee, panel, or section. The term of office is approximately 3 years.

Nomination Procedure

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees, panels, or sections. Self-nominations are also accepted. Nominations shall include a complete curriculum vitae of each nominee and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. To permit evaluation of possible sources of conflict of interest, FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts.

This notice is issued under the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)) and 21 CFR Part 14, relating to advisory committees.

Dated: April 20, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–11880 Filed 5–3–82; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 75N–0365]

Drug Products Containing Pentylenetetrazol; Final Order on Objections and Requests for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs denies a hearing and declares all drug products containing pentylenetetrazol either as a single ingredient or in combination with other ingredients to be "new drugs" which are not exempt from the premarket approval requirements of the Federal Food, Drug, and Cosmetic Act ("the act") by virtue of the "grandfather" provisions of the act. All such drugs require approved new drug applications to be lawfully marketed in interstate commerce. The drugs are offered for a variety of conditions associated with senility and for vertigo.

EFFECTIVE DATE: May 14, 1982.

FOR FURTHER INFORMATION CONTACT: Paul D. Leber, M.D., Division of Neuropharmacological Drug Products (HFD–120), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4020.

SUPPLEMENTARY INFORMATION: In a notice (DESI 10508) published in the Federal Register of August 26, 1969 (34 FR 13673), the Food and Drug Administration (FDA) announced its evaluation of reports received from the National Academy of Sciences/National Research Council, Drug Efficacy Study Group (NAS/NRC) with respect to the following drugs:

1. Geroniazol Injection (NDA 11–742, held by Philips Roxane Laboratories, Inc., 330 Oak Street, Columbus, Ohio 43216) ("Philips Roxane")—containing 100 milligrams (mg) of pentylenetetrazol and 50 mg of nicotinic acid, as sodium nicotinate, per milliliter (ml); offered for use in the treatment of senile confusion, depression, psychosis, fatigue, and debilitation.

2. Nicozol with Reserpine Tablets (NDA 10–508, held by Nysco Laboratories, Inc., 34–24 Vernon Blvd., Long Island City New York) 11106, ("Nysco")—containing 100 mg of pentylenetetrazol, 50 mg of nicotinic acid, and 0.25 mg of reserpine per tablet; offered for use in senile psychoses and psychoneuroses when anxiety and nervous tension are present; and relief of dizzy spells, mental confusion, mild behavioral disorders, irritability, and functional memory defects in elderly patients.

The notice stated that FDA concurred with the NAS/NRC reports, which had evaluated pentylenetetrazol-containing drugs as lacking substantial evidence of effectiveness for their labeled indications, and announced the Commissioner's intention to initiate proceedings to withdraw approval of the new drug applications. Before initiating such action, however, the Commissioner invited holders of the new drug applications for these drugs, and any interested person who might be adversely affected by the removal of the drugs from the market, to submit pertinent data bearing on the proposal.

On December 18, 1969, in response to the DESI notice, Philips Roxane submitted data in support of the effectiveness of Geroniazol; Nysco did not file any data in support of its product. The submission and other information were evaluated by the agency and found not to provide substantial evidence of effectiveness of the drugs for their labeled indications. Accordingly, in the Federal Register of May 20, 1970 (35 FR 7749), the Commissioner issued a notice of opportunity for hearing in which he proposed to issue an order under section 505(e) of the act (21 U.S.C. 355(e)) withdrawing approval of three new drug applications (NDA 11–347, held by Hart Laboratories, Station Square One, Paoli, Pennsylvania 19301 ("Hart"), for Nicozol with Reserpine Tablets was added to the notice of opportunity for hearing) on the ground that the drugs lacked substantial evidence of effectiveness for their labeled indications.

Before initiating such action, the Commissioner invited holders of the new drug applications and any other interested person who would be adversely affected by an order withdrawing approval of the new drug applications to submit a written notice electing whether or not to avail themselves of the opportunity for a hearing. The notice reiterated that withdrawal of approval of the new drug applications would result in the removal of marketing approval not only for the products subject to the applications, but also for any drugs containing pentylenetetrazol. Applicants or other persons requesting a hearing were instructed to state the reasons why approval of the applications should not be withdrawn and to provide a well-organized and full factual analysis of the clinical and other investigational data they were prepared to prove in support of their opposition to the proposed withdrawals.

In response to the May 20, 1970 notice, Philips Roxane requested a hearing for Geroniazol Injection but did not support its request with clinical data or legal arguments. Neither Nysco nor Hart requested a hearing. Accordingly, in notices published in the Federal Register of September 12, 1970 (35 FR 14412), the Commissioner withdrew approval of the three new drug applications.

On December 1, 1970, 20 firms marketing identical, similar, or related drug products containing pentylenetetrazol filed a complaint for declaratory and injunctive relief contending that their products either were not "new drugs" within the meaning of section 201(p)(1) of the act (21 U.S.C. 321(p)(1)) or that they were exempted from the "new drug" requirements by virtue of the statute's "grandfather" clauses. The district court declined to rule on the issues and remanded the case to FDA as the "more able arbiter" of the questions. *O'Neal, Jones & Feldman, Inc.* v. *Richardson*, No. 70–1001, slip op. at 8 (D.S.C., February 10, 1971).

The district court decision was reversed by the court of appeals, which held that the Commissioner lacked jurisdiction to determine administratively the "new drug" status of a product. *Bentex Pharmaceuticals, Inc.* v. *Richardson*, 463 F. 2d 363, 370 (4th Cir. 1972). The Supreme Court, *sub nom. Weinberger* v. *Bentex Pharmaceuticals, Inc.*, 412 U.S. 645 (1973), reversed and concluded that the district court's referral of the "new drug" and "grandfather" issues to FDA was appropriate, that the Commissioner has jurisdiction to determine administratively the "new drug" status of a product or a class of products, and that following the issuance of such an order, persons marketing such products would not be entitled to *de novo* hearings in the courts. *Id.* at 653.

Following the Supreme Court's ruling, a notice of opportunity for hearing was published in the Federal Register of January 30, 1976 (41 FR 4625). The notice stated that review of all the available data relative to the products that were the subject of the *Bentex* litigation failed to reveal any adequate and well-controlled clinical investigations demonstrating that any drug product containing pentylenetetrazol, either alone or in combination with other ingredients, will have the effect it is represented to have under the conditions of use recommended in its labeling. The FDA Associate Commissioner for Compliance concluded that all drug products containing pentylenetetrazol lacked substantial evidence of effectivenes for their labeled uses and were, *a fortiori*, "new drugs" within the meaning of 21 U.S.C. 321(p). Therefore, the agency proposed to issue an order declaring the "new drug" status of all drug products containing pentylenetetrazol, and for all drug products containing a drug related or similar to pentylenetetrazol. Each of the plaintiffs in the *Bentex* litigation and all manufacturers and distributors of such drugs were invited to request a

hearing and to support the request with data, information, and analyses showing why an order should not be issued declaring all such drug products "new drugs." The notice also invited interested persons to submit data supporting the use of pentylenetetrazol as a diagnostic agent for those epileptics whose diagnosis is refractory to other procedures.

A number of manufacturers and distributors responded to the January 30, 1976 notice. The respondents and their submissions are summarized briefly as follows.

A. *The National Ethical Pharmaceutical Association* ("NEPA"), 1200 17th St. NW., Suite 700, Washington, D.C. 20036, requested a hearing on behalf of 88 of its member companies. However, the request was not supported by any data or legal arguments. The companies included within this request were as follows:

Alba Pharmacal Corp., P.O. Box 628, Penuelas, PR 00724.
Alpha Pharmacal Co., 1451 Page Industrial Blvd., St. Louis, MO 63132.
Alwin Sales Assoc., Inc., Box 354, Mahopac, NY 10541.
Ambix Laboratories, Inc., 1615 51st St., North Bergen, NJ 07047.
Barr Laboratories, Inc., Box 7, Northvale, NJ 07647.
Barry-Martin Pharmaceuticals, Inc., 5792 SW. Eighth St., Miami, FL 33144.
Barth Spencer Corp., 270 West Merrick Rd., Valley Stream, NY 11582.
Bay Laboratories, Inc., 7321 North Ridgeway, Skokie, IL 60076.
Biocraft Laboratories, Inc., 92 Route 46, Elmwood Park, NJ 07407.
Blaine Co., 2700 Dixie Hwy., South, Ft. Mitchell, KY 41017.
Bonco Laboratories, Inc., 9209–11 Highway 42, Prospect, KY 40059.
Carnrick Laboratories, 65 Horse Hill Rd., Cedar Knolls, NJ 07927.
Central Pharmacal Co., 116–128 East Third St., Seymour, IN 47274.
Chromalloy Pharmaceuticals, Inc., 10100 Santa Monica Blvd., Los Angeles, CA 90067.
Comatic Laboratories, Inc., Box 42300, Houston, TX 77042.
Cord Laboratories, Inc., 2555 West Midway Blvd., Broomfield, CO 80020.
Danbury Pharmacal, Inc., 131 West St., Danbury, CT 06810.
Deacon Pharmaceutical Co., Foust St., Ashboro, NC 27203.
Dee Cee Laboratories, Inc., Box 166, Madison, TN 37115.
J. W. S. Delavau Co., Inc., 2140 Germantown Ave., Philadelphia, PA 19122.
Delco Chemical Co., Inc., Box 64, Mt. Vernon, NY 70550.
Desmond Laboratories, Inc., Linda Lane, Oak Ridge, NJ 07438.
Drummer Laboratories, Box 30, Sellersville, PA 18960.
Dunhall Pharmaceuticals, Inc., Box 100, Gravette, AR 72736.
Edwards Pharmacal Co., 1474 S. Trezevant, Memphis, TN 38114.
Evron Pharmaceutical Co., Inc., 7475 North Rogers Ave., Chicago, IL 60626.
Generics Corp. of America, 333 Sylvan Ave., Englewood Cliffs, NJ 07632.
The Gobese Co., Box 777, Bay City, MI 48706.
Gulfcoast Drug Supply, Inc., 1337 NW. 155th Drive, Miami, FL 33169.
Halsey Drug Co., Inc., 1827 Pacific St., Brooklyn, NY 11233.
Halsom, Medical Supply, Inc., 500 East First St., Dayton, OH 45402.
Heun/Norwood Division, E. W. Heun Co., 2303 Schuetz Rd., St. Louis, MO 63141.
Dow B. Hickam, Inc., Box 35413, Houston, TX 77035.
Hyrex/Key Pharmaceuticals, Box 18385, Memphis, TN 38118.
Interstate Drug Exchange, Engineers Hill, Plainview, NY 11803.
Jamieson-McKames Pharmaceuticals, 3227 Morganford Rd., St. Louis, MO 63116.
Keene Pharmaceuticals, Box 7, Keene, TX 76059.
Kessel Laboratories, Inc., 923 SE. 9th Ct., Hialeah, FL 33010.
Lanco Container Corp., 70 Washington St., Brooklyn, NY 11021.
Landry Pharmaceuticals, Inc., 4500 Montrose Blvd., Houston, TX 77006.
Lanpar Co., Box 35227, Dallas, TX 75235.
Laser, Inc., 2000 North Main St., Crown Point, IN 46307.
Len-Tag Co., 5101 East Davison Ave., Detroit, MI 48212.
Mallard, Inc., 3021 Wabash Ave., Detroit, MI 48216.
Marnel Pharmaceuticals, Inc., 206 Luke Dr., Lafayette, LA 70501.
M. M. Mast & Co., 4152 Ruple Rd., Cleveland, OH 44121.
Mayrand, Inc., Box 20246, Greensboro, NC 27420.
Howard B. Nelson, Vienna Bank Building, Room 201A, 374 Maple Ave. E., Vienna, VA 22180.
Medica International Ltd., 6 North Michigan Ave. (505), Chicago, IL 60602.
Medical Products Panamericana, Inc., Box 771, Coral Gables, FL 33134.
Mericon Industries, Inc., 420 SW. Washington, Peoria, IL 61602.
Misemer Pharmaceuticals, Inc., Box 3177 Glenstone Station, Springfield, MO 65804.
Napp Chemicals, Inc., Box 205, Lodi, NJ 07644.
National Pharmacal Manufacturing Co., 4128 Hayward, Baltimore, MD 21215.
Natoli Engineering Co., Inc., 10512 Baur Blvd., St. Louis, MO 63132.
Nature's Bounty, Inc., 105 Orville Dr., Bohemia, NY 11716.
North American Pharmacal Co., 6851 Chase Road, Dearborn, MI 48126.
O'Neal, Jones & Feldman, Inc., 1304 Ashby Rd., St. Louis, MO 63132.
Our Brand Pharmaceuticals, 1431 South Atlantic, Cocoa Beach, FL 32931.
Palmedico, Inc., Drawer 3397, Columbia, SC 29203.
Pan American Laboratories, Inc., Box 8068, New Orleans, LA 70182.
Pharmacaps, Inc., Box 547, Elizabeth, NJ 07207.
Pharmaceutical Associates, Inc., Box 8695, Greenville, SC 29604.
Pharmecon, Inc., 23550 Haggarty, Farmington, MI 48024.
Pharmics, Inc., 1878 S. Redwood Rd., Salt Lake City, UT 84104.
Private Formulae, Inc., 4470 Goodfellow Blvd., St. Louis, MO 63120.
Progressive Drugs of America, Box 11066, Chattanooga, TN 37401.
Pruvo Pharmacal Co., 2018 West Bender Rd., Milwaukee, WI 53209.
Rachelle Laboratories, Inc., Box 2029, Long Beach, CA 90801.
Coke Reeves, 2600 Southwest Freeway, Houston, TX 77006.
Reid-Provident Laboratories, Inc., 640 10th St. NW., Atlanta, GA 30318.
Richie Pharmacal Co., Inc., Box 414, Glasgow, KY 42141.
Saron Pharmacal Corp., Box 13547, St. Petersburg, FL 33733.
Scrip, Inc., 101 South St., Peoria, IL 61602.
Shara Laboratories, Inc., 248 East Town Line Rd., Wautoma, WI 54982.
Sheraton Laboratories, Inc., 374 Reed St., Santa Clara, CA 95050.
Sherry Pharmaceutical Co., 1550 Fifth Ave., Bay Shore, NY 11706.
Standard Pharmacal Corp., 1300 Abbott Drive, Elgin, IL 60120.
Standex Laboratories, Inc., 585 West Second Ave., Columbus, OH 43215.
Star Pharmaceutical, Inc., Box 600431, North Miami Beach, FL 33160.
Tablicaps, Inc., Box 5555, Franklinville, NJ 08322.
Time Pak, Box 4805, Detroit, MI 48239.
Trimen Laboratories, Inc., 80 26th St., Pittsburgh, PA 15222.
UAD Laboratories, Inc., Box 744, Minden, LA 71055.
Udell Associates, 8050 North Lawndale, Skokie, IL 60076.
Vangard Laboratories, Inc., Box 271, Glasgow, KY 42141.
Vitarine Co., Inc., 227 15 Conduit Ave., Springfield Gardens, NY 11413.
Winston Pharmaceuticals, Inc., Box 5275, Winston-Salem, NC 27103.

B. *The Hyrex-Key Respondents* ("Hyrex respondents") requested a hearing on behalf of 20 companies (some of which had joined in NEPA's request for a hearing) that manufacture or distribute pentylenetetrazol-containing drugs. With the exceptions noted below, this request was premised entirely upon an assortment of legal arguments (e.g., that the pentylenetetrazol-containing drugs were not "new drugs" within the meaning of 21 U.S.C. 321(p), that such drugs were exempted from the "new drug" requirements of the act by virtue of the 1938 and 1962 grandfather provisions, that they were entitled to discovery of various documents in FDA files, that this administrative proceeding was procedurally defective, and that a full evidentiary hearing was necessary to resolve genuine and material issues of fact). Three of the Hyrex respondents (Dunhall Pharmaceuticals, Inc., Misemer Pharmaceuticals, Inc., and UAD

Laboratories, Inc.) contended that their products were generally recognized as safe and effective in the management of vertigo. In support of this contention, the three firms submitted four published studies in which a product with a different formulation was administered to the patients. Not one of the Hyrex respondents contended that its product was generally recognized as effective for any of the claims associated with senility. The following companies are included within the Hyrex respondents:

Blaine Co., Inc.
Central Pharmacal Co.
Chromalloy Pharmaceuticals, Inc.
Daniels Pharmaceuticals, Inc., 2527 25th Ave. North, St. Petersburg, FL 33702.
Dunhall Pharmaceuticals, Inc.
Edwards Pharmacal Co.
Halsom Medical Supply, Inc.
Heun/Norwood Division, E. W. Heun Co.
Hyrex-Key Pharmaceuticals, Inc.
Mallard, Inc.
Mayrand, Inc.
Medical Products Panamericana, Inc.
Misemer Pharmaceuticals, Inc.
O'Neal, Jones & Feldman, Inc.
Pan American Laboratories, Inc.
Pharmaceutical Associates, Inc.
Saron Pharmacal Corp.
Scrip, Inc.
Thera-Medic, Inc., 5237 5th Ave. South, Birmingham, AL 35212.
UAD Laboratories, Inc.
Winston Pharmaceuticals, Inc.

C. *The B. F. Ascher and Co., Inc.*, Kansas City, MO ("Ascher"), requested a hearing for its product Nioric, a tablet containing pentylentetrazol as a single entity. In support of its request, Ascher submitted an animal pharmacodynamic study, a report of a survey of 253 practicing physicians who used Nioric in their practice, and the affidavit of its Director of Research and Product Development stating, among other things, his opinion that Nioric is generally recognized as safe for its intended uses. Ascher did not submit any evidence to show that Nioric's claims were substantiated by adequate and well-controlled clinical investigations or that Nioric was generally recognized as effective for its labeled uses. Rather, Ascher argued that Nioric need not prove that it is generally recognized as effective because it is exempted under the grandfather provisions of the act. Ascher also adopted each of the legal arguments advanced by the Hyrex respondents.

D. *The Knoll Pharmaceutical Co.*, Orange, NJ ("Knoll"), submitted numerous clinical studies, published and unpublished, in support of its products, Metrazol, Vita-Metrazol, and Nico-Metrazol. Knoll acknowledged that none of its submissions constituted well-controlled clinical investigations within the meaning of the regulations, 21 CFR 314.111(a)(5) or 21 CFR 300.50, but contended nevertheless that a hearing was necessary to determine whether its products are generally recognized as effective. Knoll also contended that its products are protected by the grandfather clauses of the act and adopted each of the legal arguments raised by the Hyrex respondents.

E. *The Rucker Pharmacal Co., Inc.*, Shreveport, LA, ("Rucker"), submitted five clinical investigations and a number of affidavits of physicians to support the effectiveness of Ru-Vert in the management of vertigo. No clinical data were submitted to support the effectiveness of Su-Ton and Su-Zol, two other pentylenetetrazol products marketed by Rucker. The firm also contended that its products are not "new drugs" and that the products are exempt from the new drug provisions of the act by virtue of the grandfather provisions. Rucker also raised many of the same legal arguments offered by the Hyrex respondents.

F. *The FDA Neurologic Drugs Advisory Committee* submitted two articles in response to the request for data to support the use of pentylenetetrazol as a diagnostic agent but later withdrew them. This indication for pentylenetetrazol will not be discussed further.

The Commissioner has considered all of the material submitted by those requesting a hearing and has concluded that there is no genuine issue of material fact requiring a hearing and that the legal objections offered are insubstantial. A full discussion follows.

I. The Drugs

The drugs for which a hearing was requested fall into three categories: single-entity products containing only pentylenetetrazol; products containing pentylenetetrazol with one or more vitamins or minerals; and products which contain pentylenetetrazol, a vitamin or mineral, and an antihistamine such as dimenhydrinate or pheniramine maleate. The specific drugs are listed below.

A. National Ethical Pharmaceutical Association

These respondents did not identify any specific products in support of their hearing request.

B. The Hyrex Respondents

1. *Tinaplex Elixir.* Each 5 ml contains 200 mg pentylenetetrazol, 100 mg nicotinic acid, 5 mg thiamine HCl, 2 mg pyridoxine HCl, and 25 mg vitamin B_{12}. (Blaine Company).

2. *Cenalene Tablets and Elixir.* Each 5 ml of elixir and each tablet contains 100 mg pentylenetetrazol, 1.67 mg thiamine hydrochloride (elixir) or thiamine mononitrate (tablet), 7.5 mg niacinamide, and 2.5 micrograms cyanocobalamin (vitamin B_{12}). (The Central Pharmacal Co.).

3. *Cenalene-M Tablets and Elixir.* Each 5 ml of elixir and each tablet contains 100 mg pentylenetetrazol. (The Central Pharmacal Co.).

4. *Pentylenetetrazol Tablets, Capsules, and Elixir.* Each tablet, capsule, and 5 ml of elixir would contain 100 mg pentylenetetrazol. (These products had not been marketed as of the date of the hearing request. Chromalloy Pharmaceuticals, Inc.).

5. *Pentylenetetrazol and Niacin Tablets, Capsules, and Elixir.* Each tablet, capsule, and 5 ml of elixir would contain 100 mg pentylenetetrazol and 50 mg niacin. (These products had not been marketed as of the date of the hearing request. Chromalloy Pharmaceuticals, Inc.).

6. *Vital Tablets and Elixir.* Each tablet and each 15 ml of elixir contains 10 mg pentylenetetrazol, 150 mg 1-lysine monohydrochloride, 1 mg thiamine HCl (B_1), 1.2 mg riboflavin (B_2), 10 mg niacinamide, and 10 micrograms cyanocobalamin (B_{12}). (Distributed by Daniels Pharmaceuticals, Inc.; manufactured by Pharmaceutical Associates, Inc.).

7. *Vasostim Capsules (formerly Vasonicol).* Each capsule contains 100 mg pentylenetetrazol and 100 mg niacin. (Dunhall Pharmaceuticals, Inc.).

8. *D-Vaso Capsules (formerly Vasostim and Vasonicol).* Each capsule contains 50 mg pentylenetetrazol, 50 mg niacin, and 25 mg dimenhydrinate. (Dunhall Pharmaceuticals, Inc.).

9. *Senilezol Tablets (Long Acting and Plain) and Elixir.* Each tablet and each 5 ml of elixir contains 100 mg pentylenetetrazol and 50 mg nicotinic acid. (Edwards Pharmacal Co.).

10. *Halizol Tablets.* Each tablet contains 100 mg penylenetetrazol and 50 mg niacin (Halsom Medical Supply, Inc.).

11. *Pentylenetetrazol with Nicotinic Acid (Elixir). a.k.a. Lixalert, Pentylenetetrazol with Nicotinic Acid, Vastim, Napt Elixir, Penalate Elixir, and Amid Nisine.* Each 5 ml contains 100 mg pentylenetetrazol, 50 mg nicotinic acid, and varying amounts of alcohol ranging from 5–15%. (Heun/Norwood Division).

12. *Nicozol Capsules and Elixir.* Each capsule contains 100 mg pentylenetetrazol and 50 mg niacin. Each 5 ml of elixir contains 200 mg pentylenetetrazol and 100 mg niacin (as

the sodium salt). (Hyrex-Key Pharmaceuticals, Inc.).

13. *Nialex Tablets.* Each tablet contains 50 mg pentylenetetrazol, 50 mg niacin, and 30 mg ascorbic acid (Mallard, Inc.).

14. *Penalate Capsules and Elixir.* Each capsule and each 5 ml of elixir contains 100 mg pentylenetetrazol and 50 mg niacin. (Mayrand, Inc.).

15. *Aminobrain PT Elixir.* Each 5 ml contains 100 mg pentylenetetrazol, 50 mg niacin, 100 mg l-lysine HCl, 1 mg thiamine HCl (B_1), and 1.2 mg riboflavin (B_2). (Distributed by Medical Products Panamericana, Inc.; manufactured by Pharmaceutical Associates, Inc.).

16. *Mivert Capsules.* Each capsule contains 25 mg pentylenetetrazol, 12.5 mg pheniramine maleate, 50 mg niacin, and 5 mg benzocaine. (Misemer Pharmaceuticals, Inc.).

17. *Senilex Tablets.* Each tablet contains 100 mg pentylenetetrazol and 50 mg niacin. (O'Neal, Jones & Feldman, Inc.).

18. *Trela Tablets (improved formula).* Each tablet contains 100 mg pentylenetetrazol and 50 mg niacin. (O'Neal, Jones & Feldman, Inc.).

19. *Panzol Forte (elixir).* Each 45 ml contains 30 mg pentylenetetrazol, 50 mg nicotinic acid, 5 mg riboflavin sodium phosphate, 10 mg thiamine HCl, 100 mg choline (as tricholine citrate), 50 mg inositol, 22 mg iron (as ferrric pyrophosphate), 3 micrograms vitamin B_{12} (cobalamin concentrate), 1 mg manganese (as sulfate), 2 mg magnesium (as sulfate), and 1 mg zinc (as sulfate). (Pan American Laboratories, Inc.).

20. *T-Lex Tablets and Elixir.* Each tablet and each 5 ml of elixir contains 100 mg pentylenetetrazol and 50 mg niacin. (Distributed by Thera-Medic, Inc.; manufactured by Pharmaceutical Associates, Inc.).

21. *Nialene Capsules and Elixir.* Each capsule and each 5 ml of elixir contains 200 mg pentylenetetrazol and 100 mg nicotinic acid. (Distributed by Winston Pharmaceuticals, Inc.; manufactured by Pharmaceutical Associates, Inc.).

22. *Alert Elixir.* Each 5 ml of elixir contains 100 mg pentylenetetrazol, 50 mg niacin, 100 mg l-lysine HCl, 1 mg thiamine HCl (B_1), and 1.2 mg riboflavin (B_2). (Distributed by Thera Pharmaceutical Co.; manufactured by Pharmaceutical Associates, Inc.).

23. *Tylene (elixir) Pentinic Elixir, Penta-nic Elixir, Vazole Elixir, Benizol (elixir), Lemotonic (elixir).* Each 5 ml contains 100 mg pentylenetetrazol and 50 mg niacin. (Formerly manufactured by Pharmaceutical Associates, Inc.).

24. *Tega-Zol Elixir and Capsules.* Each 5 ml of elixir and each capsule contains 100 mg pentylenetetrazol, 50 mg nicotinic acid, and 1.5 mg d-amphetamine. (Formerly manufactured by Pharmaceutical Associates, Inc.).

25. *Kenile Elixir.* Each 5 ml contains 200 mg pentylenetetrazol and 100 mg nicotinic acid. (Formerly manufactured by Pharmaceutical Associates, Inc.).

26. *Benizol Plus (elixir).* Each 5 ml contains 100 mg pentylenetetrazol, 50 mg nicotinic acid, 1.67 mg methyltestosterone, 0.0033 mg ethinyl estradiol, 1 mg thiamine, 1.2 mg riboflavin, 0.8 mg pyridoxine, 2 micrograms cyanocobalamin, 30 mg ascorbic acid, 1 mg panthenol, and 20 mg choline bitartrate. (Formerly manufactured by Pharmaceutical Associates, Inc.).

27. *Salutol-Plus Elixir.* Each 45 ml contains 300 mg pentylenetetrazol, 200 mg niacinamide, 500 mg liver fraction No. 1, 20 mg ferric ammonium citrate, 30 micrograms cyanocobalamin, 5 mg pyridoxine, 10 mg riboflavin, and 30 mg thiamine HCl. (Formerly manufactured by Pharmaceutical Associates, Inc.).

28. *Genizol Tablets and Elixir.* Each tablet contains 100 mg pentylenetetrazol and 50 mg niacin. (Saron Pharmacal Corp.).

29. *Vertab Capsules.* Each capsule contains 25 mg pentylenetetrazol, 50 mg nicotinic acid, and 25 mg dimenhydrinate. (UAD Laboratories, Inc.).

C. B. F. Ascher and Co.

Nioric Tablets and Elixir (formerly Nioric Modified). Each tablet or each 5 ml of elixir contains 100 mg pentylenetetrazol.

D. Knoll Pharmaceutical Co.

1. *Metrazol Tablets and Liquid.* Eacah tablet or each 5 mL of elixir contains 100 mg pentylenetetrazol.

2. *Vita-Metrazol Tablets and Elixir.* Each table contains 100 mg pentylenetetrazol, 10 mg niacinamide, 1 mg each of thiamine mononitrate, pyridoxine HCl, and riboflavin, and 25 mg ascorbic acid. Each 5 ml of elixir contains 100 mg pentylenetetrazol, 10 mg niacinamide, 1 mg each of thiamine HCl and pyridoxine HCl, and 1.4 mg of riboflavin-5'-phosphate sodium.

3. *Nico-Metrazol Tablets and Elixir.* Each tablet and each 5 ml of elixir contains 100 mg pentylenetetrazol and 50 mg nicotinic acid.

E. Ricker Pharmacal Co.

1. *Ru-Vert Tablets and Liquid.* Each tablet and each 15 ml of elixir contains 25 mg pentylenetetrazol, 5 mg nicotinic acid, and 12.5 mg pheniramine maleate.

2. *Su-Zol Liquid.* Each 5 ml of elixir contains 50 mg pentylenetetrazol.

3. *Su-Ton Liquid Tonic.* Each 45 ml of elixir contains 30 mg pentylenetetrazol, 50 mg niacin, 10 mg vitamin B_1, 5 mg vitamin B_2, 1 mg vitamin B_6, 100 mg choline, 50 mg inositol, 1 mg manganese, 2 mg magnesium, 1 mg zinc, 200 mg ferric pyrophosphate, and 3 micrograms vitamin B_{12}.

II. Recommended Uses and Dosage

Virtually all of the products are offered for one or more conditions which may be associated with aging or senility; several are also offered for vertigo. Viewed collectively, the labeling offers the products as a panacea for conditions, both mental and physical, which may accompany old age.

The labeling generally provides for administration of the drugs 1 to 3 times a day.

III. Data Submitted To Support General Recognition of Effectiveness

Absent an exemption, the only way these manufacturers may escape the prophylactic provisions of the act which require approved new drug applications before marketing is by demonstrating that their products are not "new drugs", i.e., that the products are "generally recognized, among experts qualified by scientific training and experience * * * as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof." 21 U.S.C. 321(p)(1). In turn, a manufacturer may clear the hurdle of "general recognition" only by coming forward with "substantial evidence" of effectiveness of a product sufficient for approval of a new drug application. *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 629 and 632 (1973). The act defines "substantial evidence" as "evidence consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved, on the basis of which it could fairly and responsibly be concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed * * * in the labeling * * * thereof." 21 U.S.C. 355(d). The prerequisites for an adequate and well-controlled clinical investigation have been particularized in regulations promulgated by FDA. See 21 CFR 314.111(a)(5)(ii). Unless the effectiveness of a product is supported by studies which meet each of the criteria spelled out in these regulations, the product lacks "substantial evidence" of effectivenss under 21 U.S.C. 355(d) and,

a fortiori, is a "new drug" within the meaning of 21 U.S.C. 321(p). Moreover, identification of a single deficiency in light of the pertinent regulations conclusively disqualifies a study and precludes its use as "substantial evidence." *Cooper Laboratories, Inc.* v. *Commissioner FDA*, 501 F. 2d 772, 781 (D.C. Cir. 1974).

A. The National Ethical Pharmaceutical Association

These companies did not submit any data to support the general recognition of effectiveness of pentylenetetrazol-containing products.

B. The Hyrex Respondents

Three companies (Dunhall Pharmaceuticals, Inc.; Misemer Pharmaceuticals, Inc.; and UAD Laboratories, Inc.) submitted data to support the contention that their products were generally recognized as effective in the management of vertigo. The data consisted of four published reports of studies conducted on a fourth product, Ru-Vert, manufactured by Rucker. These companies also cross-referenced the underlying protocols, raw data, and factual analyses of the studies contained in the Rucker submission in support of Ru-Vert. The specific product formulations and labeling are as follows:

D-Vaso Capsules (50 mg pentylenetetrazol, 50 mg niacin, and 25 mg dimenhydrinate) are "indicated in the symptomatic management of idiopathic vertigo, as well as that associated with Meniere's Syndrome, Arterial Hypertension, Labyrinthitis, Fenestration Procedures, Radiation Sickness and Tonic Effect. D-Vaso has also been of value in patients with clinical symptoms of senility and functional cerebral impairment as well as symptomatic nausea."

Mivert Capsules (25 mg pentylenetetrazol, 12.5 mg pheniramine maleate, 50 mg niacin, and 5 mg benzocaine) are offered as a "Vasodilator, cerebral stimulant, antihistaminic, for use in vertigo, Meniere's syndrome and certain conditions of apprehension and mental confusion."

Vertab Capsules (25 mg pentylenetetrazol, 50 mg nicotinic acid, and 25 mg dimenhydrinate) are indicated "in the symptomatic management of idiopathic vertigo as well as that associated with Meniere's Syndrome, Arterial Hypertension, Labyrinthitis, Fenestration Procedures, Radiation Sickness. Vertab has also been 'of value' in patients with clinical symptoms of senility and functional cerebral impairment as well as symptomatic nausea."

The four clinical studies are evaluated below:

a. "Benign Paroxysmal Positional Vertigo: A Clinical Study," Herndon, J. W., O. Haug, M. J. Horowitz and T. E. Lynes, *Annals of Otology, Rhinology and Laryngology*, 84: 218–223, 1975. Rucker, the sponsor of the study, submitted a separate report which analyzed the study in light of the regulations, 21 CFR 314.111(a)(5)(ii), as well as a separate statistical analysis. This was a double-blind, crossover study in which 23 patients with disorders of the peripheral labyrinthine system were evaluated on the basis of a neurological survey, an audiogram, and an electronystagmograph (ENG). Nystagmus (involuntary movement of the eye) and vertigo were artificially induced (by suddenly turning the patient's head 90° to one side). Scores were developed for each test by rating the severity of symptoms with plus signs; more severe symptoms were indicated by a greater number of signs. Scores were then developed for each patient by summing that patient's scores for all tests. Following the initial examination, patients were randomly given a 1-week supply of Ru-Vert or an identical appearing placebo capsule and told to take two capsules three times a day. Six of the 17 patients received Ru-Vert during the first week; 11 of the 17 patients received placebo during the first week. At the end of one week, the patients were reevaluated and crossed over to the other medication for one week at which time they were evaluated for a third time. Finally, all patients were evaluated a fourth time after 1 week of no treatment. To facilitate statistical analysis, the summed scores for each patient for each week were also ranked (i.e., the lowest score was given a rank of 1, the highest score a rank of 4).

The authors concluded as follows: (1) The data for the 11 patients who received placebo during the first week failed to show a statistically significant improvement but when these same patients received Ru-Vert during the second week, the scores were significantly lower; (2) for all 17 patients Ru-Vert score were significantly lower than placebo scores; and (3) the difference in rank sum scores for patients treated with Ru-Vert in week 1 was not statistically lower than the rank sum scores for placebo-treated patients during the same period.

The study is not adequate and well controlled for a number of reasons. First, because only a placebo control was used, no evidence is provided to support the claim that each of the three ingredients in this combination product contributes to the claimed effects. 21 CFR 300.50. To demonstrate properly that each of the ingredients contributes to the combination, it is necessary to compare Ru-Vert, not only with a placebo, but also with each of the individual ingredients in the combination and with the three permutations of ingredients which result from combining two of the three ingredients in Ru-Vert (i.e., pentylenetetrazol and pheniramine maleate; pentylenetetrazol and nicotinic acid; and pheniramine maleate and nicotinic acid).

Nor is the study capable of showing that Ru-Vert as a whole is superior to a placebo. The study protocol did not provide adequate assurance that the subjects initially selected for investigation were suitable for the study. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*). To the contrary, it plainly appears that patient selection occurred *after* the study was completed. For example, the authors state that their "original purpose in this study was to evaluate Ru-Vert in the treatment of patients with disorders of the peripheral labyrinthine system." However, when the study was completed, the authors, without explanation, decided to report the results only for those 21 patients who had benign, paroxysmal, positional vertigo. The diagnostic criteria of the condition to be studied should have been determined *before* the subjects were entered in the study, not after. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*). In fact, examination of the patient report forms shows that results from three of the patients were excluded by the authors (patient nos. 6, 10, and 11) even though their diagnoses ("peripheral vestibular dysfunction with positional vertigo," "Hallpike positional vertigo") were no different from those patients whose results were reported.

The study is also not controlled because comparability with respect to pertinent variables was not assured. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*). Again, the patient report forms shown that some patients had consumed alcohol the night before one or more of the examinations (e.g., patient nos. 13 and 14), while other patients had not. Several patients received medication for at least two weeks pre-study, but not thereafter (e.g., patient nos. 7 and 20); other patients were concurrently using additional medication (including, in one instance, an anti-vertigo agent) at various times during the study (e.g., patient nos. 8, 9, 13, 17, and 20). Under these circumstances, there is no way to determine whether observed effects

were due to Ru-Vert or to the presence of the other drug substances.

The authors acknowledged that the six patients who received Ru-Vert during the first week of the study failed to show a statistically significant improvement in ENG scores. Moreover, a comparison of the Ru-Vert group and the placebo group in change in ENG scores from pre-treatment to the first week shows that there was no statistically significant difference between the two groups (Mann-Whitney U Test, Siegal, S., *Non-Parametric Statistics*, McGraw Hill, 1956, pp. 116–126; $N=17$, $U=31$, $p>0.05$).

The findings for patients generated during the second week of treatment are unusable for the following reasons. The authors' statistical analysis of data for the 11 patients who received placebo during the first week is inappropriate because the authors failed to consider the effect of order of drug administration on observed effects. The order in which drugs are administered to patients in a crossover study is always a pertinent variable for which comparability must be assured. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*). Without such an assurance it is impossible to compare the results of treatment with a control in such a fashion as to permit meaningful quantitative evaluation. 21 CFR 314.111(a)(5)(ii)(*a*)(*4*). This is particularly so where, as here, there is an extremely small number of patients and the authors have acknowledged that vertigo "is commonly self-limiting and resolves in a period of a few weeks or months." Thus, there is no way to determine whether patient improvement was a function of elapsed time or whether it was attributable to the effect of the drug.

There is an additional factor in this study which underscores why it is necessary for an analysis to rule out sequence of drug administration as a confounding variable. As the authors recognize, "patients lean to protect themselves from vertiginous attacks by movement restriction." In other words, as the patients become more accustomed to the sudden movements used by the physician to induce the vertiginous attacks, they learn to anticipate it, thereby decreasing the severity of the symptoms induced. Accordingly, the decreased ENG scores may be attributable to patient adaptation over time to the turning procedure used to induce the vertigo, rather than to the effect of the drug. Finally, analysis of the first and second week scores for all 17 patients confirms that although there were no residual effects (within subject difference, $Z=\pm 0.857$, $p>0.05$) for the subjects of each sequence, there were significant period effects (within subject crossover difference). Koch, G. C., "The Use of Non Parametric Methods in the Statistical Analysis of the Two Period Change-Over Design," *Biometrics*, June 1972, pp. 577–584; $Z=\pm 3.026$, $p<0.01$). In short, drug effects can only be measured for the first week, and data observed during the second week must be ignored. As noted above, however, the authors reported that the first week's data failed to show a statistically significant effect for Ru-Vert over placebo.

The separate analysis submitted by Rucker did not address most of the foregoing specific deficiencies. Rucker's analysis did discuss comparability between test and control groups, but in a wholly inadequate manner. For example, in the analysis it is claimed that comparability with respect to concurrent drug usage was assured simply because the study report states that "one patient" was dropped from the investigation for taking additional medication. This statement ignores entirely the report forms which reveal that numerous other patients were also taking additional medications.

b. "The Effect of Ru-Vert and Its Components on Post-Rotatory Motor Performance," Lynes, T. E., and L. E. Boos, *Current Therapeutic Research*, 16:937–943, 1974. Rucker provided a separate analysis of the study attempting to demonstrate compliance with the regulations for adequate and well-controlled studies. This was a double-blind, placebo-controlled study designed to compare the effects of Ru-Vert with each of its individual components and with each possible pair of components on the post-rotatory phenomena. The authors selected 240 *normal* young (average age 21 years) volunteers and divided them into three sets of 80 subjects each (40 males and 40 females) as follows: Set I consisted of five groups of 16 subjects (8 males and 8 females). The subjects in each group received placebo, Ru-Vert, or one of the three components of Ru-Vert. Set II was divided into five similar groups. The subjects in these groups received either placebo, Ru-Vert, or one of the pairs of ingredients in the Ru-Vert combination. Because set III was a replicate of set II, the data were combined and analyzed together.

On the day of the experiment, subjects were asked to report having fasted for at least 6 hours before their scheduled arrival time. Upon arrival each subject was given a pre-test which included an evaluation of coordination (body, head, and arm position, and leg movements) during a tandem walk of a straight line, a standard Romberg test (i.e., the Romberg sign is said to have appeared if the patient's body sways or the patient falls when standing with feet close together and eyes closed), and a tandem Romberg test. Immediately after pre-test, each subject was given two tablets of an assigned regimen. One hour after drug administration, vertigo was artificially induced by placing the subject on a platform which was rapidly rotated for 1 minute and then brought to a rapid stop. Thereafter, the subject was evaluated for duration and intensity of vertigo.

On the duration of vertiginous symptoms, the authors reported that there were no significant differences for any of the groups in the three sets, i.e., Ru-Vert was not shown to be superior to placebo, to any Ru-Vert's individual ingredients, or to any of ingredients. (In fact, in set I the duration of vertiginous symptoms was shortest in the placebo-treated group; even in sets II and III, Ru-Vert decreased the average duration of vertiginous symptoms over placebo by only 2.2 seconds.)

On the severity of vertigo (in the patients in set I), the authors reported that Ru-Vert produced a significant reduction in the intensity of vertigo induced by deceleration, that none of the individual ingredients produced such a change, and that pheniramine meleate produced a significant increase in the intensity of vertigo. Insofar as the severity of vertigo (in the patients in sets II and III), is concerned, the authors reported that the group treated with Ru-Vert and the group treated with the combination of pentylenetetrazol and pheniramine maleate showed a statistically significant decrease in symptom intensity over placebo. The authors based their conclusion that nicotinic acid contributed to the claimed effects on the fact that the group receiving pentylenetetrazol and pheniramine maleate exhibited the Romberg sign with "a significantly greater frequency than can be accounted for by chance."

This investigation is patently incapable of providing substantial evidence of Ru-Vert's effectiveness in the management of vertigo because it provides no assurance that the patients selected were suitable for the study. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*). The authors examined only normal volunteers; no patient with vertigo was entered in the study. Under these circumstances, there can be no assurance that Ru-Vert will have the same effect on patients with the pathological conditions which cause

vertigo as the authors claim Ru-Vert had in these normal patients whose dizziness was artificially induced by deceleration. *Id.* The regulations plainly require that the study protocol set forth the "diagnostic criteria of the condition to be treated or diagnosed." 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*). If normal subjects are studied, no such diagnostic criteria can be provided. Similarly, the regulations also require that there be comparability between test and control groups for such pertinent variables as "severity, or duration of disease." 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*). Again, if normal subjects are used, the regulation becomes meaningless. In short, unless a drug is tested on patients who have the precise condition for which the drug is offered, the clinical pharmacologist and the physician will have no rational scientific basis for determining precisely which conditions may be effectively treated with the regimen. The failure to study the drug in diseased patients renders the study conclusively uncontrolled.

The study is also uncontrolled because it failed to provide assurance of group comparability with respect to a pertinent variable—concomitant drug usage. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*). In its separate analysis of the study, Rucker acknowledged that concomitant drug usage was "restricted to caffeine, nicotine, minimal amounts of alcohol and oral contraceptive drugs." Any of these drugs, which act upon the central nervous system, may have influenced the results of treatment. Because these drugs manifestly were not uniformly prohibited and no analysis was provided to assure that test and control groups were comparable on the use of such drugs, the study is uncontrolled.

There is a third deficiency in this study. The report states that the "confounding element of 'response decline' * * * (discussed in the previous study) was removed by using independent groups for evaluation of each agent and each combination." Examination of the patient report forms shows that this was not the case. In fact, at least 27 subjects were used more than once. The results generated by the "repeaters" were clearly not independent and any analysis based upon their results is unreliable. 21 CFR 314.111(a)(5)(i), (a)(5)(ii)(*a*)(*2*), and (a)(5)(ii)(*a*)(*4*).

Finally, the results of the study do not support any claim that Ru-Vert is effective in the management of vertigo. As shown above, the decrease in duration of vertigo caused by Ru-Vert was not significantly better than with any single component, pair of components, or placebo. In fact, Ru-Vert decreased the duration of vertigo over placebo by only 2.2 seconds.

Within this fleeting timespan, even if Ru-Vert had been shown to produce a decrease in intensity of vertigo, any such decrease would be clinically trivial.

Moreover, the results as reported by the authors do not show that each ingredient in Ru-Vert contributes to the effects claimed as required by 21 CFR 300.50. The authors reported that the combination of pentylenetetrazol and pheniramine maleate performed comparably with Ru-Vert in reducing the intensity of vertigo. (In fact, this combination of ingredients performed better than Ru-Vert, although not significantly so.) The evidence plainly fails to show the contribution of nicotinic acid, the third ingredient in Ru-Vert.

The authors argue that nicotinic acid does contribute to Ru-Vert, however, because the group treated with pentylenetetrazol and pheniramine maleate exhibited the Romberg sign with a "greater frequency than can be accounted for *by chance*" (emphasis added). To demonstrate that nicotinic acid in Ru-Vert contributes to the combination (in this case by decreasing the frequency of the Romberg sign), however, it is necessary to compare each of the combinations of ingredients in Ru-Vert with Ru-Vert. The same comparisons made by the authors when they measured the effect of Ru-Vert and its components on the duration and intensity of vertigo should have been made for the decrease in the frequency of the Romberg sign. Instead, the authors focused on each treatment group separately and compared the frequency of occurrence of the Romberg sign in that group with chance rather than with the frequency of occurrence in the other treatment groups. FDA analysis show that there was no statistically significant difference between the treatment groups with respect to the appearance of the Romberg sign. ($X^2=5.10$; DF=3; p=0.16.)

Once again, Rucker's separate analysis of the study did not address the above cited deficiencies.

c. "A Double-Blind, Placebo Controlled Study of Ru-Vert In Patients With Vertigo," Pou, J. W., and H. J. Quinn, *Current Therapeutic Research*, 9:558–562, 1967. Rucker submitted a separate analysis of the study. The purpose of this double-blind, placebo-controlled study was to evaluate the clinical effects of Ru-Vert in the symptomatic treatment of vertigo. Fifty patients with vertigo were divided into two groups and given either placebo or identical appearing Ru-Vert Tablets. The 27 patients in the Ru-Vert-treated group received medication for an average period of 66 days (range 7 to 206 days), while the 23 patients in the placebo-treated group received medication for an average period of 59 days (range 12 to 218 days). Evaluation of therapeutic response was based upon the results of nystagmus, pointing, Romberg and straight line tests, as well as the subjective response of the patient. The overall response was rated with a descriptive scale using the criteria "excellent" (symptom free), "good" (marked improvement, but not complete relief of all symptoms), "fair" (slight improvement), and "poor" (no improvement). The authors reported that a clinically good response (excellent or good) was observed in 77 percent of the Ru-Vert patients, whereas only 17 percent of the placebo-treated patients showed a similar response.

This study is not well controlled in several respects. The authors have not provided the diagnostic criteria of the vertigo of these patients. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*). The authors' tabular summary of the *causes* of the patients' vertigo does not comply with the regulations; the etiology of a disease may not be equated with the diagnostic criteria which characterize its nature. In fact, even the etiology of the patient's disease in many cases is not described, but is lumped in the category, "other (allergy, otosclerosis, etc.)."

The authors have also failed to assure that subjects were *assigned* to test and control groups in a manner to minimize bias. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*ii*). No information is provided regarding the method of patient assignment. Rather, the authors report only that the patients were "separated into two groups". Random assignment of subjects to test and control groups is the *sine qua non* of any controlled study. Known variables which may affect the outcome of the study, such as age, sex, and duration and severity of the disease, can and must always be assured by comparison of their distribution between test and control groups. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*). The purpose of randomly assigning subjects to test and control groups is to assure equal distribution of recurring, *unknown* variables which may influence treatment outcome. The authors give no indication that assignment of patients to test and control groups was randomized. See, e.g., the study conducted by Herndon, et al., reviewed above.

The authors have failed to assure that test and control groups were

comparable with respect to such pertinent variables as the severity or duration of the disease or the use of drugs other than the test drug. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*). Only the age and sex of the patients are accounted for. These omissions, too, are critical. Indeed other studies included in Rucker's submission acknowledge that vertigo may spontaneously remit, recur, or persist for years and that numerous therapeutic agents may have an effect on vertiginous symptoms.

The authors have also failed to compare the results of treatment with a control in a fashion which permits quantitative evaluation. 21 CFR 314.111(a)(5)(ii)(*a*)(*4*). Although the study report states that therapeutic response was evaluated on the basis of objective criteria and the subjective response of the patient, it offers no explanation of what weight is accorded to the subjective response of the patient. The patient report forms show that in numerous instances no objective tests were conducted while in others the numerical rating system for a particular test was wholly ignored by the investigators. In fact, in many instances, there was only one examination of a patient, making impossible any judgment on improvement.

This lack of objectivity in the evaluation of patient responses reveals yet another deficiency in the design of the study: failure to blind the analysts of the data. 21 CFR 314.111(a)(5)(ii)(*a*)(*4*). While it may be permissible to break the code before evaluating the results of a study when the data are wholly quantitative and permit no room for bias to creep into interpretations, this practice is impermissible when data are almost entirely subjective, as was the case in this study. Inasmuch as data were evaluated after the code was broken, there was no method used to preclude bias (conscious or unconscious) from entering into the authors' conclusions. The problem is compounded by the authors' failure to record the evaluation of the patient's response on the report form. Under these circumstances, the study constitutes little more than an undocumented series of subjective impressions. 21 CFR 314.111(a)(5)(ii) (*c*).

Finally, because only a placebo control was used, the study offers no evidence that each of the components in Ru-Vert contributes to the claimed effects. 21 CFR 300.50.

In its separate analysis, Rucker attempts to overcome the authors' failure to randomly assign the patients by arguing that "subjects were assigned to the active treatment group or the placebo treatment group such that neither patients nor the physicians knew which preparation was used."

Rucker's argument shows that it misunderstands the different purposes of randomization and blinding and the manner in which each is accomplished. As noted above, the purpose of randomization is to assure equal distribution of unknown variables between test and control groups. The purpose of blinding is to prevent bias (conscious and unconscious) in the reporting of results by the physician and the patient. Randomization, of necessity, is essentially completed before the study even begins when it is determined that patients will be assigned or medications will be distributed pursuant to a predetermined numerical order which follows a table of random numbers. Blinding, on the other hand, is not truly accomplished until the study has been completed and it has been determined that neither the investigators nor the patients were able to distinguish between the various regimens. In short, patient assignment may be randomized whether or not the study participants are blinded, and blinding will not effect randomized assignments.

Raucker's analysis did not address the other defects discussed above.

d. "A Clinical Study of Ru-Vert in the Management of Vertigo," Pou, J. W., and H. J. Quinn, *Current Therapeutic Research*, 8:494–497, 1966. Rucker submitted a separate analysis of the study. Twenty-eight patients were administered Ru-Vert in varying dosages for periods ranging from 3 to 378 days. Nystagmus, pointing, Romberg, and straight line tests were conducted pre- and post-therapy. In addition, the authors made a global evaluation of the symptomatic response using the following criteria: "Excellent" (sympton free), "good" (marked improvement, all symptoms), "fair" (some improvement, some symptoms) and "poor" (no improvement). The authors reported that "some degree of symptomatic relief" was obtained in 83 percent of the patients treated (excellent, good, or fair).

This study lacks virtually every feature of a well-controlled study. The diagnostic criteria used to select the patients are not provided. 21 CFR 314.111(a)(5)(ii)(*a)(2)(i)*). The methods of observation and recording of results, including the assessment of subjective responses and steps taken to minimize bias on the part of subject or the observer, are not explained. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*). There was no blinding. 21 CFR 314.111(a)(5)(ii)(*a*)(*4*). There was no control. *Id.* The findings were not statistically analyzed. 21 CFR 314.111(a)(5)(ii)(*a*)(*5*). The authors appear to have recognized the patent inadequacy of this study inasmuch as they have characterized their findings as "preliminary in nature" which require confirmation "by double-blind, placebo-controlled clinical trials."

Finally, the study provides no evidence that each of the ingredients in Ru-Vert contributes to the claimed effect. 21 CFR 300.50.

In its separate analysis, Rucker claims that the study used a historical control. This argument is unsupported by the study itself. While the authors state that "a number" of patients had experienced a clinically inadequate response in previous therapy with other agents, they do not state what that number of patients is or precisely what those agents were. More important, because some types of vertigo are transient and may spontaneously improve, a "historical" control is meaningless in the absence of careful documentation of the nature and history of vertigo experienced by these patients. Without a precise description of the disease and of its history in each patient, there can be no historical control.

* * * * *

There is an additional reason why each of the four foregoing studies does not constitute an adequate and well-controlled clinical investigation insofar as the products of the Hyrex respondents are concerned: the composition of the test drug, Ru-Vert, is different from the formulations of the products of the Hyrex respondents. 21 CFR 314.111(a)(5)(ii)(*b*). Ru-Vert contains 25 mg pentylenetetrazol, 12.5 mg pheniramine maleate, and 5 mg nicotinic acid. In contrast, D-Vaso, contains 50 mg pentylenetetrazol, 50 mg nicotinic acid (niacin), and 25 mg dimenhydrinate. Mivert contains 5 mg benzocaine, an ingredient not present in Ru-Vert, while Vertab contains 25 mg dimenhydrinate rather than the 12.5 mg pheniramine maleate present in Ru-Vert. Accordingly, even if these studies were adequate and well controlled, they could not be used to support the effectiveness of these three products.

The Hyrex respondents did not submit any evidence to show that their products were generally recognized as effective for the other indications for which they offered.

C. B. F. Asher & Co., Inc.

This firm also did not contend that its product, Nioric, was generally recognized as effective for its labeled indications, nor did it submit evidence to support such a contention.

D. Knoll Pharamaceutical Co.

1. *Metrazol Tablets and Liquidum (elixir).* Metrazol (containing 100 mg pentylenetetrazol per tablet or per 5 ml elixir) is offered for a host of conditions including "to enhance mental, physical activity of elderly patients," for "disturbed memory function," as "a mood conditioning drug," for "treatment of senile and arteriosclerotic psychoses," and for "cerebral arteriosclerosis."

Knoll submitted 64 serially numbered reprints of published articles and two unpublished studies (Bazo and Ban) in support of its claim that the Metrazol products are generally recognized as effective. With commendable and refreshing candor, Knoll conceded that these submissions to "not comport with the standards for controlled clinical investigations in the regulations * * *." In fact, Knoll further acknowledged that the patients in these trials performed "very poorly" when objectively evaluated (with intelligence tests, performance tests, and psychiatric rating scales) and that it was "difficult, if not impossible, to show any superiority of Metrazol * * * over placebo."

In view of these acknowledgements and in the interest of brevity, the articles will not be reviewed individually, but rather will be categorized by their deficiences. The articles are identified with Knoll's numbers rather than by their complete citations. The articles were reviewed as follows:

a. *Studies which failed to show that Metrazol was effective* (i.e., Metrazol did not "beat" the placebo or the author concluded that efficacy had not been shown) (21 CFR 314.111(a)(5)(i): 1, 19 (psychological testing showed no significant change), 21, 25, 26, 28 through 36, 73 through 75, Bazo, and Ban.

b. *Studies which failed to provide diagnostic criteria of the condition treated* (21 CFR 314.111(a)(5)(ii)(*a*)*(2)(i)*): 6, 8 through 12, 17, 19, 24, 28, 35, 38, and 72.

c. *Studies which failed to assign subjects to test and control groups in such a way as to minimize bias* (21 CFR 314.111(a)(5)(ii)(*a*)*(2)(ii)*): 1, 5, 6, 15, 24 through 27, 35, 37 through 39, and 77 through 79.

d. *Studies which failed to assure comparability between test and control groups with respect to one or more pertinent variables* (21 CFR 314.111(a)(5)(ii)(*a*)*(2)(iii)*): 1, 2, 5, 6, 9 (sequence of drug administration, concurrent use of other drugs), 24–28, 29 (concurrent use of other drugs and length of time on medication prior to observation), 35 through 39, 74, 75, and 77 through 79.

e. *Studies which failed to explain methods of observation and recording of results, including variables measured, quantitation and assessment of subjects' response* (21 CFR 314.111(a)(5)(ii)(*a*)*(3)*): 12, 13, 15, 17, 20, 27, 72, 75, and 76.

f. *Studies which failed to provide a quantitative comparison of results of treatment with control group* (21 CFR 314.111(a)(5)(ii)(*a*)*(4)*: 1 through 5, 7, 8, 10 through 13, 14 (placebo control used, but data not quantified for this group), 16 through 23, 29, 72, and 76 through 79.

g. *Studies which were unblinded or only partially blinded* (21 CFR 314.111(a)(5)(ii)(*a*)*(4)*): 2 through 18, 20 through 24, 25 (partially), 27, 29, 72, and 76 through 79.

h. *Studies which failed to provide either a summary of the method of analysis or a statistical analysis, or both* (21 CFR 314.111(a)(5)(ii)(*a*)*(5)*): 2 through 5, 9, 14 through 16, 18, and 73.

2. *Vita-Metrazol Tablets and Elixir.* Vita-Metrazol (containing 100 mg pentylenetetrazol, 10 mg niacinamide, 1.0 mg thiamine HCl, 1.0 mg pyridoxine HCl, 1.4 mg riboflavin, 2.0 mg d-panthenol, and 2.5 mg ascorbic acid per tablet or per 5 ml elixir) is offered for the same uses as Metrazol. Knoll requested that the evidence in support of Metrazol also be considered applicable to Vita-Metrazol on the grounds that the pentylenetetrazol content of the products is the same and the vitamins and minerals in Vita-Metrazol were added "as a convenience for the physician and the patient." Inasmuch as there are no adequate and well-controlled clinical investigations in the data submitted by Knoll to support the claims made for Metrazol, it is clear that Vita-Metrazol also lacks such evidence. Of course, Vita-Metrazol also lacks evidence to satisfy the criteria of FDA's combination policy set forth in 21 CFR 300.50.

3. *Nico-Metrazol Tablets and Elixir.* Nico-Metrazol (containing 100 mg pentylenetetrazol and 50 mg niacin per tablet or per 5ml elixir) is offered "to enhance mental and physical activity of elderly patients," to improve "appetite, sleep habits, mental alertness, mood, * * * ward amenability * * * orientation * * * and incontinence."

A number of articles were submitted to support the effectiveness of these products. Knoll also recognizes that none of these articles constitutes adequate and well-controlled clinical investigations within the meaning of 21 CFR 314.111(a)(5)(ii)(*a*)(*5*) and 21 CFR 300.50, but contends nevertheless that two of the studies (Ananth et al.; and La Brecque and Goldberg) which attempted to demonstrate the contribution of each of the ingredients in this combination are "well controlled" in some, even though not all, respects. Inasmuch as a hearing may be warranted only when a sponsor submits investigations which meet all of the regulatory criteria, it is unnecessary to review these studies in detail. The articles are reviewed briefly as follows:

a. "Seniliex in the Treatment of Geriatric Patients," Ananth, J. V., M. Deutsch, and T. A. Ban, *Current Therapeutic Research*, 13:316–21, 1971. This study compared a combination product (Senilex) containing nicotinic acid (50 mg) and pentylenetetrazol (200 mg) with each of its constituent ingredients in three groups of 10 patients. Patients were randomly assigned to the three groups. Investigators and patients were blind as to the regimen. However, because neither pentylenetetrazol nor nicotinic acid is an established, effective treatment for the conditions studied by these authors and because no placebo control group was used, it is impossible to assess quantitatively the contribution of either ingredient alone or the combination. 21 CFR 314.111(a)(5)(ii)(*a*)(*4*). Moreover, the product that was used in the study, Senilex, does not contain the same proportions of nicotinic acid and pentylenetetrazol as does Nico-Metrazol. Therefore, the findings are not pertinent to this product. 21 CFR 314.111(a)(5)(ii)(*b*). Finally, the authors concluded that "no significant change was observed in any of the three treatment groups at the end of the 12-week period."

b. "A Double-Blind Study of Pentylenetetrazol Combined with Niacin in Senile Patients," La Brecque, D. C., and R. I. Goldberg, *Current Therapeutic Research*, 9:611–617, 1967. This study compared a combination product of unspecified composition with a placebo. Because no patients received either nicotinic acid or pentylenetetrazol as a single entity, the study can not show that each of these ingredients contributes to the product's effect as required by 21 CFR 300.50. Moreover, the authors failed to assure comparability between test and control groups on such pertinent variables as age, sex, duration, or severity of disease. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*).

The remaining studies did not even attempt to demonstrate that each of the components in Noco-Metrazol contributed to the claimed effects as required by 21 CFR 300.50. In addition, they each contained numerous other defects.

The study conducted by Curran and Phelps did not use Nico-Metrazol, but rather Geroniazol (nicotinic acid 150 mg and pentylenetetrazol 300 mg), a product with a different formulation from Nico-Metrazol. Accordingly, the results of this study can not be used to support the effectiveness of Noco-Metrazol. 21 CFR 314.111(a)(5)(ii)(*b*). The study was completely uncontrolled (i.e., all patients receiving the test drug) and unblinded. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*) and (*4*).

The Danto study compared Nico-Metrazol with Vesprin, a product with a different formulation from Nico-Metrazol. 21 CFR 314.111(a)(5)(ii)(*b*). As the investigator recognized, the effectiveness of neither agent has been established. The study was not blinded. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*). Finally, the author concluded that, overall, 90 percent of the patients showed no change on the medications.

The eight studies conducted by Deitric, Erwin, Kris and Gerst, Miller, Phipps and Hogle, Thompson and Proctor (2), and Seidel et al. did not use a control group and were completely unblinded. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*) and (*4*). As such, they constitute little more than anecdotal reports of the experience of the investigators.

The Levy article attempted to compare a number of agents including nicotinic acid, pentylenetetrazol, and a combination similar to Nico-Metrazol (containing nicotinic acid, pentylenetetrazol, and pepsin elixr) with each other and with placebo. Each of the ingredients was administered to each of the patients apparently at the same time. The author stated that some patients were concurrently received other medication, but did not identify these patients. Nor did he identify the phase of the study during which any patient was receiving concomitant medication. Therefore, comparability in concurrent drug usage was not assured. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*ii*). Although it was reported that the combination (nicotinic acid, pentylenetetrazol, and pepsin) produced a "marked improvement" in the behavior of the patients and a "better performance" on psychological tests, these conclusions were neither quantified nor subjected to statistical analysis to determine whether the results were significant or whether the sequence of administration of the drugs affected the outcome. 21 CFR 314.111(a)(5)(ii)(*a*)(*4*) and (*5*). Finally, the author did not report whether nicotinic acid or pentylenetetrazol contributed significantly to the combination. 21 CFR 300.50.

A separate 2½-page report by Dr. Levy was not a study at all, but a testimonial speech stating the author's belief that pentylenetetrazol and nicotinic acid are efficacious.

Knoll also submitted a number of "selected references from (the foregoing) clinical papers detailing the difficulties of psychometric testing in geriatric patients using rating scales and other testing instruments" that were available before 1972. It is clear that this information in no way provides substantial evidence to support the effectiveness of Metrazol. 21 CFR 314.111(a)(5)(ii). This is particularly so in view of Knoll's recognition that such scales are now available and in view of its promise to undertake studies using such instruments. In any event, the difficulty of establishing the effectiveness of a drug does not excuse a manufacturer from the obligation to prove the claims for its products.

E. The Rucker Pharmacal Co., Inc.

Ru-Vert (containing 25 mg pentylenetetrazol, 12.5 mg pheniramine maleate, and 50 mg nicotinic acid) is offered for use "in the symptomatic management of idiopathic vertigo as well as that associated with Meniere's syndrome, arterial hypertension, labyrinthitis, fenestration procedures, and radiation sickness, * * * functional cerebral impairment" as well as "certain conditions of apprehension and mental confusion."

Rucker submitted five studies to support its contention that Ru-Vert is generally recognized as effective in the management of vertigo. Four of these were reviewed above in section III.B. The fifth is reviewed below.

"The Effect of Ru-Vert on the Slow Phase of Nystagmus in Normal Subjects During Rotation," Boos, L. E., A. S. Littell, and J. J. McCutchen, unpublished, undated. Rucker submitted a separate analysis of the study. This was a single-blind, placebo-controlled, crossover study with two objectives: (1) To determine whether a newly developed rotary chair would allow reliable electronystagmograms (ENG's) during rotation, and (2) to determine whether Ru-Vert had an effect on nystagmus produced by such rotation. The subjects were 15 normal college students who were nonsmokers. On the day before the trial, a series of nystagmus tests were conducted while the subjects were being rotated in a chair and when rotation had stopped. After these tests were completed, the subjects were instructed to take eight tablets (Ru-Vert or placebo) on a dosage schedule which would ensure the rotations conducted on the following day (i.e., the day of the trial) would occur at specific time intervals after the last two tablets had been taken. On the trial day subjects were rotated four times. Following a 5-day washout period, regimens were crossed over and the procedure was repeated. Use of alcohol was forbidden for 48 hours before and throughout the test period.

The authors reported that the angular velocity of the slow component of the eye movement was reduced significantly by Ru-Vert.

This study is not adequate and well controlled for a number of reasons. Because only normal persons were studied, there can be no assurance that the subjects selected were suitable for the purposes of the study. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*). See Lynes and Boos study, *supra* at section III.B.b.

The authors have failed to assure comparability between test and control groups for a pertinent variable—the order in which the patients received the drug. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*). While it is not normally necessary to assure patient comparability where, as here, each patient served as his own control, it is necessary to assure that sequence of drug administration did not influence the treatment outcome. No analysis to check for this variable was reported by the authors.

The authors have also failed to assure comparability between test and control groups with respect to use of drugs other than the test drug. *Id.* The report states that the subjects did "not use any drugs on a regular basis." This statement raises more questions than it answers and does not approach compliance with the regulations. What must be shown is that immediately preceding and throughout the test period no patient took any medication which may have confounded the results. No such assurance was given.

Finally, because only a placebo control was used, the study offers no evidence to support the claim that each of the ingredients in Ru-Vert contributes to the claimed effects within the meaning of 21 CFR 300.50.

Rucker submitted a protocol for a study which it stated was "in progress". However, no results from the study have been proferred although more than 4 years have elapsed since it was allegedly initiated. A protocol obviously does not provide a basis upon which experts could conclude that this product is generally recognized as effective. Nor does a protocol create a genuine issue of fact requiring a hearing.

Rucker also submitted three letters and 12 affidavits of physicians who state that the four published studies reviewed above comply with the regulations for adequate and well-

controlled clinical investigations. These physicians further state, on the basis of these studies and upon their personal experience with Ru-Vert, their conclusion that Ru-Vert is generally recognized as effective in the management of vertigo. The affiants do not address the specific criteria of the regulations. They do not state that the studies comply with each of the criteria set forth in the regulations. Nor do they state that they have reviewed the patient report forms upon which the reports are based. Rather, they state, in the most conclusory fashion, that the studies constitute "substantial evidence" which leads them to believe that Ru-Vert is effective in the management of vertigo.

It is clear that these affidavits and letters do not themselves constitute "substantial evidence" of a drug's effectiveness. Such evidence is statutorily defined and may consist only of adequate and well-controlled investigations. 21 U.S.C. 355(d). Nor are these generalized endorsements sufficient to create a genuine issue of fact requiring an evidentiary hearing. A hearing may be obtained only when studies have been submitted which meet the regulatory criteria. Whether a study meets each of the criteria set forth in the regulations can be determined only by a searching analysis of the study in light of each element of the regulations. To require an evidentiary hearing upon the mere submission of conclusory affidavits would defeat the utility of the regulations. One need only compare the conclusory affidavits with the foregoing point-by-point analyses of the studies to confirm this fact.

Rucker did not submit any evidence to show that Ru-Vert was generally recognized as effective for its other indications. Nor did Rucker submit any evidence to show that its other products, Su-Ton and Su-Zol, were generally recognized as effective.

IV. Summary

Five respondents comprising more than 90 companies requested a hearing for some 35 pentylenetetrazol-containing products offered for the widest variety of symptoms and conditions. However, only two of the parties requesting a hearing (the Hyrex respondents and Rucker) submitted evidence—five studies—which they claimed constituted adequate and well-controlled clinical investigations which comply with the regulations. 21 CFR 314.111(a)(5)(ii) and 300.50. These five studies were offered to support the claim that four products (D-Vaso, Mivert, Vertab, and Ru-Vert) are generally recognized as effective in the management of vertigo. No respondent submitted any evidence which it contended met the regulatory criteria for adequate and well-controlled clinical investigations to support the numerous other claims made for these products.

The four studies identified by the Hyrex respondents used a test drug with a formulation different from the formulation used in the products of the Hyrex respondents. Furthermore, each of the four studies has one or more additional defects which render it conclusively inadequate and not controlled in light of the regulations.

Rucker relied on the same four studies and one additional study to support its contention that Ru-Vert is generally recognized as effective in the management of vertigo. The fifth study also fails to meet the regulatory criteria for adequate and well-controlled investigations.

Of the five studies, only one (Lynes and Boos) attempted to show that each ingredient in the combination contributed to the claimed effects of the drug as required by 21 CFR 300.50. This study failed to test the drug in subjects who had vertigo.

In conclusion, it is clear that not one of the pentylenetetrazol-containing products is supported by substantial evidence. Accordingly, none is generally recognized as effective for its labeled uses, and all are therefore "new drugs."

V. Legal Arguments

General Background

In their hearing requests the respondents raised an array of legal arguments. These are discussed below.

The principal contention of each of the respondents is that its product(s) is(are) protected by one or both of the "grandfather clause" exemptions contained in the 1938 act or the 1962 amendments thereto. Accordingly, before discussing the individual claims of each manufacturer, the grandfather provisions and the relevant legal precedents will be reviewed.

The 1938 Grandfather Clause. The Food and Drugs Act of 1906, 34 Stat. 768, prohibited the sale of adulterated and misbranded drugs, but did not require the premaketing approval of drugs sold in interestate commerce. In 1938 however, following the Elixir of Sulfanilamide tragedy, Congress amended the 1906 act, to require administrative preclearance for all new drugs. 52 Stat. 1040. A "new drug" was defined as a drug which was not generally recognized by qualified experts as *safe* for its intended uses. 21 U.S.C. 321(p)(1) (emphasis added). The 1938 act also contained a grandfather clause which exempted certain drugs from having to meet the newly imposed safety requirements. The 1938 grandfather clause provides that a drug will be exempted:

> * * * if at any time prior to the enactment of this Act (June 25, 1938) it was subject to the Food and Drugs Act of June 30, 1906, as amended, and if at such time its labeling contained the same representations concerning the conditions of its use * * *.

21 U.S.C. 321(p)(1).

To qualify for grandfather status under this provision, the manufacturer must prove that (1) the identical drug (2) bearing labeling containing the identical representations concerning its conditions of use (3) was introduced into interstate commerce in the United States (or was manufactured in a Federal territory or the District of Columbia) after June 30, 1906, and before June 25, 1938.

The 1962 Grandfather Clause. The 1962 act, 76 Stat. 781 et seq., amended the definition of "new drug" to include drugs not generally recognized among experts as safe *and effective* for their intended uses. 21 U.S.C. 321 (p)(1) (emphasis added). The 1962 act also contained a grandfather clause which provides:

> (4) In the case of any drug which, on (October 9, 1962) the day immediately preceeding the enactment date, (A) was commercially used or sold in the United States, (B) was not a new drug as defined by section 201(p) of the basic Act as then in force, and (C) was not covered by an effective application under section 505 of that Act, the amendments to section 201(p) made by this Act shall not apply to such drug when intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to such drug on that day.

Section 107(c)(4) of the Drug Amendments of 1962 (note following 21 U.S.C.A. 321).

To qualify for this exemption, the manufacturer must show that on October 9, 1962, (1) the identical product (2) bearing identical labeling (3) was commercially sold in the United States, (4) was generally recognized by qualified experts as safe for its intended uses, and (5) was not covered by an effective new drug application filed under 21 U.S.C. 355.

With respect to the labeling and formulation requirements, the courts have uniformly held that only those drugs whose labeling and composition have "remained unchanged" since October 9, 1962, are entitled to the exemption. If *any* change in representations for conditions of use in the labeling or *any* change in composition has occurred since October

9, 1962, the product is no longer entitled to the exemption. *USV Pharmaceutical Corp.* v. *Weinberger*, 412 U.S. 655, 633 (1973); *Rutherford* v. *United States*, 616 F.2d 455, 457 (10th Cir.), *cert. denied*, 101 S.Ct. 336 (1980); *SmithKline Corp.* v. *FDA*, 587 F.2d 1107, 1115 n.16 (D.C. Cir. 1978); *United States* v. *1,048,000 Capsules * * * Afrodex*, 347 F. Supp. 768, 770 (S.D. Tex. 1972), *aff'd.* 494 F.2d 1158 (5th Cir. 1974); *Tyler Pharmacal Distributors, Inc.* v. *H.E.W.*, 408 F.2d 95, 99 (7th Cir. 1960); *United States* v. *Allan Drug Corp.*, 357 F.2d 713, 718–719 (10th Cir.), *cert. denied*, 385 U.S. 899 (1966). See also 21 CFR 310.3(h).

As several respondents concede (Rucker and Ascher), the 1962 and 1938 grandfather clauses must be interpreted in the same fashion. While the language of the two exempting clauses is slightly different, the difference is without legal significance. Enactment of the 1938 statute demonstrates an unmistakable congressional intent to ensure that the public receives only drugs which are safe. Enactment of the 1962 amendments demonstrates an equally strong congressional intention to ensure that the public receives therapeutically efficacious drugs. Balanced, meaningful implementation of the act requires equally narrow interpretations of their respective exempting provisions. As one circuit court has stated,

> While the exempting language of the basic Act and the Amendment is verbally different, they are undoubtedly intended to mean the same thing. *United States* v. *Allan Drug Corp., supra*, 357 F.2d at 718.

In addition to unchanged composition and labeling, a manufacturer must also show that at no time between 1938 and 1962 was its product "covered" by an effective new drug application (NDA). Stated affirmatively, the provision exempts only those "drugs that, as a generic class, were never subject to new drug regulation." *Weinberger* v. *Hynson, Westcott & Dunning, Inc., supra*, 412 U.S. at 634 n.26. If at any time prior to 1962, an NDA was effective for a particular drug "then all drugs of similar composition, known as 'me-too' drugs, whether or not * * * expressly covered by an effective NDA" are "covered" by that NDA for purposes of the grandfather provision. *Weinberger* v. *Bentex Pharmaceuticals, Inc., supra*, 412 U.S. at 647; *USV Pharmaceutical Corp.* v. *Weinberger, supra*, 412 U.S. at 667.

Two final caveats. First, it is the manufacturer's burden to "prove" every essential fact necessary for invocation of the exemption. *Javierre* v. *Altagracia*, 217 U.S. 502, 507–08 (1910); *United States* v. *An Article of Drug * * * Bentex Ulcerine*, 469 F.2d 875, 878 (5th Cir. 1972), *cert. denied*, 412 U.S. 938 (1973); *United States* v. *1,048,000 Capsules, More or Less, supra*, 347 F. Supp. at 770.

In this regard, the notice of opportunity for hearing initiating this proceeding explicitly stated that any manufacturer claiming grandfather status must support its "contention with the data and in the format as described in 21 CFR 314.200 (d) and (e)." 41 FR 4625, 4626. That regulation, in turn, provides that failure to submit "evidence of past and present quantitative formulas, labeling and evidence of marketing on which reliance is made for such contention * * * shall constitute a waiver of any such contention." 21 CFR 314.200(e)(2).

Second, because application of either grandfather clause will result in the marketing of drugs whose effectiveness has not been proven, "we must construe it strictly against one who invokes it." *United States*, v. *Allan Drug Corp., supra*, 357 F.2d at 718; *Rutherford* v. *United States, supra*, 616 F.2d at 457; *Durovic* v. *Richardson*, 479 F.2d 242, 250 n.6 (7th Cir.) *cert. denied*, 414 U.S. 944 (1973); *United States* v. *An Article of Drug * * * Bentex Ulcerine, supra*, 469 F.2d at 878.

The respondents' individual arguments are as follows:

A. The National Ethical Pharmaceutical Association

These respondents did not raise any legal arguments.

B. The Hyrex Respondents

The Hyrex respondents contend that they need not show that their products are generally recognized as effective because they are exempted by the 1962 and the 1938 grandfather clauses. As shown below, these products fail to meet virtually every requirement necessary to obtain the exemption.

Each of the products listed below fails to meet the first requirement of the 1962 grandfather clause because it was not being commercially used on or before October 9, 1962. The submission of the Hyrex respondents either fails to show that the following products were marketed on or before October 9, 1962 (21 CFR 314.200(e)), or affirmatively shows that they were marketed on the following dates after October 9, 1962. (The numbers correspond to those used in section I.B. above for the same products.):

1. *Tinaple Elixir* (earliest labeling dated 1970).

3. *Cenalene-M Tablets and Elixir* (earliest labeling dated April 1966).

4. *Pentylenetetrazol Tablets, Capsules, and Elixir* (only proposed labeling submitted; not yet marketed).

5. *Pentylenetetrazol and Niacin Tablets, Capsules, and Elixir* (draft labeling only; not yet marketed).

6. *Vital Tablets and Elixir* (statement by respondents that Elixir was first marketed in 1963; Tablets first marketed in 1975).

7. *Vasostim Capsules* (documentation submitted by respondent shows first marketed in present formulation sometime after 1964).

8. *D-Vaso Capsules* (statement that product first marketed in 1970 in present formulation).

9. *Senilezol Tablets (Long acting)* (no documentation to establish marketing before October 9, 1962).

11. *Pentylenetetrazol with Nicotinic Acid (elixir) a.k.a. Lixalert, Pentylenetetrazol with Nicotinic Acid, Vastim, Napt Elixir, Penalate Elixir, and Amid Nisine* (only documentation provided was a master formula dated November 1963).

14. *Penalate Capsules and Elixir* (statement by respondent that products were first marketed in 1964).

15. *Aminobrain-PT Elixir* (earliest labeling dated December 1969).

16. *Mivert Capsules* (labeling undated; no other data submitted).

19. *Panzol Forte* (labeling undated).

20. *T-Lex Elixir* (labeling undated; no other data submitted).

22. *Alert Elixir* (earliest labeling dated December 1975).

23. *Tylene Elixir and Pentinic Elixir* (earliest labeling dated June 1974 and January 1969 respectively).

23. *Vazole Elixir* (earliest labeling dated December 1974).

23. *Lemotonic Elixir* (earliest labeling dated November 1971).

23–24. *Tega-zol Elixir and Capsules; Penta-Nic Elixir 24* (earliest labeling dated September 1967).

25. *Kenile Elixir* (earliest labeling dated November 1965).

26. *Benizol Plus (elixir)* (earliest labeling dated September 1967).

27. *Salutol-Plus Elixir* (earliest labeling dated June 1972).

29. *Vertab Capsules* (earliest labeling dated July 1975).

The products listed below fail to meet the labeling requirements of the 1962 grandfather exemption because the submission of the Hyrex respondents shows affirmatively that the labeling has changed since October 9, 1962, or the submission lacks the documentation necessary to demonstrate that the labeling has "remained unchanged" since October 9, 1962. 21 CFR 314.200(e)(2).

2. *Cenalene Elixir and Tablets.* The labeling was revised in 1964 to include precautions against use in patients with

low convulsive threshold or heart disease and warnings with respect to possible occurrences of bradycardia, splanchnic vasodilation, conduction disturbances, falling in blood pressure, and toxic symptoms produced by central nervous system stimulants. In 1977, the dosage schedule was modified to allow reduced dosage after 1 month's therapy. "Physicians' Desk Reference," Medical Economics Co., Oradell, NJ ("PDR"), p. 703, 1977.

6. *Vital Tablets and Elixir.* The respondents stated that the elixir product was first marketed in 1963; however, the earliest labeling submitted is dated 1970. Similarly, the respondent stated that the tablet product was first marketed in November 1975; however, labeling submitted by another company for this product shows that it was distributed as early as December 1974. The 1974 labeling indicates that it is a revised descendent of still earlier labeling, yet no other labeling was submitted. Accordingly, the contention that the labeling for these products has remained unchanged has not been properly documented.

7. *Vasostim Capsules (formerly Vasonicol).* After 1963, labeling claims for lowering cholesterol were deleted, the dosage schedule was changed (from one tablet every 12 hours to one to two tablets one-half hour before meals and at bedtime), and claims for use in auditory and visual defects were added.

9. *Senilezol Tablets (Long Acting and Plain) and Elixir.* Before 1962, the labeling for these products made no claims; only the ingredients and dosage were indicated. After 1962, the product was offered for a number of explicit uses such as circulatory and respiratory stimulant and a cerebral vasodilator in circulatory deficits. In addition, qualifications about the products' usefulness were also added, e.g., that they have no definite cardiac effect and no constrictor action on blood vessels, and that "the only scientifically proven therapeutic use for nicotinic acid is in the treatment and prevention of pellegra." In 1967, a warning was added to the labeling of the Elixir product, "KEEP OUT OF THE REACH OF CHILDREN."

11. *Pentylenetetrazol with Nicotinic Acid (elixir). a.k.a. Lixalert, Pentylenetetrazol with Nicotinic Acid, Vastim, Napt Elixir, Penalate Elixir, and Amid Nisine.* The respondent submitted several examples of labeling which it claimed were in use "in 1962," but did not state whether the labeling was in use before or after October 9, 1962, or whether the labeling has changed since October 9, 1962. The respondent also failed to submit any other copies of labeling to show that there have been no changes.

12. *Nicozol Capsules and Elixir.* In 1962, these products were offered for use in "cerebral arteriosclerosis" to help "arrest mental and emotional decline typical of the aging process," and to benefit "aging patients with memory failure, mental confusion, depression and associated symptoms of senescence." By 1974, however, the labeling had deleted each of these specific claims and the products were offered as central nervous system circulatory stimulants to combat fatigue and counteract the depression produced by drug overdose. The 1974 labeling also added precautions against use in patients with low convulsive thresholds, cardiovascular and pulmonary disease, spinal injuries, and osteoporosis.

13. *Nialex Tablets.* In 1961, this product was offered for, among other things, respiratory and circulatory stimulation, surgical emergencies, acute barbiturate poisoning, acute alcoholism, and a "revitalizing" effect on the general behavior of elderly people. Claims were also made that one of the ingredients in the product, nicotinic acid, was essential for the normal functioning of all cells and that hespiridin complex, another ingredient, would improve capillary strength. In 1969, the product was offered only as a "mild" stimulant and the other claims were deleted.

14. *Penalate Capsules and Elixir.* No labeling for the capsule form was identified as being in use before October 9, 1962. In addition, the respondent did not even allege, let alone document, that its labeling had not changed since October 9, 1962; only "current" labeling was submitted. The current labeling for the elixir added the precaution, "Use only cautiously in patients with low convulsive threshold or with focal brain lesion."

15. *Aminobrain PT Elixir.* The only labeling submitted was dated December 1969. The respondent did not argue or document that the labeling has remained unchanged since that date or since October 9, 1962.

16. *Mivert Capsules.* Only undated labeling was submitted. Respondent did not argue, let alone document, that labeling has remained unchanged since Ocober 9, 1962.

17. *Senilex Tablets.* Before October 9, 1962, the product was offered for use in "senile" mental deterioration, for "mild" memory defects, to overcome anoxia, to promote well-being, and to combat depression. In 1973, the product was offered for, among other things, mental confusion, functional memory defects, irritability, antisocial attitudes, and dizzy spells. No mention was made of "senile" mental confusion. Still later labeling, dated February 1975, recommends the product solely "to enhance mental and physical activity of elderly patients." In addition, the 1975 labeling recommends a dosage of "two tablets three *or four* times daily * * *" (emphasis added) while the pre-1962 labeling recommends "2 tablets 3 times daily." Finally, the 1975 labeling added a number of contraindications and adverse reactions which were not present in the 1962 labeling.

18. *Trela Tablets.* In October 1962, the product was offered "in gerontotherapy to minimize the problems of senescence and in psychotherapy to improve mental functioning and behavior patterns when mental and sensory faculties have begun to fade." This labeling also recommended a dosage of "one or two tablets * * * with or after meals three times daily." Recent labeling, dated February 1975, however, offers this product solely "to enhance mental and physical activity of elderly patients" under a dosage of "two tablets three *or four* times daily" (emphasis added). Also, the 1975 labeling has added a number of contraindications and adverse reactions which were not present in the earlier labeling.

19. *Penzol Forte (elixir).* The respondent did not identify any labeling that was in use before October 9, 1962. Nor did the respondent allege or document that the labeling had remained unchanged since October 9, 1962.

20–27. *T–Lex Elixir and Tablets, Nialene Elixir and Tablets, Alert Elixir, Tylene (elixir), Tegazol Elixir, Pentinic Elixir, Vazole Elixir, Salutil–Plus Elixir, Benizol Plus (elixir), Kenile Elixir, and Lemotonic (elixir).* The respondent did not identify any lableing which was in use on October 9, 1962. Only one example of undated labeling was identified for each of the products and no claim was made that this labeling was the initial labeling for each product or that the labeling has remained unchanged since the date of the labeling which was submitted.

23. *Benizol (elixir).* Comparison of November 1970 labeling with labeling claimed to be in use before October 9, 1962, shows a number of changes. The later labeling has added claims of well-being, irritability, and depression, as well as contraindications against use in patients with permanent cerebral damage and focal abnormalities. In addition, the list of side effects was expanded to include pruritus and gastrointestinal irritation.

28. *Gevizol Tablets and Elixir.* Labeling in use on October 9, 1962,

offers the product for a host of indications, including depression, emotional instability, anxiety, arteriosclerotic psychosis, prevention of behavior changes, increasing the transmission of nerve impulses, and in alleviating vertigo. The recommended dosage in this labeling was "one tablet or teaspoonful three times a day or as directed by the physician." In 1973, the product was offered for use "in the aged and debilitated with symptoms of mental confusion, apathy, irritability, forgetfulness and antisocial attitudes." The 1973 labeling changed the dosage to "* * * 2 tablets three times daily" (tablets) and "1 to 2 teaspoonfuls 3 times daily" (elixir). A number of new contraindications and side effects were also added to the newer labeling.

29. *Vertab (tablets).* The respondent did not identify any labeling which was in use on October 9, 1962. Only one example of labeling dated 1975 was identified for the product and no claim was made that this labeling was the initial labeling for the product or that the labeling has remained unchanged since the date of the labeling which was submitted.

The products listed below are not entitled to grandfather exemption because their formulations have changed since October 9, 1962. The submission of the Hyrex respondents either shows affirmatively that there have been formulation changes since October 9, 1962, or the submission lacks the proper documentation necessary to show that there have been no such changes since October 9, 1962. 21 CFR 314.200(e)(2).

1. *Tinaplex Elixir.* The respondent did not submit any documentation of the complete formulation. Only labeling was submitted. In fact, the respondent did not even claim that the formulation had remained unchanged since October 9, 1962.

2. *Cenalene Tablets and Elixir.* In 1965, the tablet base was changed by adding a sugar coating. In 1973, FD&C Violet No. 1 was deleted. The elixir formula was revised in June 1972 to delete FD&C Red No. 2 dye and in November 1973 to delete FD&C Violet No. 1 dye.

3. *Cenalene M Tablets and Elixir.* The respondent did not submit any documentation of the complete formulations. Only labeling for one product was submitted. Nor was a claim made that the formulation had remained unchanged since October 9, 1962.

6. *Vital Tablets and Elixir.* The respondent did not submit any documentation of the complete formulations. Only labeling was submitted. Moreover, no claim was made that the formulations had remained unchanged since October 9, 1962.

7. *Vasostim (formerly Vasonicol).* In 1962, this product contained 300 mg pentylenetetrazol and 150 mg niacin in a time-release capsule. In 1965, the formulation was changed to 100 mg of each ingredient.

8. *D-Vaso Capsules (formerly Vasonicol and Vasostim).* In 1970, the amount of each of the primary active ingredients (in Vasostim) was reduced to 50 mg and 25 mg dimenhydrinate was added.

9. *Senilezol Tablets and Elixir.* Only one formula for each product was submitted.

10. *Halizol Tablets.* No formulation data were submitted to support the contention that there have not been any changes in formulation since October 9, 1962.

11. *Pentylenetetrazol with Nicotinic Acid (elixir) a.k.a. Lixalert, Pentylenetetrazol with Nicotinic Acid, Vastim, Napt Elixir, Penalate Elixir, and Amid Nisine.* The sponsor submitted only one formulation for the products dated November 1963. Moreover, no claim was made that this formulation was the same that was used before October 9, 1962, or that the formulation has remained unchanged since that date.

12. *Nicozol Capsules and Elixir.* The respondent failed to submit any data on formulation.

13. *Nialex Tablets.* In 1969, one of the active ingredients, hespiridin complex, was deleted from the formulation. The respondent also stated that other lubricants and inert ingredients were changed since the product was first marketed in 1957.

14. *Penalate Capsules and Elixir.* The respondent stated that in 1967 the tablet dosage form was changed to capsules and that this change was significant. Further, no formulation records were submitted for either dosage form.

15. *Aminobrain-PT Elixir.* No formulation data were submitted.

16. *Mivert Capsules.* No formulation records were submitted.

17. *Senilex Tablets.* The only formulation data submitted was a handwritten batch record, apparently dated March 1955. No later formulation data were submitted and no statement was made that the formulation has remained unchanged since October 9, 1962.

18. *Trela Tablets.* In 1966, lactose was substituted for talc. In 1970, two of the active ingredients, sodium glutamate and niacin, were deleted. In October 1970, the pentylenetetrazol was replaced by niacin. Finally, in 1974, pentylenetetrazol was added to the product.

19. *Panzol Forte (elixir).* No formulation data were submitted.

20–27. *T-Lex Tablets and Elixir, Nialene Capsules and Elixir, Alert Elixir, Tylene (elixir), Tegazol Elixir, Pentinic Elixir, Benizol (elixir), Vazole Elixir, Salutol-Plus Elixir, Benizol Plus (elixir), Kenile Elixir, and Lemotonic (elixir).* No formulation data were submitted for these products.

28. *Gevizol Tablets and Elixir.* No formulation records were submitted for either product. In addition, the respondent stated that the flavoring of the elixir was changed but did not specify when the change occurred.

29. *Vertab Capsules.* No formulation records were submitted.

The Hyrex respondents next contend that they have met the requirements of the second clause of the 1962 grandfather provision because on October 9, 1962, their pentylenetetrazol-containing products were "within a generic class of drugs" which was generally recognized as safe. The Hyrex respondents have misconstrued the law. In order for a manufacturer to meet this element of the grandfather clause, it must be shown that the particular product for which the exemption is sought was generally recognized by qualified experts as safe. *Premo Pharmaceutical Laboratories, Inc.* v. *United States,* 629 F.2d 795, 799 (2d Cir. 1980). It is not sufficient to show that the generic class was generally recognized as safe.

Several examples should suffice to illustrate the fallacy of the Hyrex respondents' argument. Thus, merely because a tablet dosage form of a drug may be generally recognized as safe, it does not follow that the injectable form of the same drug will be generally recognized as safe. Similarly, two products within the same generic class may have different amounts of active ingredients. The product with the lesser amount of drug may be generally recognized as safe while the one with the higher amount may not be. Conversely, if the product is offered for a life-threatening condition, the higher dosage may be generally recognized as safe although the product with the lesser amount may not be so recognized.

The Hyrex respondents have not contended that any particular product which they market was generally recognized as safe on October 9, 1962. It is clear therefore that all of the products fail to satisfy this requirement of the grandfather clause.

The Hyrex respondents next argue that their pentylenetetrazol products

were not "covered" by the NDA's (for Nicozol with Reserpine Tablets and Geroniazol Injection) identified in the May 20, 1970 notice of opportunity for hearing (35 FR 7749). It is now settled beyond dispute that withdrawal of any NDA approval covers all identical, similar, and related products, i.e., "me-too" drugs. *Weinberger* v. *Hynson, Westcott & Dunning, Inc., supra,* 412 U.S. at 625; *USV Pharmaceutical Corp.* v. *Weinberger, supra; Weinberger* v. *Bentex Pharmaceuticals, Inc., supra,* 412 U.S. at 653. The Hyrex respondents do not argue that their products are not identical, similar, or related to the NDA'd products identified in the notice of opportunity for hearing.

The Hyrex respondents do contend, however, that the regulations upon which FDA relies to extend the applicability of such DESI notices to "me-too" products (21 CFR 310.6 and 314.200(e)(3)) are legally invalid. For example, they argue that neither the notices of opportunity for hearing nor the subsequent notices withdrawing approval of the NDA's (35 FR 14412) apprised them of the Commissioner's rationale for considering their pentylenetetrazol-containing products to be "covered" by the NDA's for Geroniazol and Nicozol with Reserpine.

This argument overlooks the fact that the rationale for determining whether a product is "covered" by an NDA is set forth at 21 CFR 310.6, *Applicability of Drug Efficacy Study Implementation notices and notices of opportunity for hearing to identical, related and similar drug products.* The application of that rationale to the Hyrex respondents' products is self-evident.

Like the NDA'd products identified in the Federal Register notices (i.e., Geroniazol and Nicozol with Reserpine), each of the products of the Hyrex respondents contains pentylenetetrazol as its principal active ingredient. Like the NDA'd products, each of the products of the Hyrex respondents is an analeptic agent (i.e., central nervous system stimulant). Finally, like the NDA'd products identified in the Federal Register, virtually all of the products of the Hyrex respondents are labeled for use in elderly patients for treatment of conditions associated with senility. *See* 21 CFR 310.6, which defines a "me-too" drug as one which is "related in chemical structure or known pharmacological properties" including "a combination drug product containing an identical, related or similar drug * * *." 21 CFR 310.6(b).

Indeed, when the Hyrex respondents brought their case to the Supreme Court to challenge the FDA's jurisdiction to declare that their products were "new drugs," the Court found "that all of the parties to this suit market "me-too" drugs." *Weinberger* v. *Bentex Pharmaceuticals, Inc., supra,* 412 U.S. at 648. Under these circumstances, these manufacturers had clear notice of the Commissioner's rationale for concluding that their products are "me-too's" covered by the NDA's for Geroniazol and Nicozol with Reserpine.

Indeed, the regulation affords the manufacturer an opportunity to request an opinion from FDA whether a particular notice of opportunity for hearing applies to its product. 21 CFR 310.6(b). That the Hyrex respondents never availed themselves of that opportunity undercuts their argument completely. In short, any lack of actual notice is self-inflicted.

The Hyrex respondents next argue that the generic approach of 21 CFR 310.6 and 314.200(e)(3) is "inconsistent with" and "unique and foreign to" the particular product approach of sections 201(p) and 505 of the act and its grandfather provisions. This same argument has been squarely rejected by the Supreme Court.

> It is true that an NDA covers a particular product or products that it names and that section 505 when applied to an NDA is personal to the manufacturer who files it. Section 505, in other words, addresses itself to drugs as individual products. But we agree with the Government that "any drug" when used in section 107(c)(4) is used in the generic sense, which means that the "me-too's," whether products of the same or of different manufacturers "covered" by an "effective" NDA are not exempt from the efficacy requirements of section 201(p). If that were not true, then, as the Court of Appeals said, the "me-too's" of one manufacturer covered by an NDA of another manufacturer would be exempt from regulation, while the "me-too's" of the manufacturer holding the NDA could be regulated. That seems to be a reading of section 107(c)(4) that is discriminatory and needlessly so.
>
> *USV Pharmaceutical Corp.* v. *Weinberger, supra,* 412 U.S. at 664.

Indeed, in *Weinberger* v. *Hynson, Westcott & Dunning, Inc., supra,* the Supreme Court expressly approved FDA's procedures under which a withdrawal of any NDA approval covers all "me-too" drugs. 412 U.S. at 625.

The Hyrex respondents offer several hypothetical illustrations in support of their argument that the generic approach is inconsistent with the act. They first argue that a literal reading of 21 CFR 310.6 would render superfluous the grandfather provisions' requirement that labeling remain the same; they reason that if a product were "covered" by an NDA, its compliance with the grandfather provisions' labeling criteria would be irrelevant. It is true that failure to meet any one of the criteria of the grandfather provisions renders compliance with the remaining criteria moot. It does not follow, however, that the labeling requirement in the grandfather provisions is surplusage; a product might *not* be "covered" by an NDA, in which case compliance with the labeling requirement would be critical.

The Hyrex respondents next argue that a literal interpretation of 21 CFR 310.6 hypothetically would fail to protect over-the-counter (OTC) products, including aspirin, if an NDA were subsequently filed for a prescription product which included one or more of the ingredients in the OTC product. This argument ignores the fact that the regulation specifically exempts identical, similar, or related OTC drugs. 21 CFR 310.6(f).

The Hyrex respondents next contend that the foregoing "inconsistencies" can be avoided by narrowly construing 21 CFR 310.6 so that only products which are chemically and pharmacologically similar to the NDA'd product in the respects which made the NDA'd product a "new drug" would be "covered" by that NDA for purposes of the 1962 grandfather clause. As a corollary, the Hyrex respondents allege that they are not privy to FDA's reasons for requiring NDA's for Geroniazol and Nicozol with Reserpine and that they should be entitled to review FDA files to discover those reasons before further responding to the notice of opportunity for hearing.

This contention, too, is without merit. First, as noted above, the Hyrex respondents have not pointed to any "inconsistencies" in 21 CFR 310.6. Moreover, neither the Congress, when it enacted the 1962 grandfather provision, nor the Supreme Court, when it construed that provision suggested that the exempting clause should be so construed as to require a probing of the mental processes of the numerous FDA employees who have helped implement the act since 1938. In fact, the Supreme Court specifically eschewed any interpretation of the grandfather clause that would result in subjecting drugs with NDA's to the new efficacy requirements while allowing the "me-too" drugs without NDA's to escape those requirements.

> That resolution * * * would largely leave pre-1962 drugs of unproved effectiveness untouched by the 1962 amendments and perpetuate a competitive contest in the marketing of ineffective pre-1962 drugs.
>
> *USV Pharmaceutical Corp.* v. *Weinberger, supra,* 412 U.S. at 665.

In short, FDA's reasons for requiring that a particular product have an NDA are

legally irrelevant in determining the scope of the grandfather clause.

The Hyrex respondents also contend that without a hearing there will be "no evidentiary basis" upon which to base a finding that their products were "covered" by the products identified in the September 12, 1970 notice. As noted above, there is an ample evidentiary basis in the record upon which to base such a finding. It is undisputed that the NDA'd products and the products of the Hyrex respondents contain pentylenetetrazol as their principal active ingredient, that the Hyrex respondents' products and the NDA'd products are promoted for their analeptic properties, and that the specific labeling indications for both sets of products are virtually the same. Inasmuch as "no amount of examination and cross-examination can change" these facts, no hearing is necessary. *Upjohn Co.* v. *Finch*, 422 F.2d 944, 955 (6th Cir. 1970).

The Hyrex respondents also contend that a hearing is required because the Commissioner has not made a *prima facie* showing that experts would conclude that their products are "covered" by the NDA'd products identified in the Federal Register notices. This argument is without merit. The regulations, 21 CFR 310.6 and 314.200(e)(2), constitute the agency's *prima facie* showing with respect to this conclusion, *cf. Cooper Laboratories, Inc.* v. *Commissioner, FDA, supra*, 501 F.2d at 780 n. 22. Where, as here, the Hyrex respondents have not presented any evidence or even argued that experts would not so conclude, there can be no genuine dispute with respect to this issue.

The Hyrex respondents next argue that the protection of the 1962 grandfather clause extends to products of manufacturers who did not themselves market an exempt drug on October 9, 1962, but who presently market a product "intended solely for use under conditions prescribed * * * in labeling for such drug on that day." To read the provision otherwise, they contend, would be needlessly discriminatory. The Commissioner disagrees.

The Supreme Court has held that the exemption "applies only to a *product* that, on the day before the 1962 amendments became effective, (A) was used or sold commercially in the United States, * * *" *USV Pharmaceutical Corp.* v. *Weinberger, supra*, 412 U.S. at 663 (emphasis added). In short, the protection of the grandfather clause extends, if at all, only to those particular products that were on the market on the relevant date. A product marketed by another manufacturer after that date—even if virtually identical to the grandfathered product—would not be entitled to the exemption. Nor is such an interpretation "needlessly" discriminatory; it is the only way to discourage a proliferation of ineffective pre-1962 drugs.

To demonstrate that some of their products marketed for the first time after October 9, 1962, may contain the same labeling as products marketed before that date, the Hyrex respondents have asked the Commissioner to supplement the record with all labeling for pentylenetetrazol-containing products in the FDA's files which was in use on October 9, 1962. The Hyrex respondents do not identify the products that they believe may have identical labeling. Nor do they explain why their files do not contain the labeling which they purportedly emulated for their own products.

The request is denied because it is based on an incorrect legal premise. Inasmuch as only products which were on the market on October 9, 1962, are entitled to the exemption, any similarity between today's products and grandfathered products is irrelevant. Moreover, the regulations specificially state:

> It is the responsibility of every person who manufactures or distributes a drug product in reliance upon a "grandfather" provision(s) of the act to maintain in his files, organized as required by this paragraph, the data and information necessary fully to document and support such status.
>
> 21 CFR 314.200(e)(5).

Failure of a manufacturer to fulfill this obligation constitutes a waiver of any claim to grandfather status. 21 CFR 314.200(e)(2).

The Hyrex respondents contend that their products are grandfathered under the 1938 act because their labeling contains the "same representations" as Metrazol, a pentylenetetrazol-containing product which was marketed before June 25, 1938. The Hyrex respondents do not contend that any of their products were marketed before June 25, 1938. As a matter of law, therefore, they are not entitled to grandfather status under the 1938 act. *USV Pharmaceutical Corp.* v. *Weinberger, supra*, 412 U.S. at 663.

Moreover, as a factual matter, the Hyrex respondents only have cited one product, Cenalene M, which they believe contains the same labeling as the Metrazol product. Comparison of the Cenalene M labeling with the Metrazol labeling shows that the two are not the same. On April 11, 1937, Metrazol was offered

> * * * In circulatory collapse and shock as a restorative; in respiratory depression and deep anesthesia; to antidote morphine and barbiturate poisoning; in asphyzia neonatorum, to stimulate both circulation and respiration.

The Cenalene M labeling, however, offers the product

> * * * In older patients with mental confusion, apathy and memory defects as an analeptic agent.

There are other differences in the labeling. For example, the Cenalene M labeling contains a number of precautions and warnings which were not present on the earlier Metrazol labeling. Even the dosage for the two products is different. In short, even if the argument were legally valid, it lacks factual support.

Moreover, the Hyrex respondents did not submit any formulation records for Cenalene M products to show that they are formulated in precisely the same manner as Metrazol. 21 CFR 314.200(e)(2). Indeed, even if the formulas were the same, it does not follow that two products produced with identical ingredients will be therapeutically identical. Different methods of compounding used by two manufacturers may result in products with dissimilar physical characteristics that, consequently, may perform differently when administered to a patient.

In short, it is clear that none of the products of the Hyrex respondents are grandfathered under the 1962 provisions.

Three of the Hyrex respondents (Dunhall Pharmaceuticals, Inc., Misemer Pharmaceuticals, Inc., and UAD Laboratories, Inc.) contend that their products are generally recognized as effective in the management of vertigo. These manufacturers relied upon the studies submitted by Rucker which were reviewed above. Inasmuch as these studies do not constitute adequate and well-controlled clinical investigations and only such investigations warrant a hearing, it is clear that they have not justified a request for a hearing on this ground. *Weinberger* v. *Hynson, Westcott & Dunning, Inc., supra*, 412 U.S. at 621; *Cooper Laboratories, Inc.* v. *Commissioner, FDA, supra*.

The Hyrex respondents argue that section 505 of the act and the summary judgment regulation, 21 CFR 314.200, invoked by the FDA are inapplicable to this proceeding because those provisions govern only proceedings in which the FDA seeks to refuse or withdraw approval of an NDA and none of the respondents in this proceeding have or seek and NDA. This argument is without merit and was explicitly

rejected by the Supreme Court in *Weinberger* v. *Hynson, Westcott & Dunning, Inc., supra,* 412 U.S. at 627.

Moreover, as the January 30, 1976 notice of opportunity for hearing (41 FR 4625) makes clear, this is merely the final stage of FDA's efforts to remove all pentylenetetrazol-containing drugs from the marketplace. On May 20, 1970, the agency issued a notice of opportunity for a hearing, "Pentylenetetrazol-Containing Drugs," to NDA holders and all other interested persons. (35 FR 7749). That notice warned that withdrawal of approval of the listed NDA's "will cause any drug for human use containing the same active substances to be a new drug for which an approved new drug application is not in effect." The Hyrex respondents voluntarily elected not to participate in that proceeding and decided instead to seek a judicial determination that their products were not new drugs and were exempt from the proceeding. While the Hyrex respondents were seeking judicial vindication of their claim, the agency continued to go forward with that proceeding. As noted above, the Supreme Court ultimately held that FDA did have the power to decide whether the pentylenetetrazol-containing products were new drugs and that there was no "jurisdictional line under the Act" to be drawn between FDA action pursuant to sections 505(d) and (e) and an FDA determination that a product was a new drug. *Weinberger* v. *Bentex Pharmaceuticals, Inc., supra,* 412 U.S. at 652. This is precisely the line which the Hyrex respondents seek to draw here. The Hyrex respondents have already made the argument that section 505 and the procedural regulations are inapplicable here; this is the same proceeding from which the Hyrex respondents sought, unsuccessfully, to excuse themselves 10 years ago. The Supreme Court rejected the Hyrex respondent's argument and that issue, at least, is settled.

The Hyrex respondents also argue that without notice and comment the procedural regulations governing action on specific new drug applications, 21 CFR 314.200, may not be made applicable to this "new type" of proceeding in which none of the respondents have or seek an NDA. The argument is factually incorrect. In the Federal Register of February 10, 1972 (37 FR 2969), a notice was published proposing to delineate the applicability of DESI notices and notices of opportunity for hearing to identical, similar, and related drug products. Comments were evaluated and the final order was published in the Federal Register of October 31, 1972 (37 FR 23185). Moreover, as noted above, this proceeding is not "different" from that initiated by the May 20, 1970 notice of opportunity for hearing.

The Hyrex respondents also argue that even if the hearing regulations, 21 CFR 314.200 (d) and (e), were applicable to this proceeding, they cannot be required to defend against summary judgment until the Commissioner has presented a *prima facie* case in support of the proposed order. The Hyrex respondents concede that the Supreme Court in *Weinberger* v. *Hynson, Westcott & Dunning, Inc., supra,* held that the burden is always on the "applicant" to demonstrate entitlement to a hearing by coming forward with substantial evidence. However, the Hyrex respondents contend that *Hynson* is inapplicable in this proceeding because they are not applicants, but "respondents."

The Commissioner concludes that any distinction between a respondent and an applicant in this context is without significance. The law plainly requires that an applicant for a license to market a drug has the burden of coming forward with evidence of effectiveness of its products. As a matter of public policy, those who seek to *avoid* the premarketing approval requirements of the act may not be placed in a more advantageous position than their competitors who comply with the law and file NDA's containing such evidence. Yet adoption of the Hyrex respondents' argument would have precisely this effect. In fact, inasmuch as the Hyrex respondents can point only to their unsuccessful lawsuit in the *Bentex* case as the sole reason that the procedural regulations should not be applied to them, their argument is particularly unpersuasive.

The Hyrex respondents further argue that the notice of opportunity for hearing issued in this proceeding is no different from the one which was ruled invalid by the Court in *USV Pharmaceutical Corp.* v. *Secretary of Health, Educ. & Welfare,* 466 F. 2d 455 (D.C. Cir. 1972). The Commissioner disagrees.

In that case, the notice of opportunity for hearing was issued on July 10, 1968, 2 years *before* the Commissioner promulgated the regulations which define substantial evidence of effectiveness. The Commissioner advised the manufacturer that it had only 30 days to submit evidence which complied with the new regulations. The manufacturer's request for a stay to obtain the evidence was denied by the Commissioner and the denial was followed on the next day by a Federal Register notice withdrawing approval of petitioner's NDA's.

The Court found this procedure fundamentally unsound. 466 F. 2d at 460. The Court held that the Commissioner had an obligation to present a *prima facie* case *before* calling upon the petitioner to respond to the notice of opportunity for hearing and that the Commissioner's refusal to provide additional time to meet the new regulatory requirements for substantial evidence was arbitrary and capricious. *Id.* at 461–62.

Here, unlike the situation in *USV Pharmaceutical Corp.*, the regulations defining substantial evidence were published 6 years before the publication of the notice of opportunity for hearing. Further, the notice of opportunity for hearing advised interested parties that to date no adequate and well-controlled investigations had been submitted to support the effectiveness of pentylenetetrazol-containing drugs. (41 FR 4625). It is now settled that this procedure is perfectly permissible. As the Supreme Court stated:

> The standard of "well-controlled investigations" particularized by the regulations is a protective measure designed to ferret out those drugs for which there is no affirmative, reliable evidence of effectiveness. *The drug manufacturers have full and precise notice of the evidence they must present* to sustain their NDA's, and under these circumstances we find FDA hearing regulations unexceptionable on any statutory or constitutional ground.

Weinberger v. *Hynson, Westcott & Dunning, Inc., supra,* 412 U.S. at 622; *see also SmithKline Corp.*, v. *FDA, supra,* 587 F. 2d at 1116.

The Hyrex respondents also contend that the notice of opportunity for hearing is inadequate under *USV Pharmaceutical Corp.* because it failed to state "facts and reasons" for the Commissioner's proposed action. As one circuit court has noted:

> While *Hynson* did not mention *USV*, it plainly held that the FDA's regulations defining adequate and well-controlled investigation, * * * themselves constitute sufficient "facts and reasons" to require that an applicant seeking a hearing produce its own evidence of efficacy.

Cooper Laboratories, Inc. v. *Commissioner, FDA, supra,* 501 F. 2d at 780, n.22; see also *Hess & Clark, Division of Rhodia, Inc. v. FDA,* 495 F. 2d 975, 985 (D.C. Cir. 1974) (particularized regulations provide required showing by FDA as predicate for summary adjudication).

In a similar vein, the Hyrex respondents complain that the reegulations approved by the Court in

Hynson do not provide them with notice of the criteria for applying either the 1962 or the 1938 grandfather clause. It is true that the Court in *Hynson* did not endorse FDA's regulation (21 CFR 314.200(e)) describing the evidence necesary to sustain a contention that a product is grandfathered. This grandfather regulation was not before the Court. The act clearly sets forth the criteria for obtaining grandfather status. 21 U.S.C. 321(p); section 107(c)(4) of Pub. L. 87–781 (note following 21 U.S.C.A. 321). Moreover, the criteria for the grandfather exemptions have been further particularized by the courts. Under these circumstances, the Hyrex respondents may not contend that they lacked "full and precise notice" of the evidence they must present to sustain their contention. Indeed, the Hydrex respondents have submitted a volume of evidence attempting to satisfy the very criteria of which they claim ignorance. Finally, as shown below, their failure to meet those criteria is not due to any lack of notice, but rather to the fact that the evidence does not support their claims.

The Hyrex respondents next argue that the district court in *O'Neal, Jones & Feldman, Inc.* v. *Richardson, supra,* held that they are entitled to a hearing on the new drug status of pentylenetetrazol-containing drugs and that FDA is bound by this holding under the doctrine of *res judicata.* This argument ignores a host of critical facts.

First, the district court did not hold that the plaintiffs were entitled to a formal evidentiary hearing; that issue was never before the court. The question which the court was asked to decide was whether FDA had jurisdiction to determine the "new drug" status of a product. The court ruled that the agency had primary jurisdiction to decide whether a product was a new drug and that the agency rather than the court was the "more able arbiter" of this issue. *Id.* at 7–8. While the term "hearing" was used in the court's opinion, the court clearly was focusing upon providing the plaintiff "an opportunity to be heard on the merits of their contention" rather than the nature of that opportunity. *Cf. United States* v. *Florida East Coast Ry. Co.,* 410 U.S. 242 (1973).

The Hyrex respondents' reliance upon the district court's reference to an opportunity to make a record does not advance their argument. The Hyrex respondents have been given ample opportunity to "make a record" in this proceeding. The record which they made shows affirmatively that their products are not entitled to grandfather status.

Second, as the Hyrex respondents concede, this portion of the district court's order was reversed by the court of appeals. The Supreme Court's reversal of the court of appeals did not reinstate this aspect of the district court's opinion. To the contrary, the Supreme Court stated that it was confronted only with the "narrow question * * * whether the FDA may decide whether a drug is a 'new drug' on referral from a district court." *Weinberger* v. *Bentex Pharmaceuticals, Inc., supra,* 412 U.S. at 651.

Third, and finally, as the Hyrex respondents further concede, when the matter was remanded to the district court, the government argued that it could resolve the new drug status of plaintiffs' drugs without holding a hearing. The district court's order following this argument did not mandate a hearing. Rather, the court directed plaintiffs "to pursue the remedies provided under the Federal Food, Drug, and Cosmetic Act *through the procedures established by that agency.*" Order, October 30, 1974 (emphasis added).

The Hyrex Requests

The Hyrex respondents filed a discovery motion to supplement the notice of opportunity for hearing with various documents. These requests are each denied because, as the Hyrex respondents acknowledge, there are no discovery procedures available in this proceeding. Moreover, even if discovery were available, the information sought would not be relevant or material. A brief discussion of each request follows.

1. The request for the "NDA file" for each product containing pentylenetetrazol alone or in combination with any other substance including those specifically identified in the May 20, 1970 notice of opportunity for hearing (35 FR 7749) will not uncover information relevant to the issue whether the Hyrex respondents' products are "covered" by these NDA's. Each of the NDA's named in the notice of opportunity for hearing was for a product containing pentylenetetrazol. The Hyrex respondents do not dispute this. Nor do they dispute that the NDA's products listed in that notice are in the same generic class as their products. Under the law, therefore, the products of the Hyrex respondents are "covered" by these NDA's. *USV Pharmaceutical Corp.* v. *Weinberger, supra,* 412 U.S. at 664; *Weinberger* v. *Bentex Pharmaceuticals, Inc., supra,* 412 U.S. at 647–48. Whatever other information these NDA's may contain will not alter this fact.

2–3. The requests for all labels and labeling for pentylenetetrazol-containing drugs which were in use (a) at any time before June 25, 1938, and (b) on October 9, 1962, are also not directed at relevant or material information. The Hyrex respondents and other parties to this proceeding have submitted volumes of labeling for pentylenetetrazol-containing drugs. Without exception, these submissions establish that none of the labeling of the products marketed by the Hyrex respondents have "remained unchanged" since October 9, 1962, or since June 25, 1938. *USV Pharmaceutical Corp.* v. *Weinberger, supra,* 412 U.S. at 663. Moreover, the regulations place the burden squarely upon one who seeks to invoke the protection of the grandfather clause "to maintain in his files * * * the data and information necessary to document and support such status." 21 CFR 314.200(e)(5). *Cf. Javierre* v. *Altagracia, supra,* 217 U.S. at 507–08.

4. The request for all FDA opinions that any pentylenetetrazol-containing product is not a "new drug" is pointless. Such opinions have been expressly revoked by regulation. 21 CFR 314.100. They have also been denied any legal status by the courts. See, e.g., *SmithKline Corp.* v. *FDA, supra,* 587 F.2d at 1112 and 1115, n.15; *Bentex Pharmaceuticals* v. *Richardson, supra,* 463 F.2d at 368, n.17, *rev'd on other grounds sub nom Weinberger* v. *Bentex Pharmaceuticals, Inc., supra.*

5. The request for all minutes, transcripts, memoranda, and other documents of any advisory committee meeting relating to pentylenetetrazol is equally pointless. In fact, the Hyres respondents have not explained why they desire these materials. The only issue to which such materials conceivably could be relevant is the general recognition of the safety and effectiveness of particular pentylenetetrazol-containing products. However, the Hyrex respondents have not claimed that any particular products which they market are generally recognized as either safe or effective.

6. The request for all data and information relied upon by FDA's Office of Compliance in reaching the conclusion that the NDA's drugs identified in the September 12, 1970 **Federal Register** order were similar to Hyrex respondents' products which contain pentylenetetrazol can lead nowhere. The Supreme Court has held that a drug is "covered" by an NDA for purposes of the grandfather clause if it is within the same generic class as the product which is the subject of the NDA. *USV Pharmaceutical Corp.* v. *Weinberger, supra,* 412 U.S. at 664. Indeed, as noted above, the Supreme Court specifically found that the very products containing pentylenetetrazol marketed by the Hyrex respondents

were within the same generic class as the NDA's products identified in the September 12, 1970 Federal Register notice. *Weinberger* v. *Bentex Pharmaceuticals, Inc., supra,* 412 U.S. at 648. Again, no amount of information in FDA's files can alter these facts.

7. The request for all data and information considered by the Commissioner in reaching the conclusion that he is unaware of any adequate and well-controlled clinical investigations demonstrating the effectiveness of pentylenetetrazol-containing drugs is also misdirected. The Hyrex respondents do not even contend that their products are generally recognized as effective. Nor do they contend that evidence of their products' effectiveness exists. In view of the total inability of the numerous manufacturers who market pentylenetetrazol-containing drugs—despite the lapse of 10 years—to come forward with such evidence, "it would constitute the most arid formalism" to permit discovery of "what has since become obvious, namely," that there is no substantial evidence of effectiveness for pentylenetetrazol-containing drugs. *Cf. Holland-Rantos Co., Inc.* v. *United States Dep't of Health, Educ. & Welfare,* 587 F.2d 1173, 1176 (D.C. Cir. 1978).

8. The request for all establishment inspection reports and equivalent material relating to any establishment known to have manufactured or distributed a drug containing pentylenetetrazol will not lead to any relevant information. Here again, the Hyrex respondents have not stated how these materials could be relevant. It is clear that they are not. The only other issue to which such materials could possibly be relevant is whether pentylenetetrazol-containing products are grandfathered under either the 1938 act or the 1962 amendments thereto. The Hyrex respondents have not contended that they were unable to obtain data to show that their products were marketed on the relevant dates. To the contrary, their submissions demonstrate readily that, for the most part, their products were *not* marketed on the relevant dates. In any event, as noted above, the regulations require the one who contends that his product is grandfathered to *himself* maintain the records necessary to establish such status. 21 CFR 314.200(e)(5). The manufacturers may not attempt to shift this burden by filing burdensome discovery requests upon the agency.

All of the foregoing requests for discovery are denied on the additional grounds that it would be impractical, unnecessary, and contrary to the public interest for the agency to expend its limited resources in an attempt to establish that these products may be sold to the consumer despite the respondents' failure to demonstrate effectiveness. Most, if not all, of the records which the Hyrex respondents seek (if they have not been destroyed), are located at the Federal Records Center in St. Louis, MO. It would be an extremely difficult and time-consuming task to identify each of the myriad products and firms which may fall within the broad requests of these respondents. Moreover, in view of the abundance of evidence which establishes that these drugs are not grandfathered, the task would be futile as well.

The Hyrex respondents' argument that the Commissioner should comply with their discovery request because similar data would be filed to support a notice of proposed rulemaking is rejected. In a rulemaking proceeding under section 701(a) of the act (21 U.S.C. 371(a)), the burden of going forward as well as the ultimate burden of sustaining the action rests upon the Commissioner. Here, the regulations governing adequate and well-controlled investigations and the statutory requirements for grandfather protection constitute the Commissioner's *prima facie* case. It is the respondents' burden to establish that they are entitled to a hearing. Moreover, at a hearing, it would be the respondents' burden to establish that their products are grandfathered and are not "new drugs". In short, this proceeding is in no way analagous to a rulemaking proceeding and discovery is neither contemplated nor required under either the statute or the applicable regulations.

Finally, the Hyrex respondents argue that they should be provided the documents through a discovery mechanism because they are entitled to the information in any event under the Freedom of Information Act. The Commissioner does not agree that merely because a party may be entitled to material under the Freedom of Information Act, that the same material ipso facto becomes discoverable under an administrative proceeding in which no discovery is contemplated. Where Congress has established a specific route by which persons may readily obtain information, there is no reason to make that information available by another route. In short, the Hyrex respondents will not be prejudiced in any way by following the well-traveled road paved by Congress.

To this end, the Commissioner, by letter dated May 5, 1980, advised counsel for the Hyrex respondents (and the other parties who made similar motions) that their requests for discovery should be resubmitted under the Freedom of Information Act, 5 U.S.C. 552 ("the FOIA"), in the event they remained interested in the information. The Hyrex respondents did not renew their request under the FOIA.

The Hyrex respondents also moved to enforce separation of functions in this proceeding. This request has been granted. Pursuant to 21 CFR 314.200(f) and 10.55, no person in the Bureau of Drugs or the General Counsel's office who participated in proposing this order has participated with or advised the Commissioner's office with respect to his review and decision.

The contention that the Associate Commissioner for Compliance (now the Associate Commissioner for Regulatory Affairs) "overstepped" his bounds by proposing summary judgment in the notice of opportunity for hearing is frivolous. There is nothing improper in initiating these proceedings with the issuance of a notice of opportunity for hearing. The notice of opportunity for hearing reflects no prejudgment of the outcome. To the contrary, it merely offers interested persons an opportunity to come forward with evidence to justify a hearing. If they are unable to do so, denial of a hearing is appropriate. The propriety of the summary judgment procedure has long since been settled. *Weinberger* v. *Hynson, Westcott & Dunning, Inc., supra,* 412 U.S. at 620.

Finally, the Hyrex respondents argue that an Administrative Law Judge rather than the Commissioner should decide the matter. This argument was made and rejected at the time when the agency's regulations concerning new drug hearings were revised in 1974. See 39 FR 9750, 9754 (Mar. 13, 1974). As FDA pointed out then, the *Hynson* decision supports FDA's practice of having the Commissioner decide such matters. Adequate measures have been taken to assure that the Commissioner's decision in an independent one. The law requires nothing more.

C. B. F. Ascher & Co., Inc.

Ascher makes no claim that its product, Nioric, is generally recognized as effective for its labeled uses or even that it is actually effective for such uses. Rather, Ascher argues that Nioric is exempt from the "new drug" provisions of the act under the 1938 and 1962 grandfather provisions. Ascher further contends that whether Nioric satisfies the requirements of each provision raises factual questions necessitating an

evidentiary hearing. A discussion of Ascher's contentions follows.

Ascher acknowledges that Nioric was first marketed on July 31, 1970, but contends nevertheless that Nioric is entitled to grandfather status under the 1938 act because its product is related to Metrazol (another pentylenetetrazol-containing product) which was on the market on June 25, 1938. For the reasons stated above, the Commissioner rejects this contention. A product may only be grandfathered if it was marketed on the relevant date. 21 U.S.C. 321(p); *USV Pharmaceutical Corp.* v. *Weinberger, supra*, 412 U.S. at 663. Whether or not Metrazol may be entitled to grandfather status under the 1938 act is irrelevant to Nioric's claim to similar status.

Ascher's contention that the Supreme Court has approved this generic approach to the grandfather clause is erroneous. The Supreme Court held that the FDA properly may apply the *withdrawal* of an NDA to all "me-too" drugs, to avoid administrative "delay where in the interests of public health there should be prompt action." *Hynson, Westcott & Dunning, Inc., supra*, 412 U.S. at 625 (emphasis added). It is quite another matter to treat "me-too" copies of a drug as the same for purposes of *permitting* them to be marketed without having to prove that they are safe and effective. *Pharmadyne Laboratories, Inc.* v. *Kennedy*, 466 F. Supp. 100, 104 at n.7 (D. N.J.), *aff'd* 596 F.2d 568 (3rd Cir. 1979). In short, having conceded that Nioric was not marketed until 1970, Ascher may not claim the benefit of the 1938 exemption.

In fact, even if Ascher's "piggy-back" approach were legally permissible and Nioric could satisfy the "marketed in 1938" requirement by riding on the coattails of Metrazol, it would still fail to satisfy the other requirements of the 1938 exemption because Metrazol itself can not satisfy those requirements. See section D, below.

Indeed, Ascher concedes that Nioric and its adopted ancestor, Metrazol, both have undergone several labeling changes. Ascher argues however, that the 1938 grandfather clause does not require that a product's labeling remain unchanged. According to Ascher, the labeling provisions of the 1938 grandfather clause are satisfied so long as labeling representations made before 1938 are the same "in substance and import" as labeling representations made after 1938.

The Commissioner disagrees. The 1938 grandfather clause contains no qualifications that would permit the labeling of a pre-1938 product to be the same "in substance and import" as a post-1938 product. It explicitly provides that the labeling representations must be "*the same.*" 21 U.S.C. 321(p)(1) (emphasis added). Moreover, the Supreme Court has held that a product satisfies this criterion only "so long as [its] labeling remained unchanged." *USV Pharmaceutical Corp.* v. *Weinberger, supra*, 412 U.S. at 663.

In any event, Nioric does not even satisfy Ascher's permissive interpretation because its labeling is substantially different from Metrazol's pre-1938 labeling. For example, Nioric is now indicated solely "to enhance mental and physical activity of elderly patients." Before 1938, Metrazol was not offered to enhance mental activity, nor was it recommended for the elderly patient. Furthermore, before 1938, Metrazol was offered for a host of purposes including as an "antidote to morphine and barbiturate poisoning" and "for circulatory stimulation in the emergencies of pneumonia and other overwhelming infections and for those arising during the treatment of congestive heart failure." Nioric's labeling mentions none of these uses.

Ascher ignores these differences and focuses solely upon the one feature which the two products have in common, i.e., that Metrazol (before 1938) and Nioric (today) both claim to act as a central nervous system stimulant Ascher's argument proves too much. If Ascher's argument were correct, and product could acquire grandfather status simply by adopting a single claim made for a product before 1938. This, of course, would virtually nullify the safety and effectiveness provisions of the act.

Ascher next contends that the following factual issues regarding Nioric's entitlement to grandfather status under the 1938 act requires a hearing:

1. Was there a single-entity pentylenetetrazol-containing drug on the market before June 25, 1938?

2. If so, was that product intended for use in the cure, mitigation, or prevention of disease in man or other animals?

3. Were representations made before 1938 and were the same representations made for the drug before the 1938 act and at the time of the passage of the 1938 act and afterwards?

4. Is Nioric related to any single-entity pentylenetetrazol-containing drug marketed before the 1938 act?

5. Does Nioric contain representations made for a single-entity pentylenetetrazol-containing drug before 1938?

The Commissioner does not find that any of these issues warrants a hearing. The Commissioner agrees with Ascher that the answer to items numbers 1, 2, and 4 is "yes". Accordingly, there is no dispute over these facts. The resolution of item number 3 does not require an evidentiary hearing inasmuch as Ascher has conceded that the labeling for Metrazol and Nioric have not "remained unchanged." Accordingly, whether there are similarities between Nioric's labeling and Metrazol is legally irrelevant. Similarly, item number 5 is also irrelevant because it is based upon the incorrect legal premise that Nioric may become grandfathered by riding the coattails of Metrazol.

Ascher next contends that Nioric is grandfathered under the 1962 amendments to the act. The Commissioner disagrees. As shown below, Nioric fails to satify several of the criteria necessary for the exemption.

For example, inasmuch as Ascher has conceded that Nioric was not first marketed until 1970, it is clear that "on the day immediately preceding the enactment date" Nioric was not "commercially used or sold in the United States" section 107(c)(4)(A), of the Drug Amendments of 1962 (note following 21 U.S.C.A. 321).

Nioric also fails to satisfy the requirements that its composition "remained unchanged" since October 9, 1962. *USV Pharmaceutical Corp.* v. *Weinberger, supra*, 412 U.S. at 663. Nioric obviously cannot satisfy this test because it was not marketed on October 9, 1962. Moreover, Nioric may not rely upon Metrazol's formula to satisfy this requirement because it is legally impermissible to do so and because, as shown below, Metrazol's formulation has changed since October 9, 1962.

Nioric also fails to meet the requirement that its present labeling today has "remained unchanged" from the labeling used before October 9, 1962. *USV Pharmaceutical Corp.* v. *Weinberger, supra*, 412 U.S. at 663. Nioric cannot meet the requirement because it was not marketed on October 9, 1962. Moreover, Nioric may not rely upon Metrazol's pre-1962 labeling because Nioric's present labeling is not the same as Metrazol's pre-1962 labeling. For example, in 1962 Metrazol was offered "for the elderly *presenting early and more advanced signs of senility* * * *." "Physicians' Desk Reference," p. 626, 1962 (emphasis added). Nioric is not recommended for use in such a patient population. Moreover, Nioric's present labeling has deleted numerous claims which appeared on Metrazol's 1962 labeling, including improvement of sleeping and eating habits, tidiness and sociability, and the acceleration of recovery from convalescence. *Id.*

In fact, Nioric's labeling has undergone several changes since 1970. When first introduced in 1970, Nioric's dosage schedule was "initially, 2 tablets three or four times daily. For maintenance, after optimum results have been achieved, 1 tablet three or four times daily." In 1975, however, Nioric's dosage schedule was "1 or 2 tablets three times daily."

In short, Nioric fails to meet the labeling requirements of the 1962 grandfather provision under Ascher's test and under the correct test.

Ascher recognizes that Nioric may not be grandfathered if it is "related" to any drug "covered" by an NDA that was effective before October 9, 1962. Ascher argues, however, that Nioric is not related to Geroniazol Injection—one of the pentylenetetrazol-containing drugs named in the **Federal Register** notices of August 26, 1970 and May 20, 1970. Specifically, Ascher contends that Nioric is not related to Geroniazol because the latter product (1) was an injectable, (2) contained an additional pharmacologically active ingredient (nicotinic acid), and (3) was offered for some additional uses for which Nioric was not offered. Ascher submitted an affidavit of its Director of Research in support of this contention.

Neither the arguments not the affidavit are sufficient to create a genuine and material issue of fact requiring a hearing because Nioric is related to Geroniazol Injection as a matter of law. Under the regulations, an identical, related, or similar product includes other dosage forms. 21 CFR 310.6(b). Accordingly, it is irrelevant that Geroniazol is marketed as an injectable and Nioric as a tablet. In this regard, it is noteworthy that Ascher's affiant provides no explanation why the injectable product containing the same principal active ingredient renders Geroaniazol not related to Nioric.

It is also irrelevant that Geroniazol contains an additional ingredient not found in Nioric. The regulations provides that "a combination drug product *containing* an identical, related or similar drug is also subject to the conclusions in the notice." *Id.* Geroniazol and Nioric each contain pentylenetetrazol as the principal active ingredient. Moreover, inasmuch as Geroniazol and Metrazol (which Ascher argues is identical to Nioric) were offered for essentially the same purpose (i.e., to alleviate the various symptoms of deterioration associated with senility), it is clear that Nioric is related to Geroniazol in "chemical structure and known pharmacological properties." 21 CFR 310.6(b). Ascher's affiant does not state otherwise. Accordingly, even if there were genuine factual disputes on the other issues, there is no dispute over the fact that Nioric and Geroniazol are related in this respect. Under these circumstances there can be no *genuine* issue whether Nioric is "related" to and therefore "covered" by the NDA for Geroniazol Injection.

Ascher argues that until it has examined the materials in the Geroniazol NDA it is unable, solely upon the information in the **Federal Register**, to fully address the issue whether Nioric is related to Geroniazol. To buttress this argument, Ascher requested that FDA supplement the record with a copy of all NDA's for products containing pentylenetetrazol and all correspondence and memoranda which discuss the new drug status of any drug containing pentylenetetrazol. Ascher, unlike Hyrex, also filed a request for these and other documents under the FOIA.

For the reasons stated above in response to an identical discovery request made by the Hyrex respondents, Ascher's discovery request is denied.

Additionally, even if there were a factual issue about whether Nioric is "covered" by the Geroniazol NDA, there is still no necessity for discovery or for a hearing. The above cited **Federal Register** notices identified another pentylenetetrazol-containing product for which an NDA was effective on October 9, 1962—Nicozol with Reserpine Tablets (NDA 10–508 held by Nysco Laboratories). Ascher does not dispute that Nioric is related to this product. Therefore, whether Nioric is related to Geroniazol is mooted by Ascher's failure to dispute the fact that Nioric is related to Nicozol with Reserpine Tablets.

Ascher next argues that there is a genuine issue of fact about whether Nioric is related to a drug which was on October 9, 1962, generally recognized as safe. In support of this contention, Ascher submitted an affidavit, two pharmacodynamic studies (one animal and one human), and 4,000 patient evaluation forms completed by 253 practicing physicians; Ascher also cross-referenced the articles submitted by the Knoll Pharmaceutical Co. in support of its Metrazol products.

Nioric obviously could not have been generally recognized as safe on October 9, 1962, because it was not marketed until 1970. Whether Nioric is related to a drug which was generally recognized as safe on October 9, 1962 is, as explained above, legally irrelevant. In any event, assuming this fact were legally relevant and assuming further that there was a genuine issue of fact about the reputation for safety of another product before 1962, this factual dispute is not material because, as shown above, Ascher failed to satisfy the other requirements necessary to qualify for exemption under the 1962 grandfather clause.

Ascher also joined in each of the legal arguments made by the Hyrex respondents. For the reasons stated above, the Commissioner finds those arguments to be insubstantial.

To summarize, because Nioric was first marketed in 1970, it fails to meet the commercial-use requirements of either the 1938 of the 1962 grandfather clause. In addition, even if Nioric were permitted to ride the coattails of Metrazol, which was marketed before 1938, Nioric can not satisfy the labeling and compositional requirements of either exempting clause because Metrazol itself can not satisfy those requirements. Finally, there is no genuine dispute over the fact that Nioric was "covered" by NDA's for pentylenetetrazol-containing drugs which were effective on October 9, 1962.

D. The Knoll Pharmaceutical Co.

The Knoll Pharmaceutical Co. recognizes that there are no adequate and well-controlled clinical investigations to substantiate the claims for its Metrazol products. Knoll claims, however, that its products are exempted from the effectiveness provisions of the act by one or both of the grandfather clauses.

a. *The 1938 Grandfather Clause.*

i. *Metrazol.* Although Knoll has shown that Metrazol Tablets were subject to the Food and Drugs Act of 1906, it has failed to satisfy the other conditions necessary for exemption. For example, Knoll acknowledges that since 1938, the excipients used in Metrazol have changed several times. In 1930, Metrazol contained talcum powder, corn starch, talcum, and zinc stearate. In 1964, each of these ingredients (except talcum) was deleted and replaced by dextrose hydrous, potato starch, and magnesium stearate. Moreover, in 1967–1968 dextrose hydrous was deleted and replaced by lactose anhydrous, while the potato starch and talcum were replaced by guar gum. Other similar changes were made in 1970 and 1971. It is clear, therefore, that the composition of Metrazol Tablets has not "remained unchanged" since 1938. *USV Pharmaceutical Corp.* v. *Weinberger, supra,* 412 U.S. at 663.

Metrazol Tablets also fail to meet the labeling requirements of the 1938 grandfather exemption. On April 11, 1937, Metrazol was labeled as follows:

A Promptly Acting Circulatory And Respiratory Stimulant

Indications: In circulatory collapse and shock as a restorative; in respiratory depression and deep anesthesia; to antidote morphine and barbiturate poisoning; in asphyxia neonatorum, to stimulate both circulation and respiration. For circulatory stimulation in the emergencies of pneumonia and other overwhelming infections, and for those arising during the treatment of congestive heart failure.

Matrazol acts on the central nervous system stimulating the vasomotor and respiratory centers. Metrazol is absorbed quickly and is promptly followed by an intense circulatory and respiratory stimulation. In depressed states of the circulation and respiration, Metrazol tends to raise the blood pressure toward normal, to improve the pulse and increase the depth of respiration.

Today, however, Metrazol is indicated for another purpose, "to enhance mental and physical activity of elderly patients." *Physicians' Desk Reference*, p. 968 (1981). Moreover, since 1938, any number of claims have been deleted from Metrazol's labeling (e.g., that the product is effective in circulatory collapse, in congestive heart failure, and as an antidote to barbiturate poisoning). Such deletions are themselves sufficient to defeat Metrazol's claim of grandfather status. *United States* v. *Allan Drug Corp., supra*, 357 F.2d at 718–719.

Knoll attempts to ignore these changes by arguing that at all times since 1937 Metrazol's "principal labeling claim" has been that the drug is a central nervous system, circulatory, respiratory, and cerebral stimulant or "other words to the same effect." This argument begs the issue. Even if Knoll were able to establish that the claims made about Metrazol's *method of action* had remained unchanged, it is clear that the specific *indications* (i.e., the clinical effects) claimed for Metrazol are wholly different today than in 1938. To hold that a mere continuity of pharmacological claims would be sufficient to overcome changes in the clinical claims for a product would create a loophole in the statutory scheme and defeat the purpose of the 1962 amendments. If Knoll's argument were adopted, manufacturers of pre-1938 drugs could market their products with virtual impunity for any indication they desired so long as they did not change the pharmacological claims.

Knoll may also be contending that Metrazol Liquidum, an elixir, is grandfathered under the 1938 act, although this is unclear because Knoll argues that "Metrazol" is grandfathered, but does not identify any specific dosage form. Metrazol Liquidum may not be grandfathered under the 1938 act for the following reasons.

First, the elixir form of Metrazol was first marketed in 1952. Accordingly, it could not have been subject to the Food and Drugs Act of 1906. Although Knoll did submit data indicating that a liquid product (a 10% aqueous solution identified as "oral solution") was marketed before 1938, Metrazol Liquidum is a "wine flavored elixir [which] contains 15% alcohol." *Physicians' Desk Reference*, p. 951 (1980).

Second, the composition of Metrazol Liquidum has not "remained unchanged" since 1938. Between 1952 and 1967 thiamine was added to Metrazol Liquidum and then, in 1967, thiamine was deleted from the formulation; in 1970, methylparaben was added to the formula.

Third, inasmuch as the labeling for the Tablets and the Liquidum is the same, it is clear that the Liquidum is no more entitled to grandfather status under the 1938 clause than is the tablet dosage form.

ii. *Vita-Metrazol.* Equally without merit is the contention that Vita-Metrazol Tablets and Elixir are exempted under the 1938 grandfather provision. Knoll acknowledges that the Vita-Metrazol products were not marketed until 1957. Accordingly, they clearly were not subject to the Food and Drugs Act of 1906. 21 U.S.C. 321(p). Knoll's attempt to shrug off this requirement on the grounds that the "only difference" between the Vita-Metrazol products and Metrazol is the eight vitamins added "as a * * * convenience for the physician and the patient * * * requiring a dietary supplement" is unavailing for a number of reasons. First, as explained above, *any* change in the composition of the product is sufficient to result in forfeiture of grandfather status; the grandfather clauses make no distinction between vitamins and other ingredients. Knoll's contention that the vitamins are offered as food supplements is legally irrelevant. Second, even assuming that Metrazol and Vita-Metrazol were identical in their formulations, Vita-Metrazol would not satisfy the labeling requirements of the 1938 clause for the same reasons that its adopted parent, Metrazol, does not.

b. *The 1962 Grandfather Clause.*

i. *Metrazol, Vita-Metrazol, and Nico-Metrazol.* Knoll's contention that Metrazol, Vita-Metrazol, and two other products, Nico-Metrazol Tablets and Elixir, are exempted under the 1962 grandfather clause is also without merit for the following reasons.

First, each of these products was "covered" by an effective NDA within the meaning of section 107(c)(4) of the 1962 amendments. As the notices published in the **Federal Register** of August 26, 1969 (34 FR 13673), May 20, 1970 (35 FR 7749), and September 12, 1970 (35 FR 14412), make clear, on October 9, 1962, there were a number of effective new drug applications for products which contained pentylenetetrazol as their principal active ingredient. In fact, one of these products, Nicozol with Reserpine Tablets, like Knoll's Vita-Metrazol, also contained nicotinic acid. Moreover, each of the products identified in the **Federal Register** notices, like Knoll's products, was recommended for use in conditions associated with senility. Under these circumstances, there can be no doubt that the NDA's products listed in the foregoing **Federal Register** notices were identical, similar, or related to Knoll's products within the meaning of 21 CFR 310.6 and were therefore within the same generic class of drugs as Knoll's products for purposes of the 1962 grandfather clause. *USV Pharmaceutical Corp.* v. *Weinberger, supra*, 412 U.S. at 664; *Weinberger* v. *Bentex Pharmaceuticals, supra*, 412 U.S. at 648.

Second, as shown above, the Metrazol products and the Vita-Metrazol products have undergone changes in formulation since October 9, 1962.

Knoll's submission shows that the Nico-Metrazol products have undergone similar changes in formulation. With respect to the Nico-Metrazol Tablets, the lactose, talcum, and potato starch excipients were deleted in 1970 and replaced by another ingredient. Furthermore, in 1976, isopropyl alcohol was added to Nico-Metrazol Tablets. With respect to Nico-Metrazol Elixir, caramel color was deleted sometime after 1959 and, in 1976, FD&C Red No. 2 was replaced by FD&C Red No. 40. In short, each of the formulations of each of the Knoll products has undergone one or more changes in formulation which preclude grandfather status under the 1962 amendments.

Third, the labeling for Metrazol and Vita-Metrazol have changed since October 9, 1962. Before October 9, 1962, Metrazol Tablets and Elixer and Vita-Metrazol were offered

for the elderly presenting early and *more advanced signs of senility* to increase alertness, regularize sleeping and eating habits, improve tidiness and sociability. Also in fatigue states and to accelerate the recovery time of the convalescent.

Physicians' Desk Reference, pp. 626–627 (1962) (emphasis added). Today,

Metrazol is offered solely "to enhance mental and physical activity of elderly patients." *Physicians' Desk Reference,* p. 968 (1981). In short, these products are now offered for use in a patient population that is different from the one for which they were offered before 1962. Finally, as noted above, the present labeling for Metrazol and Vita-Metrazol has deleted a number of claims which were made before 1962. "A change in the labeling * * * to reduce the use of the drug" is sufficient to deprive a product "of the immunity of the Grandfather Clause * * * *United States* v. *Allan Drug Corp., supra,* 357 F. 2d at 718–719.

The labeling for Nico-Metrazol Elixir and Tablets has also changed since 1962. Before 1962, Nico-Metrazol was indicated for "the countless patients who 'can't seem to get started' because of general debility or fatigue" and "for the lethargic middle-aged patient." Other pre-1962 labeling shows that Nico-Metrazol was offered in "senile deterioration of all degrees accompanied by lethargy, withdrawal, resultant confusion and disorientation, and behavioral disorders" and to restore the image of the patient before deterioration occurred. Today, Nico-Metrazol has dropped all of these claims and, despite the addition of nicotinic acid, is offered for precisely the same purposes as Metrazol and Vita-Metrazol, "to enhance mental and physical activity of elderly patients." *Physicians' Desk Reference,* p. 969 (1981).

In addition, the present labeling for Nico-Metrazol has added a rather lengthy list of precautions and warnings which were not present in the pre-1962 labeling (e.g.,precautions against use in patients with focal brain lesions, peptic ulcer, diabetes, gall bladder, or liver disease and warnings against concurrent use with other drugs such as hypotensive agents and phenothiazine derivatives). In short, it is clear that the labeling for Nico-Metrazol has not "remained unchanged" since October 9, 1962. *USV Pharmaceutical Corp.* v. *Weinberger, supra,* 412 U.S. at 663.

Knoll argues that Congress had a "severely limited" purpose in mind when it amended the definition of "new drug." According to Knoll, Congress intended that products being marketed on October 9, 1962, would be required to demonstrate efficacy only if "new" claims were made for them and not because of any change in the formulation or labeling. Knoll's argument is untenable.

Congress did not have a "severely limited" purpose in mind when it enacted the 1962 drug amendments. To the contrary, its purpose was nothing less than to revamp the basic regulatory scheme for new drugs. Nor did Congress intend that the impact of this legislation be narrowly confined to a few products. Rather, the transitional provisions and the grandfather provision were "* * * designed in general to make the new 1962 requirements applicable to drugs then on the market after a two-year grace period." *USV Pharmaceutical Corp.* v. *Weinberger,* legislative history of the amendments, the Supreme Court found:

> * * * that prescription drugs on the market were to be subjected to the efficacy requirements. If the 1962 amendments are to be comprehensively meaningful, we decline to read section 107(c)(4) so as to provide a loophole so that manufacturers can go on marketing drugs previously subject to new drug regulation without demonstrating by the new statutory standards that they are effective as claimed.

Id. at 666.

Knoll next argues that an unduly narrow interpretation of the grandfather provision would be against the public interest because manufacturers would retain labeling claims found to be unsupported by evidence rather than risk losing the protection of the grandfather clause. The Commissioner disagrees. A manufacturer's refusal to delete a labeling claim which it cannot substantiate or its refusal to add a necessary precaution or warning would result in FDA's initiation of regulatory sanctions. Therefore, it is clearly in the manufacturer's best interest to revise labeling to conform to the requirements of the law.

Moreover, whatever force this public policy argument may have had in 1962 has long since been dissipated by the passage of time and the fact that virtually all labeling has undergone numerous changes since 1962. In any event, a manufacturer whose only interest is to continue marketing a product lacking evidence of effectiveness is in no position to champion the public interest.

Knoll's contention that the widespread use of pentylenetetrazol for over four decades constitutes evidence of eficacy which warrants a hearing has been repeatedly and firmly rejected by the courts. *Hynson, Westcott & Dunning, Inc.* v. *Weinberger, supra,* 412 U.S. at 620–21; *Upjohn Co.* v. *Finch, supra,* 422 F.2d at 954; *Pharmaceutical Manufacturers Ass'n* v. *Richardson,* 318 F. Supp. 301, 310 (D. Del. 1970); *Cooper Laboratories, Inc.* v. *Commissioner of FDA, supra,* 501 F.2d at 785 (only well-controlled investigations warrant a hearing).

Knoll adopted the discovery motion of the Hyrex respondents and followed its motion with an FOIA request for virtually the same information. Knoll's discovery motion is denied for the same reasons that the Hyrex respondents' motion has been denied.

Finally, Knoll argues that it should be granted a hearing because it is in the process of preparing protocols for controlled clinical trials which "may" demonstrate the effectiveness of its products. Despite the fact that this assurance was made more than 4 years ago, Knoll has not submitted any protocols or studies to FDA. In any event, it is clear that a promise to conduct studies is not a sufficient basis upon which to grant a hearing. On the other hand, Knoll need not be precluded from demonstrating the effectiveness of its products. It is free to apply for an investigational exemption under 21 U.S.C. 355(i).

E. The Rucker Pharmacal Co.

Rucket raised a number of legal objections, most of which were also made by the Hyrex respondents and answered above. The remaining arguments are discussed below.

Rucker argues that FDA's hearing regulations, 21 CFR 314.200 et seq., violate due process because they do not provide for discovery of evidence in the possession of FDA or others to support its contentions that its products are grandfathered and are not "covered" by the pre–1962 NDA's. For several reasons, this argument is without merit. First, Rucker's generalized claim that the denial of discovery prevents it from proving that its products are grandfathered is directly refuted by its specific arguments that each Rucket product meets each of the criteria of the act's grandfather provisions.

Second, even if discovery were available to obtain documents in FDA's files, this would not enable Rucker to obtain documents in the possession of "others."

Third, the information which Rucker seeks was not generated by FDA. Rather, it is proprietary information created by Rucket in the course of its business operations. It has always been the rule that one who seeks the benefit of a statutory exemption bears the burden of pleading and proving its entitlement thereto. *Javierre* v. *Altagracia, supra,* 217 U.S. at 507–08. Rucket may not shift this burden by failing to maintain the necessary records and then claim that such records may exist in FDA's files. 21 CFR 314.200(e).

Fourth, as discussed more fully below, the finding that Rucker's products are

not grandfathered does not rest solely upon its failure to present particular types of evidence, but rather on the fact that the evidence which it did submit demonstrates that its products are *not* entitled to grandfather status.

Finally, Rucker's argument that it needs to discover the reasons why FDA required NDA's for several products containing pentylenetetrazol to determine whether its products are "covered" by those NDA's is without merit. As noted above, the question "why" FDA decided to require NDA's for the pentylenetetrazol products named in the notice of opportunity for hearing is not relevant to the question "whether" those NDA's "cover" Rucker's products. Once it has been determined that an NDA for a particular product was effective on October 9, 1962, then all products within the same generic class are "covered" by that NDA for purposes of the grandfather clause. *USV Pharmaceutical Corp.* v. *Weinberger, supra,* 412 U.S. at 658 and 664 (all drugs containing bioflavanoid compounds alone or in combination with other drugs held to be "me-too's" covered by withdrawal of NDA's for bioflavanoid products); *Weinberger* v. *Bentex Pharmaceuticals, Inc., supra,* 412 U.S. at 653. Inasmuch as Rucker does not deny that each of its products is within the same generic class as the products identified in the notice of opportunity for hearing, discovery on this issue would serve no useful purpose.

Rucker next argues that the agency may not grant itself summary judgment because FDA is the proponent of the proposed order and, under 5 U.S.C. 556(d), the proponent bears the ultimate burden of proof. The Commissioner disagrees. The provisions of 5 U.S.C. 556(d) are applicable only when a hearing is "required by sections 553 or 554" of the Administrative Procedure Act. 5 U.S.C. 556(a). This order manifestly is not a hearing, but rather a proceeding to determine whether a hearing has been justified. In any case, the fact that a party has the burden of proof in a proceeding does not foreclose the possibility of summary judgment in favor of that party.

Furthermore, it has long been settled that FDA's regulations which predicate a party's right to a hearing upon the submission by that party of adequate and well-controlled studies are valid. *Weinberger* v. *Hynson, Westcott & Dunning, Inc., supra.* 412 U.S. at 620–22. Rucker's failure to come forward with such evidence justifying a hearing renders moot any questions on the ultimate burden or proof.

Rucker next argues that 21 CFR 314.200(e) (1) and (2), which require the submission of data in a particular format, is unreasonable because some of it "may not be readily accessible to a petitioner without assistance from FDA or by judicial process." The Commissioner disagrees. There is nothing unreasonable about requiring a party to support its grandfather and not-new-drug contentions with relevant evidence presented in an organized, logical fashion. In fact, such requirements facilitate review.

Rucker next argues that FDA's policy on combination drugs constitutes a disguised attempt to require a showing of relative efficacy in contravention of the legislative intent that such a showing is unnecessary. This argument distorts FDA's policy covering combination drugs and is without merit. 21 CFR 300.50, in pertinent part, provides:

> Two or more drugs may be combined in a single dosage form when each component makes a contribution to the claimed effects and the dosage of each component (amount, frequency, duration) is such that the combination is safe and effective for a significant patient population requiring such concurrent therapy as defined in the labeling for the drug.

The purpose of this regulation is to assure that each active ingredient is present in a particular drug solely because it provides a therapeutic benefit to the consumer and not because a manufacturer seeks to obtain a marketing advantage by differentiating its product from that of its competitors. In contrast, the legislative history discussing the comparative effectiveness issue shows that Congress eschewed comparisons only between *different products.* In short, FDA's combination policy has nothing to do with the issue of comparative effectiveness.

Rucker next argues that the January 30, 1976 notice of opportunity for hearing (41 FR 4625) is not applicable to its product, Ru-Vert, because that notice arose out of the Supreme Court's decision in *Weinberger* v. *Bentex Pharmaceuticals, Inc., supra,* and Rucker was not involved in that litigation. Rucker's argument is without merit. It was stated in the **Federal Register** that in addition to the named persons who participated in the *Bentex* litigation "this notice applies to all persons who manufacture or distribute a drug product containing pentylenetetrazol * * *" (41 FR 4625).

Rucker also argues that Ru-Vert is not identical, similar, or related to any of the products involved in the *Bentex* litigation. This argument is also without merit. There is simply no room for genuine argument that Ru-Vert is not related, similar, or identical to the pentylenetetrazol-containing products involved in the *Bentex* litigation. Like the products in the *Bentex* case, Ru-Vert contains pentylenetetrazol as one of its principal active ingredients. Accordingly, it is clearly chemically related to these products. 21 CFR 310.6. Moreover, inasmuch as Ru-Vert's labeling contained the same indications ("vasodilator, cerebral stimulant * * * for use in * * * certain conditions of apprehension and mental confusion"), contraindications ("epilepsy, severe hypotension and hemorrhage") and warnings (convulsions and flushing) as the products involved in the *Bentex* case, it is clear that Ru-Vert is also pharmacologically related to those products. 21 CFR 310.6. In short, Rucker's argument that Ru-Vert is not related or similar to the pentylenetetrazol-containing drugs identified in that notice is without merit.

Rucker also argues that a hearing is necessary to determine whether two other products which it manufactures, Su-Ton and Su-Zol, are grandfathered under the 1938 act. Rucker does not claim that Su-Ton and Su-Zol were marketed before June 25, 1938, but rather that products "essentially" identical to Su-Ton and Su-Zol were subject to the 1906 Act. This argument is legally untenable. As shown above, grandfather status is determined on a product-by-product basis, not on a wholesale basis. Inasmuch as Rucker concedes that Su-Ton and Su-Zol were not marketed before June 25, 1938, these products are not entitled to the exemption afforded by the 1938 act.

Rucker next claims that each of its products is exempted from the efficacy requirements by the 1962 grandfather clause. With respect to Ru-Vert, Rucker claims that is has met each of the elements of the grandfather clause. As shown below, Rucker has not met each of the criteria of the grandfather provision.

Rucker has not properly established that Ru-Vert's present formulation is identical to that used on October 9, 1962. Although Rucker concedes that this product was manufactured to its specifications, it claims to be unable to produce any batch records for the formulation in use on October 9, 1962, as required by the regulations. Rucker's attempt to overcome this omission with invoices and a letter from the original manufacturer is inadequate because these documents do not identify the inactive ingredients in Ru-Vert. 21 CFR 314.200(e)(2)(I); 21 CFR 310.3(h).

Accordingly, Rucker has failed to comply with its responsibility to maintain in its files "the data and information necessary fully to document and support" grandfather status. 21 CFR 314.200(e)(5).

Nor is this all. Ru-Vert is clearly "covered" by the NDA's for Geroniazol and Nicozol with Reserpine because it is indisputable that Ru-Vert is within the same generic class as the products whose NDA's were withdrawn in the Federal Register notices of September 12, 1970 (35 FR 14412). Rucker's argument that Ru-Vert was not "covered" by NDA's because the subject products either used a different route of administration (injectable) or contained an additional ingredient (reserpine) not present in Ru-Vert is without merit. Indeed, in its efforts to show that Ru-Vert was generally recognized as safe on October 9, 1962, Rucker equated Ru-Vert with the "pentylenetetrazol-containing products" identified in the notice of opportunity for hearing, thereby conceding that Ru-Vert is within the same generic class as those products.

Ru-Vert also fails to satisfy the labeling requirements of the 1962 grandfather clause. Rucker recognizes that a product can qualify for grandfather status only if "the dosage, contraindications, side effects and hazards have remained identical" since October 9, 1962, and contends that Ru-Vert's labeling satisfies this test. However, examination of Ru-Vert's labeling shows otherwise.

On October 9, 1962, Ru-Vert was offered solely "for use in vertigo, Meniere's syndrome and certain conditions of apprehension and mental confusion." In 1975 these claims were expended to include, "symptomatic management of peripheral vestibular disorders such as idiopathic vertigo * * * labyrinthitis and fenestration procedures," "acute and chronic vertigo," "arterial hypertension," "radiation sickness," and "clinical symptoms of senility and functional cerebral inpairment."

Furthermore, in 1962 Ru-Vert's labeling recommended a dosage of "1 or 2 tablets 3 times daily *before meals*" (emphasis added). In 1975, the requirement that Ru-Vert be taken before meals was deleted.

The 1975 labeling was changed in other respects. For example, the labeling added a contraindication (against use "in patients with a known history of sensitivity" to any of the ingredients in Ru-Vert), a precaution (about the potential sedative effect of pheniramine maleate), and deleted warnings (about muscle tremors, respiratory paralysis, and dermatitis). Under these circumstances, it is clear that Ru-Vert's labeling has not "remained unchanged" since October 9, 1962. *USV Pharmaceutical Corp.* v. *Weinberger, supra,* 412 U.S. at 663. On this ground alone, Ru-Vert fails to satisfy the criteria of the grandfather clause.

Rucker also claims that Su-Ton and Su-Zol are grandfathered under the 1962 amendments. However, as is the case with Ru-Vert, Rucker has not shown that these products meet each of the elements of the grandfather clause.

Rucker concedes the Su-Zol was first commercially sold or used in July 1962. No data were provided on the extent or nature of the sales between July and October 9, 1962. It is clear, however, that a product may not become *generally* recognized as safe among qualified experts within four months after it is initially introduced into the marketplace. *Cf. United States* v. *An Article of Drug "Bentex Ulcerine," supra,* 469 F.2d at 878–79.

Both products also fail to satisfy the other elements of the grandfather clause. Thus, despite the fact that both Su-Zol and Su-Ton were manufactured according to Rucker's specifications, no batch formula was submitted showing the precise formulation for these products that was in use on October 9, 1962. The letter from the manufacturer and the invoice are inadequate for this purpose inasmuch as they do not reveal the inactive ingredients of the products. 21 CFR 314.200(e)(2)(I); 21 CFR 310.3(h). Indeed, the letter from the manufacturer does not even indicate that Su-Zol contains alcohol as one of the ingredients. In addition, Raucker conceded that Su-Ton's formulation has not "remainded unchanged" since October 9, 1962, because cobalt sulfate was deleted from the formula in 1976.

Moreover, because Su-Ton and Su-Zol both contain pentylenetetrazol, they are clearly "covered" by the NDA's for Geroniazol and Nicozol with Reserpine for the same reasons that Ru-Vert is covered by those NDA's.

Nor does either of these products meet the labeling requirements of the grandfather clause. With respect to Su-Zol, Rucker has not submitted any labeling in use for the product on October 9, 1962. Rucker's statement that to the best of its knowledge the labeling has been unchanged is not adequate to support its claim. 21 CFR 314.200(e)(2). Indeed, Rucker does not even allege that it sought such labeling from the original manufacturer of Su-Zol, but has merely alleged that it was unable to find any labeling in its files.

With respect to Su-Ton, there were numerous changes in the labeling. For example, labeling in use in 1958 and 1960 offers the product simply as a "geriatric supplement and cerebral stimulant." No other claims were made for the product. The 1969 labeling, however, offers Su-Ton as a "cerebral stimulant and nutritional supplement for use in elderly persons to increase alertness, relieve depression and forgetfulness." The newer labeling also has added a contraindication (against use in epilepsy) as well as information on side effects and hazards ("flushing," "muscle tremor, convulsions, respiratory paralysis"). Finally, the 1969 labeling recommends that Su-Ton be taken "with meals," whereas the pre-1962 labeling has no such restriction.

In short, it is clear that none of the Rucker products discussed herein are entitled to grandfather status.

Rucker next contends that Ru-Vert is not a new drug because experts have concluded that it is generally recognized as effective. In support of this argument, Rucker points to nine identically worded, conclusory affidavits and three letters stating that Rucker's studies constitute "substantial evidence" of Ru-Vert's effectiveness. As shown above, each of the studies submitted by Rucker patently fails to meet one or more of the regulatory criteria for adequate and well-controlled clinical investigations. No number of affidavits can overcome these deficiencies or "change the scientific studies and the data reported into something they are not." *Cooper Laboratories, Inc.* v. *FDA, supra,* 501 F. 2d at 785 (quoting *Upjohn* v. *Finch, supra*).

Nor is the Commissioner obliged to hold a hearing upon the mere submission of conclusory affidavits. Unless the affidavits are premised on properly conducted studies, the opinions which they contain are unavailing. It is not difficult for manufacturers to produce affidavits from persons proclaiming their belief that one or more studies are adequate and well controlled. In these circumstances, the agency is required to pierce the opinions expressed in the affidavits and determine whether they raise genuine issues of material fact, i.e., whether the opinions are based upon studies which meet "the statutory standards as particularized by the regulation." *Weinberger* v. *Hynson, Westcott & Dunning, Inc., supra,* 412 U.S. at 620. In short, hearings are granted on the basis of adequate and well-controlled investigations, not affidavits. In this case, no such studies have been submitted.

For example, each of the afiants opines that the study conducted by

Lynes and Boos on healthy young males (see section III, *supra*) constitutes "substantial evidence" of the effectiveness of Ru-Vert in the treatment of vertigo. However, analysis of this study in light of the regulations defining adequate and well-controlled investigations, 21 CFR 314.111(a)(5)(i), shows clearly that the study is patently deficient. Thus, the regulations require that the protocol and the report of the study must include "a method of selection of the subjects that provides adequate assurance that they are suitable for the purposes of the study, diagnostic criteria of the condition to be treated or diagnosed * * *." 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*). The use of healthy subjects in the study rather than subjects with vertigo is irreconcilable with these regulations.

Two circuit court opinions have addressed the requirement that subjects used in a clinical trial have the condition for which the drug is offered. In *SmithKline Corp.* v. *FDA, supra*, 587 F. 2d at 1121, the court agreed with the agency that the results of a study conducted on anxious obese patients could not be generalized to obese patients for whom the drug is offered because the test did not show whether the drug would have its purported effect on non-anxious obese patients. In *Cooper Laboratories, Inc.* v. *Commissioner, FDA, supra*, 501 F. 2d at 778, the court stated its understanding that the statute itself contemplates studies involving diseased patients: "The 1962 amendments clearly demand that efficacy be shown by controlled tests—that is, by studies where some *diseased persons* receive the drug in question while other *diseased persons*, otherwise comparable, receive nothing, or a 'placego,' or some substance of known effect" (emphasis added).

The lack of critical analysis in the affidavits and letters submitted by Rucker is demonstrated by the fact that not one of the individuals detected a single deficiency in any of the studies submitted by Rucker despite the fact that each study contained numerous deficiencies. (See section III, *supra*).

Indeed Rucker itself appears to have recognized that deficiencies might be identified in its submissions. Thus, Rucker urges that "in the event that the Agency determines that these studies, or any of them, are in any respect not adequate or well controlled, Rucker hereby petitions for a waiver of whatever criteria with respect to which the study or studies are thought to be deficient. The specific criteria for which waiver is sought cannot now be cited * * *."

Rucker's request can not be granted for a number of reasons:

First, if a manufacturer could avoid compliance with the regulations for adequate and well-controlled studies simply by requesting a categorical, post-hoc waiver of any regulation which it failed to meet, there would, in effect, be no regulations.

Second, the waiver regulations require that:

> * * * a petition for a waiver shall set forth clearly and concisely the specific provision or provisions in the criteria from which waiver is sought, why the criteria are not reasonably applicable to the particular clinical investigation, what alternative procedures, if any, are to be, or have been employed, what results have been obtained, and the basis on which it can be, or has been, concluded that the clinical investigation will or has yielded substantial evidence of effectiveness, notwithstanding nonconformance with the criteria for which waiver is requested * * *.

Proviso, following 21 CFR 314.111(a)(5)(ii)(*a*)(*5*). Rucker has not complied with these requirements, but has merely asked to be excused if it erred. "This constitutes a request to waive not merely the Administration's regulations but also the fundamental requirement of the 1962 legislation. Granting such a waiver is beyond the power of either the FDA or the courts." *Cooper Laboratories, Inc.* v. *Commissioner, FDA, supra*, 501 F.2d at 778.

Rucker also requested that the Commissioner hold his decision on its hearing request in abeyance because it is curently undertaking additional studies to demonstrate Ru-Vert's effectiveness. In this connection, Rucker submitted a protocol for one of the studies which it claimed was "in progress." Rucker's request is denied.

Although more than five years have elapsed since Rucker allegedly initiated its study, it has yet to submit any results. Under these circumstances, further delay is unwarranted. It is uncertain when, if ever, these studies will be completed and the data submitted. On the other hand, if Rucker is genuinely serious about subjecting Ru-Vert to adequate and well-controlled investigations, it may do so under an investigational exemption. 21 U.S.C. 355(i).

Rucker's final argument is that it be allowed to "modify" the claims that Ru-Vert is effective for "certain conditions of apprehension and mental confusion" in the event those claims are interpreted as offering Ru-Vert for indications other than vetigo. Inasmuch as it is clear that these claims are in no way related to vertigo, Rucker's concern is well founded. Indeed, Rucker itself has acknowledged that Ru-Vert is only "primarily indicated for the treatment of vertigo." Because Rucker's studies do not even attempt to measure Ru-Vert's effect on these other conditions, this is an additional grounds for concluding that Ru-Vert is a new drug which is not generally recognized by qualified experts as effective for its labeled uses. 21 U.S.C. 321(p)(1). Here again, however, Rucker is free to apply for an investigational exemption to conduct proper studies.

VI. Findings

On the basis of the foregoing review of all the evidence submitted and legal arguments offered, the Commissioner finds that all drug products containing pentylenetetraxol, either as a single ingredient or in combination with other ingredients, (1) lack substantial evidence of effectiveness in support of the claims made for them and are, *a fortiori*, "new drugs" within the meaning of 21 U.S.C. 321(p), (2) lack substantial evidence to show that each component of the combination contributes to the effects claimed, and (3) are not exempt from the premarket approval requirements for "new drugs" by either of the grandfather provisions of the act. 21 U.S.C. 321(p); 21 U.S.C. 355(d); section 107(c)(4) of the Drug Amendments of 1962; 21 CFR 314.111(a)(5), 300.50, 314.200(e).

The respondents have failed to offer any data or legal reason which demonstrates the extistence of a genuine and material issue of fact requiring a hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (Sec. 201, 505, 701), 52 Stat. 1041 as amendced, 1052–1053 as amended, 1055–1056 as amended (21 U.S.C. 321, 355, 371) 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)), the foregoing hearing requests are denied, all drugs containing pentylenetetrazol either as a single ingredient or in combination with other ingredients are declared to be "new drugs," not grandfathered, which require new drug applications filed and approved pursuant to 21 U.S.C. 355. Distribution of these drug products in interstate commerce without an approved new drug application is illegal and subject to immediate regulatory action. This order is effective May 14, 1982.

Dated: April 9, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 82-11744 Filed 5-3-82; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Privacy Act of 1974; Report of New System

Correction

In FR Doc. 82-11241, appearing at page 17862, in the issue for Monday, April 26, 1982, please make the following corrections:

(1) On page 17862, in the first column, in the "Dates" paragraph, in the fifth line, "April 9, 1982" should have been "April 19, 1982".

(2) On page 17862, in the middle column, in the first line, the date "June 9, 1982" should have been "June 18, 1982".

BILLING CODE 1505-01-M

National Institutes of Health

Frederick Cancer Research Facility Advisory Committee; Establishment

The Acting Director, National Institutes of Health, announces the establishment on April 16, 1982, of the Frederick Cancer Research Facility Advisory Committee by the Director, National Cancer Institute, under the authority of section 404(b)(3) of the Public Health Service Act (42 U.S.C. 285(b)(3)). Such advisory committees shall be governed by the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) setting forth standards governing the establishment and use of advisory committees.

This committee shall advise the Director, National Cancer Institute, concerning the merit and relevance to the Institute of research conducted by the contractor at the Facility. The advice bears solely on the content and the direction of science as performed by the contractor in the research area. Contractor research shall be reviewed and evaluated in its entirety twice within the span of a contract period.

A second critical responsibility of this Committee shall be to review contractor science in the context of potential redundancy with National Cancer Institute intramural research.

Authority for this committee shall terminate on April 16, 1984, unless renewed by appropriate action as authorized by law.

Dated: April 28, 1982.

Thomas E. Malone,

Acting Director, National Institutes of Health.

[FR Doc. 82-12034 Filed 5-3-82; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service National Toxicology Program; Di(2-ethylhexyl)phthalate; Correction

The National Toxicology Program's notice of the availability of *Carcinogenesis Bioassay of Di(2-ethylhexyl)phthalate* (T.R. 215) on page 14959 of the April 7, 1982 **Federal Register** (47 FR 14959) contained an error. The notice incorrectly stated that DEHP is "found in plastic milk containers." Although DEHP is found in milk, to our knowledge it is not found in plastic milk containers. The error is regretted.

Dated: April 26, 1982.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 82-12035 Filed 5-3-82; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Environmental Quality

[Docket No. NI-95]

Planned Residential Commercial Development For Portage, Mich.; Intended Environmental Impact Statement

The Department of Housing and Urban Development gives notice that an Environmental Impact Statement (EIS) is intended to be prepared for the following project under HUD programs as described in the appendix to this Notice: Planned Residential/ Commercial Development for Portage, Michigan. This Notice is required by the Council on Environmental Quality under its rules (40 CFR Part 1500).

Interested individuals, governmental agencies, and private organizations are invited to submit information and comments concerning the project to the specific person or address indicated in the appropriate part of the appendix.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, issues and data which the EIS should consider, recommended mitigating measures and alternatives, and major issues associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interests should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

Each Notice shall be effective for one year. If one year after the publication of a Notice in the **Federal Register** a Draft EIS has not been filed on a project, then the Notice for that project shall be cancelled. If a Draft EIS is expected more than one year after the publication of the Notice in the **Federal Register**, then a new and updated Notice of Intent will be published.

Issued at Washington, D.C. April 23, 1982.

Francis G. Haas,

Deputy Director, Office of Environment and Energy Programs.

Appendix—EIS on Planned Residential/ Commercial Development, City of Portage, Michigan

The Department of Housing and Urban Development (HUD) Grand Rapids Service Office intends to prepare an EIS for Planned Residential/ Commercial Development in the City of Portage, Michigan. The Department hereby solicits comments and information for consideration in this EIS.

Description: The Moors Investment group has submitted a proposal to develop approximately 320 acres north of Centre Street, east of US 131 in Sections 17 and 18 of the City of Portage, Michigan. The proposal as submitted includes 1615 single and multifamily dwelling units on 290 acres and retail, commercial office facilities on 30 acres. The proposed development calls for five phases over a ten year period. HUD's involvement is limited to mortgage insurance under Title X of the Housing and Community Development Act.

Need: An EIS is being prepared because the overall project exceeds the threshold level for EIS's established by HUD (800 for Kalamazoo County). Environmental considerations which have been identified include but are not limited to: (1) Adverse noise, (2) wetlands, (3) endangered species, (4) ground water recharge, (5) storm drainage, and (6) archeological sites.

Alternatives: The HUD alternatives perceived at this time are: (1) Approve the proposal as submitted, (2) approve the proposal with modifications, or (3) disapprove the proposal.

Scoping: Response to this Notice will assist in identifying data sources and significant environmental issues which the EIS should address.

Comments: Comments should be sent on or before May 25, 1982, to John W. Kirkwood, Supervisor, Grand Rapids Service Office, Department of Housing and Urban Development, 2922 Fuller

Avenue, N.E., Grand Rapids, Michigan 49505, telephone number (616) 456–2216.

[FR Doc. 82-12033 Filed 5-3-82; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit; Receipt of Applications

The applicants listed below wish to conduct certain activities with endangered species:

Applicant: San Antonio Zoo, San Antonio, TX—PRT 2-9066

The applicant requests a permit to import four female giant armadillos (*Priodontes giganteus*) from Santa Cruz, Bolivia for enhancement of propagation. The zoo currently only has four breeding males.

Applicant: Little Rock Zoo, Little Rock, AR—PRT 2-9055

The applicant requests a permit to import one male captive-bred maned wolf (*Chrysocyon brachyurus*) from Halle East Germany Zoo for enhancement of propagation.

Applicant: Caldwell Schools, Inc., Tyler, TX—PRT 2-9056

The applicant requests a permit to purchase in interstate commerce one female captive-bred margay (*Felis weidii*) from the Audubon Park Zoo, New Orleans, LA for enhancement of propagation.

Applicant: Institute for Wildlife Studies, Arcata, CA—PRT 2-8894

The applicant requests an amendment to PRT 2-8894 to relocate bald eagle (*Haliaeetus leucocephalus*) nestlings taken from Washington and California to Santa Catalina Island, California. The original application requested Santa Cruz Island, California.

Humane care and treatment during transport, if applicable, has been indicated by the applicants.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish and Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications on or before June 3, 1982, by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: April 28, 1982.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 82-12078 Filed 5-3-82; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[INT DEIS 82-9]

Draft Brothers Grazing Management Environmental Impact Statement; Public Hearings and DEIS Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Public meetings on Brothers Grazing Management DEIS.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft Environmental Impact Statement for the Brothers EIS area. The proposal involves implementing a livestock grazing program on public lands within the Brothers EIS area of the Prineville District in central Oregon.

Public reading copies will be available for review at the following locations:

Bureau of Land Management, Office of Public Affairs, 825 N.E. Multnomah Street, Portland, Oregon
Bureau of Land Management, Prineville District Office, 185 East Fourth St., Prineville, Oregon
Library, University of Oregon, Eugene, Oregon
Central Oregon Community College, College Way, Bend, Oregon
Library, Portland State University, 727 SW Harrison, Portland, Oregon
Harney County Library, 80 West D, Burns, Oregon
Crook County Library, 200 East 2nd, Prineville, Oregon
Deschutes County Library, 507 N.W. Wall, Bend, Oregon
Library, Oregon State University, Corvallis, Oregon

A limited number of copies are available upon request to the BLM Oregon State Office or the Prineville District Office.

Informal public information meetings will be held on May 25, 1982 at 7:00 p.m. in Prineville, Oregon at the Catholic Parish Hall located at 150 East 1st Street and on May 26, 1982 at 7:00 p.m. in Bend, Oregon at the Bend Riverhouse located at 3075 North Highway 97.

Written comments on the draft environmental impact statement will be accepted by the Prineville BLM District Manager until June 30, 1982.

Written comments on the draft EIS may be sent to: Prineville District Manager, Bureau of Land Management, P.O. Box 550, Prineville, Oregon 97754.

Comments should be postmarked on or before June 30, 1982 to be considered in preparation of the Final Brothers EIS.

FOR FURTHER INFORMATION CONTACT:

Brian Cunninghame, Team Leader, Prineville BLM District Office, Telephone: (503) 447–7003.

Dated: April 2, 1982.

Philip C. Hamilton,

Chief, Division of Planning and Environmental Coordination

[FR Doc. 82-12062 Filed 5-3-82; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Leases OCS–G 3410, 3783, and 2323, Blocks 352, 353, and 360, Eugene Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT:

Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: April 27, 1982.

Lowell G. Hammons,

Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-12102 Filed 5-3-82; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Mobil Exploration and Producing Southeast, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Mobil Exploration and Producing Southeast Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 078, Block 51, Eugene Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: April 27, 1982.

Lowell G. Hammons,

Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-12103 Filed 5-3-82; 8:45 am]

BILLING CODE 4310-31-M

National Park Service

Golden Gate National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 10:30 a.m. (p.s.t.) on Saturday, May 22, 1982, at West Marin School, Point Reyes Station.

The Advisory Commission was established by Pub. L. 92-589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin and San Francisco counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman
Ms. Amy Meyer, Secretary
Mr. Ernest Ayala
Mr. Richard Bartke
Mr. Fred Blumberg
Ms. Margo Patterson Doss
Mr. Jerry Friedman
Ms. Daphne Greene
Mr. Peter Haas, Sr.
Mr. Burr Heneman
Mr. John Jacobs
Ms. Gimmy Park Li
Mr. Duane "Doc" Mattison
Mr. John Mitchell
Mr. Merritt Robinson
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

Agenda items for this meeting will include a report by the Point Reyes Committee on the status of the proposed Bear Valley Visitor Center, a report by the Finance Committee on DELTA KING proposal, and a report by the Superintendents of Golden Gate National Recreation Area and Point Reyes National Seashore on the storm damages incurred on January 5 and the rehabilitation plans for the parks. The Superintendents' reports will be followed by a tour of Point Reyes to inspect the storm damage.

The meetings are open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact John H. Davis, General Superintendent of the Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123; telephone (415) 556-2920.

Minutes of the meeting will be available for public inspection by June 22, 1982 in the Office of the General Superintendent, Golden Gate National Recreation Area, Fort Mason, San Francisco, CA 94123.

Dated: April 23, 1982.

Howard H. Chapman,

Regional Director, Western Region.

[FR Doc. 82-12093 Filed 5-3-82; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 23, 1982. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by May 19, 1982.

Sarah G. Oldham,

Acting Keeper of the National Register.

ARKANSAS

Ashley County

Crossett, *Wiggins Cabin,* City Park

Crittenden County

West Memphis, *Dabbs Store,* 1320 S. Avalon

Sharp County

Evening Shade Multiple Resource Area. This area includes: Evening Shade, *Cochran Store,* Main St.; *Coger House,* Main St.; *Davidson, Sam House,* Commack St.; Edwards, W. A., House Main St.; *Herrn House,* Main St.; *McCaleb, John, House,* Main St.; *Metcalfe House,* Gin Dr.; *Plum Spring Springhouse and Site,* Main St.; *Sharp Mill and Thompson Mill Site,* AR 56; *Shaver, Charles W., House,* Court St.; *Shaver, John W., House,* Main St.; *Stokes House,* Cammack St.; and *Wilkerson House,* Sidney Rd.

Washington County

Fayetteville, *Hemingway House and Barn,* 3310 Old Missouri Rd.

GEORGIA

Chatham County

Savannah, *Savannah Victorian District,* bounded by Gwinnett, Anderson and 31st Sts. (boundary increase)

Tybee Island, *Fort Screven Historic District,* Tilton, Butler, Van Horn, Railroad Alger Aves. and Pulaski Rd.

Coweta County

Newman, *Northwest Newnan Residential Historic District,* Roughly bounded by Jefferson, Cavender, Duncan Brown and RR tracks.

Dougherty County

Albany, *Albany Railroad Depot Historic District*, Roosevelt Ave.

Elbert County

Elberton, *Elberton Commercial Historic District*, Church, Elbert, Oliver, and McIntosh Sts. and Public Sq.

IDAHO

Ada County

Boise, *Murphy, Daniel F., House*, 1608 N. 9th St.

Owyhee County

Wickahoney Post Office and Stage Station.

LOUISIANA

Evangeline Parish

Ville Platte, *Dardeau Building*, 224 W. Main St.

Jefferson Davis Parish

Jennings, *Jennings Post Office*, 118 W. Placquemine St.

OHIO

Montgomery County

Dayton, *Hanitch-Huffman House*, 139 W. Monument Ave. (proposed move).

OREGON

Benton County

Corvallis, *Hotel Benton*, 408 SW Monroe Ave.

[FR Doc. 82-12094 Filed 5-3-82; 8:45 am]

BILLING CODE 4310-70-M

Temporary Ellis Island Preservation Council; Meeting

Notice is hereby given that the closed meeting of the Temporary Ellis Island Preservation Council previously announced for May 7, 1982, has been rescheduled to convene on May 20, 1982, at the Department of the Interior, 18th and C Streets, NW., Washington, D.C. All information regarding this meeting remains the same as published on April 15, 1982 (47 FR 16224).

Dated: April 20, 1982.

Robert A. Ritsch,

Associate Director, Recreation Resources, National Park Service.

[FR Doc. 82-12095 Filed 5-3-82; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Intent To Prepare an Environmental Impact Statement on the Approval To Fund Annual State and Indian Abandoned Mine Land (AML) Grants

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) intends to prepare an environmental impact statement (EIS) on the approval of annual State and Indian AML grants at the level of funding cited in section 402(g)(2) of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, 30 U.S.C. 1201 et seq. (herein referred to as SMCRA or the Act), for the support of State and Indian AML programs and implementation of appropriate reclamation projects and technological approaches to reclaim abandoned mine lands. This analysis is necessary in order to evaluate the impacts associated with approving annual grant requests at the mandated level of funding so that the objectives of the Act can be attained.

DATES: The Draft EIS should be available for public comment during the months of November and December 1982. The Final EIS should be available in February 1983.

ADDRESSES: Written comments on the Draft EIS must be mailed or hand-delivered to: OSM Headquarters, U.S. Department of the Interior, South Building, Room 132, 1951 Constitution Avenue, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gwendolyn C. Lockley, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. (telephone: 202-343-5981).

SUPPLEMENTARY INFORMATION: Final rules which established the AML Reclamation Program and procedures for administering Title IV of the SMCRA were published in the **Federal Register** on October 25, 1978. OSM has prepared a programmatic EIS on the Implementation of Program Policies for Federal, State, and Indian Abandoned Mine Land Reclamation under Title IV of the SMCRA of 1977 (OSM-EIS-2) which evaluated policies for two program elements under Title IV of the Act: the Federal Reclamation Program (section 402(g)(3) of SMCRA), and the State and Indian Reclamation Program (section 405 of SMCRA). This programmatic EIS evaluated specific policies for allocation of the Federal share of the Abandoned Mine Land Fund under the Federal program, and guidelines for the performance of reclamation activities under both the Federal and the State and Indian reclamation programs.

The proposed EIS will analyze the impacts associated with the approval of applications to fund individual annual State and Indian grant requests to reclaim abandoned mine lands. Impacts will be considered at two levels of funding, i.e. 50-percent of the amount anticipated to be collected from fees levied on coal production by States and Indian Tribes and a higher level. The EIS will also present generic analyses of the proposed types of reclamation projects and possible technological approaches, assess project impacts at individual State and Indian tribal levels, and assess cumulative impacts at the National level.

Major alternatives to be considered by OSM include the following:

1. Do not approve annual grants to States and Indian Tribes. This no action alternative is required by § 1502.14(d) of the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969.

2. Approve annual grants to States and Indian tribes at the level of funding cited in section 402(g)(2) of the SMCRA for the support of State and Indian programs and implementation of appropriate reclamation projects and technological approaches for the reclamation of abandoned mine lands.

3. Approve annual grants to States and Indian tribes at a higher level of funding than that cited in section 402(g)(2) of the SMCRA for the support of State and Indian programs and implementation of appropriate reclamation projects and technological approaches for the reclamation of abandoned mine lands.

Additional alternatives may be identified during preparation of the draft EIS or after the public comments have been evaluated.

Workshops addressing OSM's NEPA compliance responsibilities were conducted during the fall of 1981 for the OSM AML staff and personnel from the States and Indian tribes participating in the AML State and Indian Grants Program. Comments and recommendations generated during discussions of the proposed EIS aided in establishing the scope of the EIS and served as part of the scoping process. A draft preparation plan was developed by OSM and submitted to the workshop participants for review in late January 1982.

Scoping meetings have not been planned. The public and all interested Federal, State, and local agencies and Indian tribes are invited to submit written comments on the draft EIS as indicated under "Dates" and "Addresses".

The impact analysis process will comply with the CEQ regulations for implementing NEPA and the requirements of the Interior Departmental Manual on the

preparation of EIS's, and with other applicable Federal laws.

Availability of Documents: The final preparation plan for the proposed EIS on approval of Federal Grants for the AML State and Indian Reclamation program, and the final EIS entitled "Implementation of Program Policies for Federal, State, and Indian Abandoned Mine Land Reclamation under Title IV of the Surface Mining Control and Reclamation Act of 1977" (OSM–EIS–2) are available for inspection at the OSM office listed under Addresses.

Dated: April 28, 1982.

Approved:

J. S. Griles,

Acting Director, Office of Surface Mining.

[FR Doc. 82–12036 Filed 5–3–82; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Permanent Authority Decisions Volume No. 252]

Motor Carriers; Permanent Authority Restriction Removals, Decision-Notice

Decided: April 23, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR Part 1137. Part 1137 was published in the Federal Register of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

CANADIAN CARRIER APPLICANTS: In the event an application to transport property, filed by a Canadian domiciled motor carrier, is unopposed, it will be reopened on the Commission's own motion for receipt of additional evidence and further consideration in light of the record developed in Ex Parte No. MC–157, *Investigation Into Canadian Law and Policy Regarding Applications of American Motor Carriers For Canadian Operating Authority.*

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Shaffer, Ewing, and Williams.

Agatha L. Mergenovich,

Secretary.

MC 340 (Sub-63)X, filed April 5, 1982. Applicant: QUERNER TRUCK LINES, INC., 1131–33 Austin St., San Antonio, TX 78208. Representative: M. Ward Bailey, 2412 Continental Life Bldg., Ft. Worth, TX 76102. Lead, Subs 28, 48, and 52 (1) remove exception of commodities of unusual value, those requiring special equipment, and livestock from general commodities authority, lead (2) broaden plastic bags and sheeting and cellulose film to "plastic and related products", Sub 52, (3) allow service at all intermediate points, lead, regular route portion (4) remove plantsite limitation and/or broaden St. Louis, MO to St. Louis, MO, St. Louis County, MO, St. Clair and Madison Counties, IL; Cleveland, OH to Cuyahoga and Lake Counties; Mendota, IL to LaSalle County; Chicago, IL to Cook, Lake, DuPage and Will Counties, IL and Lake and Porter Counties, IN; Austin, Dallas, Ft. Worth, San Antonio and Waco, TX to Travis, Dallas, Tarrant, Bexar, McLennan and Harris Counties, Melrose Park, IL to Cook County; Amarillo, TX to Potter County; and Laredo, TX to Webb County and (5) to radial authority.

MC 3252 (Sub-121)X, filed April 16, 1982. Applicant: MERRILL TRANSPORT CO., 1037 Forest Ave., P.O. Box 739, Portland, ME 04104. Representative: Francis E. Barrett, Jr., 10 Industrial Park Road, Hingham, MA 02043. Subs 116X, 117X, 62, and 114 certificates, (1) broaden (a) ore, in dump vehicles to "ores and minerals" in Sub 116X (para. 6), (b) junk batteries to "scrap metals" in Sub 116X (para. 15), (c) used engines to "machinery, and waste and scrap metals" in Sub 117X (para. 51), and (d) woodpulp to "pulp, paper and related products" in Sub 117X (para. 52); (2) change Searsport to Waldo County, ME, and Thamaston to Knox County, ME in Sub-62; (3) change one-way to radial authority in Subs 116X (paras. 6, 15, 18 and 25), 117X (paras. 9, 51 and 52), 62 and 114.

MC 8573 (Sub-2)X, filed April 19, 1982. Applicant: FERRARO TRUCKING CO., INC., 170 27th Street, Brooklyn, NY 11232. Representative: Kenneth M. Piken, 95–25 Queens Boulevard, Rego Park, NY 11374. Sub-1 permit: Broaden (1) commodity description from corrugated paper products to "pulp, paper and related products"; and (2) territorial description to between points in the U.S., under a continuing contract(s) with a named shipper.

MC 59517 (Sub-3)X, filed March 30, 1982. Applicant: HARRY E. SHEA SONS, INC., 701 U.S. Route 130, Riverton, NJ 08077. Representative: Lester R. Gutman, 805 McLachlen Bank Building, 666 Eleventh Street, NW., Washington, D.C. 20001. Lead broaden (1) agricultural commodities to "farm products," lumber to "lumber and wood products," lime to "ores and minerals," fertilizer to "chemicals and related products," and farm implements to "machinery, metal products, and rubber and plastic products"; (2) Riverton, NJ and points within 25 miles of Riverton to Camden, Gloucester, Burlington Counties, NJ and Philadelphia, Delaware, Chester, Montgomery and Bucks Counties, PA; Philadelphia, PA to Philadelphia, Delaware, Chester, Montgomery and Bucks Counties, PA, New Castle County, DE, and Mercer, Monmouth, Burlington, Gloucester, Camden, Salem, Ocean, Somerset, and Hunterdon Counties, NJ; Easton, PA to Northampton and Bucks Counties, PA and Warren and Hunterdon Counties, NJ; Bethlehem, PA to Northampton, Bucks, and Lehigh Counties, PA, points on Long Island, NY to Nassau and Suffolk Counties, NY; Camden, NJ to Camden, Burlington, and Gloucester Counties, NJ nd Philadelphia, Montgomery, and Bucks Counties, PA; from Norristown, PA to Philadelphia, Delaware, Montgomery, Chester, and Bucks Counties, Chester Valley, PA to Chester County; Harrisburg, PA to Dauphin, Cumberland, Perry, and York Counties, PA, and Palmyra, NJ to Burlington and Camden Counties, NJ and Philadelphia and Bucks Counties, PA; and (3) to radial authority.

MC 60157 (Sub-34)X, filed April 7, 1982. Applicant: C. A. WHITE TRUCKING COMPANY, 5327 N. Central Expressway, Suite 316, Dallas, TX 75205. Representative: Bernard H. English, 6270 Firth Rd., Fort Worth, TX 76116. Lead and Subs 5, 6, 7, 8, 10, 11, 12, 14, 17, 20, 21G, 22, 23, 24, 25, 26F, 27, 28F, 30F, and 32F certificates, and E–1 through E–13 letter notices: (A) broaden (1) lead and Subs 7, 8, 10, 11, 21G, 24, 25, and E nos. 1 (part 1), 2, 3, 4, 5, 6, 7, 8, 10, 11, and 13,

machinery, equipment, materials, and supplies used in or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas, petroleum and their products and by-products, and machinery, materials, equipment and supplies used in, or in connection with the construction, operations, repair, servicing, maintenance and dismantling of pipe lines, including the stringing and picking up thereof, and pipe used in, incidental to, or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products including the stringing and picking up of main pipelines to "mercer commodities"; (2) Subs 6, 11, 21G, 25, and E–1 (part 2), 2, and 9 from earth drilling commodities, as described, to "machinery, metal products and earth drilling commodities"; (3) Subs 7, 8, and 10, and E–12, machinery, equipment, materials and supplies used in pipelines other than gas, water or sewage to "machinery and metal products"; (4) Sub-Nos. 7, and 10 and E–12 (part 1) machinery and equipment, materials and supplies used in the production, etc. of sulphur, to "machinery and metal products" (5) Subs 7, 8, 10, and E–13, machinery, equipment, materials, and supplies used in the drilling of water wells, to "machinery and metal products"; (6) Subs 5, 12, and 27, pipe, pipe fittings, pipe connections and pipe couplings, except for use in mercer commodities operations to "metal products"; (7) Sub 17, plastic pipe to "rubber and plastic products"; (8) Subs 14, 20, 22, 23, 28F, and 32F, iron and steel articles, iron and steel scrap; iron and steel articles, iron and steel articles, aluminum articles, iron and steel tanks, aluminum tanks and parts, attachments and accessories, to "metal products"; (9) from iron and steel articles and pipe, and materials, equipment and supplies used in the production, manufacture or distribution thereof to "metal products and pipe"; (10) Sub 30, petroleum products and paints to "petroleum or coal products and chemicals and related products"; (B) remove the (1) "originating at or destined to" restriction, Subs 12, 14, 22, and 23; (2) "prior or subsequent movement by water" restriction, Sub 30; (3) "mercer commodities" restriction, Subs 5, 12, and 14; (4) "pipeline rights of way" restriction, Subs 7, 8, and 10; and (5) "TX" restriction, Sub 17; and (6) commodities in bulk exception, Sub 28; (C) broaden to (1) county-wide authority: (a) Subs 12 and 27, facilities Gainesville (Cooke County, TX); (b) Sub 17, Houston (Harris County, TX); (c) Sub 20, facilities Midlothian (Ellis County, TX); (d) Sub 21G, Houston, Lone Star and Lufkin (Harris, Morris and Angelina Counties, TX); (e) Sub 22, facilities Beaumont (Orange County, TX); (f) Sub 30, facilities Beaumont and Houston (Orange and Harris Counties, TX); (g) Sub 28, facilities Conroe (Montgomery County, TX); and (h) Subs 5 and 14, Lone Star (Morris County, TX); and (2) radial authority, Subs 5, 12, 17, 20, 21G, 22, 23, 27, 28, 30, and 32.

MC 79434 (Sub-5)X, filed April 16, 1982. Applicant: BENNETT TRUCK LINE, INC., 200 E. Walnut, Paragould, AR 72450. Representative: R. Connor Wiggins, Jr., 100 N. Main Bldg., Suite 909, Memphis, TN 38103. Sub 1X: Broaden the off route point of Knobel, AR, to Clay Country, AR.

MC 85811 (Sub-14)X, filed April 2, 1982. Applicant: AMSCO TRANSPORTATION, INC., 10560 Mykawa Road, P.O. Box 33280, Houston, TX 77033. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 23101. Subs 4, 6, 8, 11F, 12F, and 13F certificates: Broaden (1) Subs 8, 11, 12, and 13 to "metal products," from iron and steel articles; Sub 4 to "lumber and wood products, pulp, paper and related products, rubber and plastic products, clay, concrete, glass or stone products, machinery, transportation equipment, Mercer commodities, and those commodities which because of their size or weight require the use of special handling or equipment," from back-fillers, bank doors, batch bins, beams, boilers, bridge equipment, construction equipment, ditching equipment, ererction equipment, finishing equipment, irrigation and drainage equipment, industrial equipment, paving equipment, refinery equipment, roadbuilding equipment, sawmill equipment, bulldozers, castings, caterpillars, channels, circuit breakers, columns, compressors, cranes, derricks, drag lines, dynamoes, electric motors, engines, furnaces, generators, girders, graders, machinery, hoists, industrial hammers, lathes, mixers, ovens, pile driving rigs, pilings, planes, plates, poles, posts, presses, pumps, punches, road maintainers, rollers, rotaries, safes, scrapers, sheet, shovels, tanks, threshing machines, trenching machines, tractors, transformers, trusses, turbines, vaults, pipe, and oilfield equipment; and Sub 6 to "rubber and plastic products," from plastic pipe; (2) to countywide authority: Sub 6 Houston, TX (plantsite at Houston), and Tulsa County, OK (plantsite at Broken Arrow); Sub 8, Liberty County, TX (facilities in Liberty County); and Sub 11, Bossier and Caddo Parishes, LA (Bossier City); (3) to radial authority; and (4) remove restrictions (a) restricting service to "size or weight commodities and self-propelled articles, transported on trailers" in Sub 4; and (b) the "originating at and destined to" restriction at named points in Sub 8.

MC 95965 (Sub-3)X, filed April 1, 1982. Applicant: NICHOLAS J. ASCENZO, INC., 1544 Boone Ave., Bronx, NY 10460. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048–0640. Lead Subs 2, 9 and 10 permits; Broaden, (1) iron and steel, iron and steel articles and steel beams, to "metal products"; lead, 2, 9, and 10; piling to "clay, concrete, glass or stone products and lumber and wood products", lead, 2, and 9; (2) remove in bulk restriction, as a exception in connection with contractors, equipment, materials and supplies in Sub 10; and (3) to between points in the United States (except AK and HI), under contract(s) with named shippers, all permits.

MC 102971 (Sub-5)X, filed April 9, 1982. Applicant: LYTLE'S TRANSFER & STORAGE, INC., 2309 Union Avenue, Altoona, PA 16602. Representative: William J. Lavelle, Esq., 2310 Grant Bldg. Pittsburgh, PA 15219. Sub-1. Broaden: household goods to "household goods, furniture and fixtures"; points within 20 miles of Altoona to Bedford, Blair, Cambria, Centre, Clearfield and Huntingdon Counties, PA; points within 50 miles of Altoona to above counties and Armstrong, Indiana, Jefferson, Westmoreland, Somerset, Fulton, Juniata, Mifflin, Elk, Cameron, Clinton, Perry, Cumberland and Franklin Counties, PA; and to radial authority.

MC 105375 (Sub-92)X, filed April 5, 1982. Applicant: DAHLEN TRANSPORT, INC., 1680 Fourth Ave., Newport, MN 55055. Representative: Joseph A. Eschenbacher, Jr., P.O. Box 289, Newport, MN 55055. Subs 2, 8, 11, 14, 15, 17, 18, 19, 20, 21, 23, 24, 27, 30, 31, 32, 33, 34, 35, 36, 39, 42, 52, 53, 56, 57, 65, 69, 70F, 71, 74, 75, 76F, 81F, 82F, and 85F certificates: (1) broaden (a) petroleum and petroleum products, (Subs 2, 8, 69, and 76F); liquefied petroleum gas, (Subs 15, 30, and 69); gasoline and fuel oils, (Sub 33); jet fuel, acetone, methyl ethyl ketone, isopropyl alcohol, methanol, toluol, xylol, isopropyl ether and petroleum solvents, road oils and asphalt, liquefied petroleum products, gasoline, fuel oil, and liquefied petroleum gas, (Sub 69), to "petroleum, natural gas and their products"; (b) anhydrous ammonia, fertilizers, fertilizer compounds, ammonium nitrate and

nitrogen solutions, (Subs 11 and 69); liquid chemicals, (Sub 14); nitrogen fertilizer solutions, (Subs 17 and 69); fertilizer and fertilizer compounds, acids and chemicals, (Sub 18); anhydrous ammonia (Subs 19, 21, 23, 39, 42, 69, and 82F); acids, chemicals, fertilizer and fertilizer ingredients (Subs 20 and 24); chemicals and fertilizers, (Sub 27); fertilizers, insecticides, fungicides and herbicides, and materials and ingredients thereof (Sub 31); chemicals and fertilizer and fertilizer materials derived from petroleum products, (Sub 35); liquid carpet shampoo, (Sub 53); adhesives, (Subs 57 and 69); liquid fertilizer, (Subs 65, 69, 75, and 82F); sulfuric acid, phosphatic solutions, calcium sulfate, anhydrous ammonia and ammonium nitrate, alum, nitric acid, acid base detergent, (Sub 69); fertilizer and fertilizer materials, (Sub 74), to "chemicals and related products"; (c) dry plastics, (Sub 32) to "rubber and plastic products"; (d) liquid animal food and liquid animal food supplements, (Subs 34, 36, 52, 56 and 69); flour preparations (except feed and feed ingredients), (Sub 69); flour, (Subs 69 and 71); edible sugar, (Sub 69); sugar (Sub 85F); vegetable oil, (Sub 81F), to "food and related products"; (e) cotton piece goods, and materials and supplies used in the manufacture and distribution of abrasive cloth and paper; and abrasive cloth and paper, (Sub 69), to "pulp, paper and related products"; (f) general commodities (with exceptions), (Sub 69), to "general commodities (except classes A and B explosives, household goods, and commodities in bulk)"; (g) inedible tallow (Sub 69), to "animal fats and oils"; (2) remove restrictions (a) in bulk, or in bulk, in tank vehicles, or in bulk in tank or hopper type vehicles, wherever they appear; (b) ex-rail restriction in Sub 69; (c) originating at and/or destined to restrictions in Subs 31, 32, 34, 35, 36, 39, 42 and 65; (d) eliminate facilities limitations in Subs 14, 15, 19, 20, 21, 23, 24, 27, 30, 31, 32, 33, 34, 35, 36, 39, 42, 53, 65, 69, 70F, 74, and 76F; (3) change one-way to radial in all Subs; and (4) replace cities with counties, Clear Lake, IA (Cerro Gordo County), Subs 2 and 15; Fort Madison, IA (Lee County), Sub 11; Clinton, IA (Clinton County), Subs 14 and 32; Clarion, IA (Wright County), Sub 17; Fremont, NE (Dodge County), Sub 18; Fort Dodge, IA (Webster County) Sub 19; East Dubuque, IL (Jo Daviess County), Sub 20; Albany, IL (Whiteside County), Subs 21 and 74; Garner, IA (Hancock County), Subs 23 and 39; Niota, IL, (Hancock County), Sub 24; Whiting, IA, (Monona County) Subs 30 and 39; Blair, NE, (Washington County), Subs 31 and 52; Dubuque, IA, (Dubuque County), Sub 34; Lincoln, NE, (Lancaster County), Sub 35; LaPlatte and Omaha, NE, (Douglas County), Sub 36; Greenwood, NE (Cass County), and Early, IA, (Sac County), Sub 39; Spencer, IA, (Clay County), and Marshalltown, IA, (Marshall County), Sub 42; Cordova, IL, (Rock Island County), and Prairie du Chien, WI, (Crawford County), Sub 53; Clarence, IA, (Cedar County), Sub 56; Knoxville, IA, (Marion County), and Brookings, SD, (Brookings County), Sub 57; Fulton, IL (Whiteside County), Sub 65; St. Paul and Minneapolis, and points within 10 miles of each, MN, (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties), Subs 69 and 70; Savage, MN, (Scott County), Sub 69; Alexandria, MN, (Douglas County), Subs 69 and 75; Duluth, MN, (St. Louis County), Rochester, MN, (Olmstead County), Grand Forks, ND, (Grand Forks County), Newport, MN, (Washington County), Minneapolis, Savage, and Pine Bend, MN, (Hennepin, Scott and Dakota Counties), Charles City, IA, (Floyd County), Diamond Bluff, WI, (Pierce County), Rosemount, MN, (Dakota County), Oostburg, WI, (Sheboygan County), West Union, IA, (Fayette County), Winona, MN, (Winona County), Sanborn, IA, (O'Brien County), Sub 69; St. Paul, MN, (Ramsey County), Subs 69 and 76F; Janesville, WI, (Rock County), Blue Earth, MN, (Faribault County), Belmond, IA, (Wright County), Green Bay, WI, (Brown County), Pine Bend, MN, (Dakota County), Minneapolis and Hastings, MN, (Hennepin and Dakota Counties), New Brighton, MN, (Ramsey County), Minneapolis, MN, (Hennepin County), St. Louis, MO, (St. Louis, MO and Jefferson County), Hillsboro and Wahpeton, ND, (Richland and Trail Counties), Cottage Grove, MN, (Washington County), and Junction City, WI, (Portage County), Sub 69; Hastings, Rush City and Mankato, MN, (Dakota, Chisago and Blue Earth Counties), Sub 71; Mankato, MN, (Blue Earth County), Sub 81F; Wahpeton, ND, (Richland County), and Chaska Crookston, Moorhead and Renville, MN, (Carver, Polk, Clay and Renville Counties), Sub 85F.

MC 110746 (Sub-5)X, filed April 12, 1982. Applicant: PARKS MOVING & STORAGE, INC., 740 Commonwealth Drive, Warrendale, PA 15086. Representative: William J. Lavelle, 2310 Grant Bldg., Pittsburgh, PA 15219. Lead and Sub-No. 2F: Broaden (1) household good to include "furniture and fixtures" in both authorities; (2) Pittsburgh, PA, and points in PA and WV within 40 miles of Pittsburgh to Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Indiana, Lawrence, Washington, and Westmoreland Counties, PA, and Brooke, Hancock, Marshall, and Ohio Counties, WV in the lead.

MC 120737 (Sub-101)X, filed April 6, 1982. Applicant: STAR DELIVERY & TRANSFER, INC., P.O. Box 39, Canton, IL 61520. Representative: James C. Hardman, 33 N. LaSalle Street, Chicago, IL 60602. Sub Nos. E–1, E–2 and E–3: (1) Broaden in Sub E–1 from livestock feeder tanks, fuel tanks, stalls, grain boxes and electric fence posts to "machinery and metal products"; and Sub E–3, from tractors (except highway tractors for hauling freight trailers and except tractors, the transportation of which, because of size and weight, requires the use of special equipment, regardless by whom loaded) to "machinery"; (2) broaden points within 50 miles of Pottstown, IL to Warren, McDonough, Fulton, Mason, Logan, Tazewell, McLean, Livingston, Woodford, Marshall, Putnam, Bureau, Knox, Henry, Stark, Menard, DeWitt, Peoria and LaSalle Counties, IL" in Subs E–1 and E–2; (3) broaden Peoria, IL to Peoria, Woodford and Tazewell Counties, IL in Sub E–1; Ashtabula, OH to Ashtabula County, OH in E–2; Eau Claire, WI to Chippewa and Eau Claire Counties, WI in Sub E–3; and West Chicago, IL to DuPage County, IL in Sub E–3, (4) change one-way to radial authority; (5) remove "size and weight" restriction in Sub E–3; and (6) remove plant-site restriction "traffic originating at" Sub E–3.

MC 124004 (Sub-71)X, filed December 7, 1981, previously noticed in the Federal Register of December 23, 1981, republished as follows: Applicant: RICHARD DAHN, INC., 620 West Mountain Rd., Sparta, NJ 07871. Representative: Richard W. Dahn (same as applicant). Sub-Nos. 60 and 63: rephrase the facilities restrictions to read "between the facilities used by the named corporations," at points in the United States (except Alaska and Hawaii) on the one hand, and, on the other, points in the United States (except Alaska and Hawaii).

MC 128604 (Sub-2)X, filed April 6, 1982, Applicant: LARRY G. WHITMOYER, P.O. Box 175, R.D. #2, Millville, PA 17846. Representative: S. Berne Smith, P.O. Box 1166, Harrisburg, PA 17108. Lead permit, broaden (1) to "ores and minerals, clay, concrete, glass or stone products, and metal products and other foundry materials," from industrial sand, limestone and fire clay, in dump vehicles, and foundry materials; and (2) to "between points in the U.S.,"

under continuing contract(s) with the named shippers.

MC 133984 (Sub-5)X, filed April 12, 1982. Applicant: POPPERT TRUCKING, INC., 401 Covina Lane, City of Industry, CA 91744. Representative: Richard C. Celio, 2300 Camino Del Sol, Fullerton, CA 92633. Sub-2 permit: Broaden to between points in the United States (except AK and HI), under continuing contract(s) with named shippers.

MC 134940 (Sub-11)X, filed April 9, 1982. Applicant: VERNON KUFAHL d.b.a. KUFAHL TRUCKING, 4704 North 32nd Avenue, Wausau, Wisconsin 54401. Representative: Wayne W. Wilson, 150 E. Gilman Street, Madison, Wisconsin 53703. Subs-2 and 5 permits, (1) broaden (a) building and housing units, complete, knocked down, or in sections and component parts thereof to "building and housing units and component parts thereof," and (b) wood products to "lumber and wood products" in Sub 2; (2) remove commodities in bulk exception in Sub-5; (3) expand to between points in the U.S. (except AK and HI) under a continuing contract(s) with named shipper, in both Subs.

MC 138977 (Sub-5)X, filed April 7, 1982. Applicant: EDWARD SKINNER, JR., d.b.a. SKINNER TRUCKING, P.O. Box 709, Twin Falls, ID 83301. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701. Sub-Nos. 1 and 3 permits: Broaden (1) to "beekeepers' supplies and equipment, materials and supplies used in the conduct of such business, food and related products, materials, equipment and supplies used in apiaries and by honey processing, storage and distribution plants, clay, concrete, stone or glass products, metal and metal products, plastic and plastic products and containers" from Beekeepers' supplies equipment, and honey and beeswax in mixed loads with such supplies and equipment, materials, equipment, and supplies used in apiaries and by honey processing, storage, and distribution plants, and honey and beeswax in mixed loads with such materials, equipment, and supplies, glass bottles, glass jars, glass bowls, metal bottles and jar caps, plastic containers, and metal cans in Sub 1; and in Sub-No. 3 to "pipe, pipe fittings, irrigation systems and materials, equipment and supplies used in the manufacture and distribution thereof," from irrigation pipe, and fittings and accessories for irrigation pipes; (2) to between points in the U.S. (except AK and HI) under continuing contracts with named shippers in both permits.

MC 139457 (Sub-33)X, filed April 13, 1982. Applicant: G. L. SKIDMORE d.b.a. JELLY SKIDMORE TRUCKING CO., P.O. Box 38, Paris, TX 75460. Representative: Paul D. Angenend, P.O. Box 2207, 1806 Rio Grande, Austin, TX 78768. Sub 23F permit. Broaden: Part (1), canned and preserved foodstuffs and canned and packaged animal food and part (2), materials and supplies used in the manufacture of the commodities above, to "food and related products"; and territorial description to "between points in the U.S." under continuing contract(s) with named shippers.

MC 142429 (Sub-7)X, filed April 15, 1982. Applicant: HORACE G. STROUD d.b.a. STROUD TRUCK SERVICE, 11030 Weaver Street, South El Monte, CA 91733. Representative: John C. Russell, 1545 Wilshire Blvd., Los Angeles, CA 90017. Sub 3 (M1F) permit, broaden (1) to "food and related products," from meats, meat products and byproducts, and articles distributed by meat packinghouses; (2) to "between points in the U.S.," under continuing contract(s) with the named shippers; and (3) remove commodity and vehicle restrictions, as follows: "except hides and commodities in bulk, in vehicles equipped with mechanical refrigeration."

MC 145203 (Sub-14)X, filed April 9, 1982. Applicant: REITZEL TRUCKING CO., INC., 7481 Fremont Pike, Perrysburg, OH 43551. Representative: Andrew Jay Burkholder, 275 E. State St., Columbus, OH 43215. Lead and Sub 13: (1) Broaden glassware, machine-made and uncut, except ampules, bottles, carboys, demijohns, and jars to "clay, concrete, glass or stone products", Sub 13; (2) eliminate the restriction against the transportation of foodstuffs, lead; (3) remove the facilities limitation and broaden Perrysburg Township, Wood County, OH to Wood County, OH, lead; (4) remove the originating at and/or destined to restriction, lead; and (5) change one-way to radial authority, Sub 13.

MC 146712 (Sub-3)X, filed April 5, 1982. Applicant: STEEL CARGO, INC., R.R. 1, Box 81, Sharpsville, IN 46068. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Lead and Sub-No. 1F permit: Broaden (1) to between points in the U.S. (except AK and HI) under continuing contract(s) with named shippers in both permits; (2) steel tubing, tubing, chain link, wire, and ornamental fence, and parts thereof, to "metal products" in the lead; and fencing materials, iron, steel, zinc, lead and articles (except in bulk), springs, and construction materials, supplies and equipment (except in bulk) and materials, equipment and supplies (except in bulk), used in the manufacture and distribution thereof, to "construction materials" in Sub-No. 1.

MC 147019 (Sub-7)X, filed April 12, 1982. Applicant: WENGERT TRANSPORTATION, INC., d.b.a. CITY DELIVERY, 651–58th Avenue Court, SW., Cedar Rapids, IA 52404. Representative James M. Hodge, 3730 Ingersoll Ave., Des Moines, IA 50312. Lead certificate and Subs 6, 8, 9, 10, 13 and 17 (acquired in No. MC–FC–79486); (1) Broaden motion picture films, film accessories, advertising material used in connection with the exhibition of such films, newpapers, magazines and periodical publications to "motion picture films, film accessories and printed matter" in lead and Subs 8 and 9; (2) change (a) Kellogg, Montezuma, Williamsburg and Cedar Rapids, IA to Jasper, Poweshiek, Iowa and Linn Counties, IA, in lead (off-route points on regular routes), (b) Omaha, to Douglas County, NE and Fulton, to Whiteside County, IL, and Des Moines, to Polk County, IA, in lead (irregular route), (c) Des Moines Municipal Airport at Des Moines, IA to Polk County, IA, in Subs 10 and 13, (d) Eppley Airfield at Omaha, NE to Douglas County, NE, in Sub 13; (3) remove (a) size and weight restrictions, in Subs 6, 9 and 17, (b) ex-air restriction, in Subs 10 and 13, (c) livestock exception, in Sub 10.

MC 147404 (Sub-6)X, filed April 14, 1982. Applicant: DONALD J. GETTELFINGER, d.b.a. GETTELFINGER FARMS, R.R. 2, Box 241, Palmyra, IN 47164. Representative: Robert W. Loser II, 1101 Chamber of Commerce Bldg., 320 N. Meridian St., Indianapolis, IN 46204. Sub 2F and Sub 4F. Broaden: To "food and related products (except commodities in bulk)" from meats, meat products, meat by products, dairy products, articles distributed by meat packinghouses, and commodities used by meat packers in the conduct of their business, except hides and commodities in bulk (Sub 2F), and foodstuffs except in bulk (Sub 4F); Jefferson, Oldham, and Bullitt Counties, KY and Floyd, Clark and Harrison Counties, IN for Louisville, KY (facilities) (Sub 2F); and Saginaw, Lapeer, St. Clair and Macomb Counties, MI for Bridgeport, Imlay City and Memphis, MI (facilities); Washington County, MS for Greenville, MS (facilities); Sussex County, DE for Millsboro, DE (facilities); and Los Angeles County, CA for City of Industry, CA (facilities) (Sub 4F); and remove restriction in Sub 2F to Tansportation of traffic originating at/destined to named points.

MC 150724 (Sub-10)X, filed April 12, 1982. Applicant: DONALD SANTISI TRUCKING COMPANY, 340 Victoria Road, P.O. Box 4145, Youngstown, OH 44515. Representative: Andrew F. Burkholder, 275 E. State St., Columbus, OH 43215. Permits MC–143218 (M1)F and Sub-Nos. 2 (M1)F, 3F, and 5F, broaden (1) hardware, and strip steel, in the lead, and steel doors and steel frames, threaded rods and studs, and parts for threaded rods and studs, in Sub 3 to "metal products"; books, magazines, periodicals, and advertising matter (except commodities in bulk) to "printed matter and advertising material" in Sub 2; electric transformers and transformer parts, and materials, equipment and supplies used in the production, distribution or sale of electric transformers (except commodities in bulk) to "machinery, and materials, equipment and supplies used in the manufacture and distribution of machinery" in Sub 5; (2) to between points in the U.S. (except AK and HI) under continuing contract(s) with named shippers in all authorities.

MC 151182 (Sub-2)X, filed March 16, 1982. Applicant: K.C.G.M. TRANSPORT, P.O. Box 9636, Long Beach, CA 90810. Representative: Donald R. Hedrick, P.O. Box 4334, Santa Ana, CA 92702. Sub 1F certificate, remove (1) the restriction prohibiting transportation of "household goods as defined by the Commission," from general commodities in intermodal containers; and (2) the restriction limiting shipments to those "having an immediately prior or subsequent movement by water."

MC 151522 (Sub-4)X, filed April 8, 1982. Applicant: DIRECT MOTOR EXPRESS, INC., 2098 Kellogg Ave., Memphis, TN 38114. Representative: Henry E. Seaton, Suite 1024, 425 13th Street, NW., Washington, DC 20004. Sub 1 certificate, broaden to countywide authority, as follows: Shelby, Fayette and Tipton Counties, TN, DeSoto, Tunica and Marshall Counties, MS, and Crittenden, St. Francis and Lee Counties, AR (Memphis, TN).

[FR Doc. 82–12060 Filed 5–3–82; 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 become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

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. OP1–74

Decided: April 21, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 161510, filed April 15, 1982. Applicant: EVARET G. WALKER, 7011 S.E. Wilshire, Milwaukie, OR 97222. Representative: Evaret G. Walker, P.O. Box 87, 7349 Old Pac. Hwy. So., Kalama, WA 98625; (206) 673–3878. 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. (except AK and HI).

MC 161511, filed April 15, 1982. Applicant: CONTINENTAL BORDERS EXPRESS, INC., 1231 Mandalay Street, Ontario, CA 91764. Representative: Barry Weintraub, Suite 510, 8133 Leesburg Pike, Vienna, VA 22180; (703) 442–8330. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret material, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 161521, filed April 15, 1982. Applicant: MERLYN E. AND JACQUALINE L. MAAS, d.b.a. MERJAC ENTERPRISES, N. 4024 Madison St., Spokane, WA 99205. Representative: Jim Pitzer, 15 S. Grady Way, Suite 321, Renton, WA 98055–3273, (206) 235–1111. 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. (except AK and HI).

Volume No. OP2–85

Decided: April 26, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 161052, filed March 16, 1982. Applicant: KEIHIN AMERICA CORPORATION, 5300 West 83rd Street, Los Angeles, CA 90045. Representative: David A. Livdahl, 555 South Flower Street, Suite 4310, Los Angeles, CA 90045. *As a broker of general*

commodities (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP5–93

Decided: April 23, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 161468, filed April 12, 1982. Applicant: WILLIAM C. HEWISH, JR. & DENNIS P. WARDS d.b.a. H & W ASSOCIATES, INC., 2307 Briston Pk., Croydon, PA 19020. Representative: William C. Hewish, Jr. (same address as applicant), 215–785–5545. As a broker of *general commodities* (except used household goods), between points in the U.S. (except AK and HI).

MC 161489, filed April 13, 1982. Applicant: CLIPPER EXPRESS COMPANY, 3401 West Pershing Rd., Chicago, IL 60632. Representative: Charles A. Webb, 1828 L St., NW., Suite 1111, Washington, DC 20036, (202) 822–8200. As a *broker of general commodities* (except household goods), between points in the U.S.

Volume No. OP5–95

Decided: April 27, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 161558, filed April 19, 1982. Applicant: SPURT MESSENGER SERVICE, INC., 831 3rd Ave., New York, NY 10022. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666 (201) 836–1144. 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. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–12059 Filed 5–3–82; 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 inquires to the Ombudsman's Office, (202) 275–7326.

Volume No. OP1–76

76

Decided: April 23, 1982.

By the Commission Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 2661 (Sub-19), filed April 19, 1982. Applicant: INDIAN TRAILS, INCORPORTED, 109 E. Comstock St., Owosso, MI 48867. Representative: J. G. Dail, Jr., P.O. Box, LL, McLean, VA 22101; (703) 893–3050. Transporting *passengers and their baggage*, in the same vehicle with passengers, in charter operations, between points in the U.S. (except HI), under continuing contract(s) with Scheffler's Four Seasons Tours, Inc., of Saginaw, MI.

MC 74681 (Sub-17), filed April 7, 1982. Applicant: STEVENS VAN LINES, INC., 121 South Niagara St., Saginaw, MI 48602. Representative: Robert J. Gallagher, 1000 Connecticut Ave. NW., Suite 1200, Washington, DC 20036; (202) 785–0024. Transporting *household goods*, between points in AL, AZ, AR, CA, CO, CT, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY, and DC.

MC 111941 (Sub-44), filed April 19, 1982. Applicant: PIERCETON TRUCKING COMPANY, INC., P.O. Box 233, Laketon, IN 46943. Representative: Norman R. Garvin, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204–3491; (317) 638–1301. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with L. B. Foster Company, of Doraville, GA.

MC 144630 (Sub-66), filed April 16, 1982. Applicant: STOOPS EXPRESS, INC., P.O. Box 287, Anderson, IN 46015. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240; (317) 846–6655. 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 J. A. Tucker Company, of Westville, NJ.

MC 146910 (Sub-8), filed April 15, 1982. Applicant: MOTOR CARGO TRANSPORT CORP., 21 D'Shibe Terrace, Vineland, NJ 08360. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666; (201) 836–1144. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the NJ and PA, on the one hand, and, on

the other, points in the U.S. (except AK and HI).

MC 147770 (Sub-6), filed April 19, 1982. Applicant: WEST AMERICAN TRANSPORT, INC., 1260 West North Temple, Salt Lake City, UT 84116. Representative: Mark K. Boyle, Suite 400, 10 West Broadway Building, Salt Lake City, UT 84101; (801) 363–3550. Transporting *rubber and plastic products, metal products, and machinery and parts,* between points in the U.S. (except AK and HI), under continuing contract(s) with Baker Mining and Equipment Company, of Salt Lake City, UT.

MC 148440 (Sub-5), filed April 16, 1982. Applicant: LEIBY S. HALL, d.b.a. TCF INDUSTRIES, 525 North Franklin St., Decatur, IL 62523. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701; (217) 544–5468. Transporting *materials, equipment, and supplies* used in the manufacture of earthmoving, construction and material handling machines and engines, between points in the U.S. (except AK and HI), under continuing contract(s) with Caterpiller Tractor Co., of Peoria, IL.

MC 148620 (Sub-9), filed April 6, 1982. Applicant: K.G.L. CONTRACTING SERVICES, INC., P.O. Box 8202, Pembroke Pines, FL 33024. Representative: Robert W. Gerson, 1400 Candler Building, 127 Peachtree Street, NE., Atlanta, GA 30043; (404) 658–8045. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with United Freight, Inc., of Morrow, GA.

MC 149351 (Sub-5), filed April 19, 1982. Applicant: HEYMAN TRUCKING, INC., Box 97, 212 Mulberry St., Stephens City, VA 22655. Representative: Edward N. Button, 635 Oak Hill Ave., Hagerstown, MD 21740; (301) 739–4860. Transporting *vending machines,* between points in Jefferson and Berkeley Counties, WV, and Washington County, MD, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 150301 (Sub-19), filed April 6, 1982. Applicant: EQUITY TRANSPORTATION COMPANY, INC., 9744 E. Fulton Rd., Ada, MI 49301. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503; (616) 459–6121. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in the U.S., under continuing contract(s) with United Freight, Inc., of Morrow, GA.

MC 150561 (Sub-2), filed April 16, 1982. Applicant: LAW-TON TRUCKING CORP., 7 Cedar Crest Drive, Dix Hills, NY 11746. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240; (317) 846–6655. Transporting *such commodities* as are dealt in by drug stores, between points in the U.S. (except AK and HI), under continuing contract(s) with Selective Promotions, Ltd., of Farmingdale, NY.

MC 154541 (Republication), filed May 4, 1981, previously noticed in the **Federal Register** issue of May 21, 1981. Applicant: SEA ISLAND STAGES OF BEAUFORT/HILTON HEAD, P.O. Box 4031, Beaufort, SC 29902. Representative: D. R. Wismer, 605 Broad River Drive, Beaufort, SC 29902; (803) 524–0393. Transporting *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, between Hilton Head, SC, on the one hand, and, on the other, points in FL, GA, LA, MD, NC, TN, and VA. Condition: Issuance of a certificate in this proceeding shall cancel certificate issued October 22, 1981.

Note.—The purpose of this republication is to clarify the territory description.

MC 159390, filed April 16, 1982. Applicant: WINTHER TRANSPORT, INC., 3380 Edward Ave., Santa Clara, CA 95050. Representative: James Robert Evans, 145 W. Wisconsin Ave., Neehah, WI 54956; (414) 722–2848. 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 Liberty Vinyl Corporation, of Santa Clara, CA.

MC 161450, filed April 15, 1982. Applicant: ROBERTSON FACTORIES, INC., 33 Chandler Ave., Taunton, MA 02780. Representative: Charles E. Southwell, (same address as applicant) (617) 823–5141. 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 Cameo Curtain Company of New Bedford, MA, Mt. Hope Finishing Company, of Butner, NC, and Polylok Corporation, of New York, NY.

MC 161520, filed April 15, 1982. Applicant: PRO CARTAGE, INC., 8 Greek Lane, Edison, NJ 08817. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666; (201) 836–1144. Transporting *plastic materials,* between points in NY, NJ, CT, RI, MA, PA, NC, SC, IL, OH, IN, FL, MD and GA.

MC 161530, filed April 15, 1982. Applicant: RAIDER TRUCKING, INC., 3621 West Dailey, Phoenix, AZ 85023. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 80514; (602) 264–4891. Transporting *such commodities* as are dealt in or used by tire stores, between points in the U.S. (except AK and HI), under continuing contract(s) with Goodyear Tire & Rubber Company, of Akron, OH.

MC 161570, filed April 19, 1982. Applicant: LARSON BROTHERS INCORPORATED, 350 Hartford Avenue, Wethersfield, CT 06109. Representative: John E. Fay, 663 Maple Avenue, Hartford, CT 06114; (203) 525–2661. Transporting *steel products,* between East Hartford, CT, on the one hand, and, on the other, points in CT, MA, ME, NH, RI, and VT, under continuing contract(s) with Republic Steel Corporation, of Massillon, OH.

Volume No. OP2–83

Decided: April 23, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 150103 (Sub-18), filed April 12, 1982. Applicant: SCHWEIGER INDUSTRIES, INC., 116 West Washington St., Jefferson, WI 53549. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703; 608–256–7444. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of polyester, cotton, and fiberglass products, between points in Cook County, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 150683 (Sub-3), filed April 14, 1982. Applicant: GEORGE FANCSAL, 148 Grandview Ave., Conneaut, OH 44030. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114; 216–566–5639. Transporting *chemicals and related products and clay, concrete, glass and stone products,* between points in Ashtabula County, OH, and points in TX.

MC 150803 (Sub-2), filed April 6, 1982. Applicant: T. W. KOEGER TRUCKING, 1200 S. Main, Williamsville, MO 63967. Representative: Gerald K. Gimmel, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877; 301–840–8565. Transporting *charcoal,* between points in Butler and Carter Counties, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151173 (Sub-13), filed April 16, 1982. Applicant: HAR-BET, INC., 7209 Tara Blvd., P.O. Box 855, Jonesboro, GA 30255. Representative: O. L. Godfrey, Jr. (same address as applicant), 404–478–4115. 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 Warren/Sherer Division of Kysor Industrial Corporation, of Conyers, GA.

MC 151253 (Sub-2), filed April 5, 1982. Applicant: TRI-STATE TRANSPORT, INC., 322 Grange Road, P.O. Box 4054, Port Wentworth, GA 31407. Representative: James P. Cates (same address as applicant), (912) 964-9002. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between the ports and port cities of Charleston, SC, Jacksonville, FL and Savannah, GA, on the one hand, and, on the other, points in AL, FL, GA, KY, MS, NC, SC, TN, and VA.

MC 153723 (Sub-9), filed March 23, 1982. Applicant: A & M ENTERPRISES, INC., P.O. Box 884, Springdale, AR 72764. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72702; (501) 521-8121. Transporting *attic stairways, pocket door frames, attic fans and metal stampings, food and related products, aluminum ventilators, roof louvers, turbines, and shutters,* between points in Pulaski County, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 159502, filed April 12, 1982. Applicant: BRAY TRUCKING, INC., P.O. Box 562, Big Piney, WY 83113. Representative: Frank Bray (same address as applicant), 307-276-3346. Transporting *machinery, equipment, materials, and supplies,* used in, or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission and distribution of natural gas and petroleum and their products and by-products, and the dismantling, moving and setting-up of rigs, between points in WY, CO, ID, MT, NE, NV, NM, ND, SD, KS, OK, TX, and UT, under continuing contract(s) with (a) Hageman Anchor & Testing Ser. For Woods Pet. Corp., (b) Mobil Oil Corp., (c) Woods Petr. Corp., all of Big Piney, WY, (d) Helmrick & Payne, Inc., of Oklahoma City, OK, and (e) J. B. Roden Drilling Co., of Mills, WY.

MC 161342, filed April 2, 1982. Applicant: SPECIALIZED TRANSPORT INTERNATIONAL, INC., 5 Augusta Drive, Seguin, TX 78155. Representative: Robert J. Brooks, 1828 L St., NW., Suite 1111, Washington, DC 20036; (202) 466-3892. Transporting *Machinery* and *such commodities* as are used in the manufacture and distribution of machinery, between points in the U.S., under a continuing contract(s) with Montgomery Elevator Company, of McKinney, TX.

MC 161363, filed April 5, 1982. Applicant: SOUTH CENTRAL TRUCKING, 135 Post Rd., Anchorage, AK 99501. Representative: L. L. Fairbanks (same address as applicant), 907-279-0414. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AK.

MC 161372, filed April 16, 1982. Applicant: EXHIBIT BILDERS, INC., TRUCKING DIVISION, 9109 Premier Row, Dallas, TX 75247. Representative: E. Larry Wells, P.O. Box 45538, Dallas, TX 75245; 214-358-3341. Transporting *trade show exhibits,* between points in the U.S. (except AK and HI).

Volume No. OP2-84

Decided: April 21, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 141093, (Sub-2), filed April 1, 1982. Applicant: BERKSHIRE BULK SERVICE, INC., The Port of Albany, Albany. Representative: Neil D. Breslin, 11 N. Pearl St., Albany, NY 12207; (518) 434-1136. Transporting *flour, semolina, and wheat-midds,* between points in Albany County, NY, on the one hand, and, on the other, points in MA, NH, NJ, PA, RI, VT, CT, ME and NY.

MC 141443, (Sub-70), filed April 1, 1982. Applicant: JOHN LONG TRUCKING, INC., 1030 East Denton, Sapulpa, OK 74066. Representative: Wilburn L. Williamson, Suite 107, 50 Classen Ctr., 5101 North Classen Blvd., Oklahoma City, OK 73118; (405) 848-7946. Transporting *food and related products,* between points in Custer County, OK, on the one hand, and, on the other, points in AZ, CA, CO, NM and TX.

MC 152972, (Sub-1), filed April 1, 1982. Applicant: BARRY R. HAYNES, 4146 E. Williamson Rd., Marion, NY 14505. Representative: Barry R. Haynes (same address as applicant) (315) 026-5108. Transporting *rubber and plastic products* between points in the U.S. under continuing contract(s) with Commodore Plastics Inc., of Holcomb, NY.

MC 159902, filed April 1, 1982. Applicant: FRANK BACA, 122 Los Ranchos Road, NW., Alburquerque, NM 87107. Representative: Frank Baca (same address as applicant) (505) 898-1277. Transporting *ores and minerals,* between points in the U.S. (except AK and HI), under continuing contract(s) with St. Cloud Mining Co., and San Pedro Mining Corp., of Alburquerque, NM.

MC 161213, filed March 25, 1982. Applicant: MID COLUMBIA MOTOR FREIGHT, INC., 2640 W. Cascade, Hood River, OR 97031. Representative: Philip G. Skofstad, 529 S. E. Grand Ave., Portland, OR 97214; (503) 239-4157. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Multnomah, Hood River and Wasco Counties, OR, and Klickitat, Skamania and Yakima Counties, WA.

Volume No. OP2-86

Decided: April 26, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 146213, (Sub-18), filed April 5, 1982. Applicant: WISCONSIN FARM LINES, LTD., P.O. Box 76, Wisconsin Dells, WI 53965. Representative: Stanley C. Olsen, Jr., 5200 Willson Road, Suite 307, Edina, MN 55424; (612) 927-8855. Transporting *such commodities* as are dealth in or used by hardware and farm supply stores and surplus merchandise liquidators, between points in WY, on the one hand, and, on the other, points in the U.S. (including AK, but excluding HI).

MC 151142 (Sub-8), filed April 5, 1982. Applicant: H & H TRANSPORTATION, INC., 1425 E. Main Street, Newark, OH 40035. Representative: H. Neil Garson, 3251 Old Lee Highway, Fairfax, VA 22030, (703) 691-0900. Transporting, *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Avon Products, Inc., of New York, NY.

Volume No. OP4-151

Decided: April 28, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 134027 (Sub-1), filed March 29, 1982. Applicant: BELKNAP & STORAGE OF SAN ANTONIO, INC., 7902 Webbles Dr., San Antonio, TX 78218. Representative: David Earl Tinker, 1000 Connecticut Ave., NW., Suite 1112, Washington, DC 20036; (202) 887-5868. Transporting *household goods, furniture, and fixtures,* between points in TX, on the one hand, and, on the other, points in the U.S.

MC 143776 (Sub-49), filed April 20, 1982. Applicant: C.D.B., INCORPORATED, 155 Spaulding Ave., SE., Grand Rapids, MI 49506. Representative: C. Michael Tubbs (same address as applicant) (800) 253-9527.

Transporting *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Spartan Stores, Incorporated, of Grand Rapids, MI.

MC 144617 (Sub-2), filed April 20, 1982. Applicant: AUSTIN TRUCKING COMPANY, INC., 14 W. Morgan St., Austin, IN 47102. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240; (317) 846–6655. Transporting *food and related products*, between points in the U.S. (except AF and HI), under continuing contract(s) with Hunt-Wesson Foods, Inc., of Fullerton, CA.

MC 146957 (Sub-3), filed April 20, 1982. Applicant: DACIANO A. SANTOS, d.b.a. CONNECTICUT AIRPORT SERVICE, 17 Fairfield Ave., Danbury, CT 06810. Representative: John E. Fay, 663 Maple Ave., Hartford, CT 06114, (203) 525–2661. Transporting *passengers and their baggage*, in charter operations, between Bethel, Bridgewater, Brookfield, New Fairfield, Newtown, Redding, Ridgefield, Weston, Danbury, Naugatuck, Waterbury, and Bridgeport, CT, La Guardia and John F. Kennedy Airport, NY, and Newark International Airport, NJ, on the one hand, and on the other, points in the U.S. on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Countries, MN, to the International boundary line between the U.S. and Canada.

MC 148787 (Sub-3), filed April 20, 1982. Applicant: HOME DELIVERY CORPORATION, 422 N. 27th St., Milwaukee, WI 53208. Representative: Lawrence P. Kahn, 633 W. Wisconsin Ave., Milwaukee, WI 53203, (414) 276–2260. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of toilet preparations, between Glenview and Morton Grove, IL, on the one hand, and, on the other, points in Brown and Outagamie Countries, WI, under continuing contract(s) with Avon Products, Inc., of Morton Grove, IL. 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 issurance 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 149397 (Sub-4), filed April 21, 1982. Applicant: HELEN REAGAN, d.b.a. SOUTHEAST TRUCKING COMPANY, 8418 Tallmadge Rd., Ravenna, OH 44266. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210; (703) 525–4050. Transporting *building materials*, between points in OH, on the one hand, and, on the other, points in IL and IN.

MC 157547, filed April 19, 1982. Applicant: BELMONT ENTERPRISES, INC., 10203 Prospect Rd., Forestville, NY 14062. Representative: Jack A. Belmont (same address as applicant); (716) 965–2553. Transporting *grease and oil lubricants*, between points in the U.S., under continuing contract(s) with Battenfeld American, Inc., of Buffalo, NY.

MC 158967 (Sub-1), filed April 20, 1982. Applicant: SDR CONTRACTING, INC., 1795 Lexington Ave. So., Mendota Heights, MN 55118. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440; (612) 542–1121. Transporting *pulp, paper and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with American Thermcell Insulation, of Anoka, MN.

MC 160797, filed April 19, 1982. Applicant: J. KUHOLSKI & SON, 3726 Cumberland Rd., Erie, PA 16510. Representative: John C. Kuholski (same address as applicant); (814) 899–4678. Transporting *doors and related hardware*, between Erie, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Fenestra, Div. of the Marmon Group Inc., of Erie, PA.

MC 161577, filed April 20, 1982. Applicant: WESTERN STATES TRANSPORT SERVICE, 580 North Main, Centerville, UT 84014. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110; (801) 531–1777. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in UT, ID, CO, WY, and NV.

Volume No. OP5–94

Decided: April 27, 1982.

By the Commission, Reivew Board No. 3, members Krock, Joyce, and Dowell.

W–1348, filed April 14, 1982. Applicant: PORT EVERGLADES TOWING, INC., 1900 S.E. 17th St. Causway, P.O. Box 13038, Port Everglades Station, Fort Lauderdale, FL 33316. Representative: Milton B. Whitfield, 2101 L St., N.W., Washington, DC 20037; 202–828–2252. Using towing vessels to move *space vehicles, component parts, hardware and test equipment*, towed on Government owned or supplied barges, for or on behalf of the United States Government, between those points in the U.S. (except AK and HI), located on navigable waterways, oceans, gulfs, and rivers, under continuing contract(s) with NASA.

Note.—This application contemplates operations which should result in decreased energy consumption in comparison with existing energy consumption in the affected area. To the extent traffic will be diverted from existing transportation modes, greater energy efficiencies may be obtained without disruption to existing patterns of energy distribution or to development of energy resources. The application is, in all respects, consistent with prevailing goals and objectives of the National Energy Policy.

MC 41098 (Sub-76), filed April 14, 1982. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K St., NW., Washington, DC 20006; (202) 833–8884. Transporting *household goods* between points in the U.S., under continuing contract(s) with General Mills, Inc., of Minneapolis, MN, and its subsidiary, Red Lobster Restaurants of Atlanta, GA.

MC 123279 (Sub-14), filed April 16, 1982. Applicant: CHARTER EXPRESS, INC., 8418 Tallmadge Rd., Ravenna, OH 44266. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210; 703–525–4050. Transporting *building materials*, between Chicago, IL, Elizabeth, NJ, Pasadena, TX, Los Angeles and Sacramento, CA, and points in Summit and Portage Counties, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 134638 (Sub-5), filed April 20, 1982. Applicant: MID–WEST TRUCK LINES, LTD., 1216 Fife St., Winnipeg, Manitoba, Canada. Representative: James E. Ballenthin, 630 Osborn Bldg., St. Paul, MN 55102; (612) 227–7731. Transporting *food and related products* (except commodities in bulk), between ports of entry on the international boundary line between the United States and Canada, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 140418 (Sub-3), filed April 20, 1982. Applicant: E. L. M. ENTERPRISES, INC., 1006 Carroll St., East Chicago, IL 46312. Representative: Arnold L. Burke, 180 North LaSalle St., Chicago, IL 60601; 312–332–5106. Transporting *commodities in bulk*, between points in Elkhart County, IN, on the one hand, and, on the

other, points in CO, CT, DE, FL, GA, ME, MD, MA, MT, NH, NM, NJ, NY, NC, RI, SC, VT, and WY.

MC 141318 (Sub-20), filed April 20, 1982. Applicant: WEATHER SHIELD TRANSPORTATION, LTD., P.O. Box LTD., Medford, WI 54451. Representative: Robert S. Lee, 1600 TCF Tower, Minneapolis, MN 55402; 612–333–1341. Transporting *building materials*, between points in Sawyer County, WI, on the one hand, and, on the other, points in the U.S. (including AK but excluding HI).

MC 141878 (Sub-16), filed April 19, 1982. Applicant: DIRECT COURIER, INC., 6310 C Gravel Ave., Fleet Industrial Pk., Alexandria, VA 22310. Representative: Dean N. Wolfe, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877; 301–840–8565. Transporting *farm products*, between points in the U.S. (except AK and HI).

MC 145059 (Sub-11), filed April 19, 1982. Applicant: SPINELLI BROS. TRUCKING, INC., 55 South Wade Blvd., Nillville, NJ 08332. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904; 201–572–5551. Transporting *food and related products*, between points in the U.S. (except AK and HI).

MC 149489 (Sub-3), filed April 13, 1982. Applicant: WITTE BROS., INC., Route 3, Faribault, MN 55021. Representative: Robert S. Lee, 1600 TCF Tower, 121 So. 8th St., Minneapolis, MN 55402; (612) 333–1341. Transporting (1) *trailers* between Milwaukee, WI, and points in Union County, SD, on the one hand, and, on the other, Minneapolis, MN, (2) *machinery* between Chicago, IL, on the one hand, and, on the other, points in Dodge County, MN, and (3) *metal and metal products*, (a) between Chicago, IL, Detroit, MI, Kansas City, MO, and points in Madison, Lake, and Whiteside Counties, IL, St. Clair County, MI, Nodaway County, MO, Muscatine County, IA, Erie County, PA, Richland County, OH, and Marshall and Starck Counties, IN, on the one hand, and, on the other, points in MN, and (b) between points in Erie County, PA, on the one hand, and, on the other, Des Moines, IA.

MC 150088 (Sub-10), filed April 12, 1982. Applicant: STERLING TRANSPORT DIVISION, INC., 2005 S. Great Southwest Pkwy., Grand Prairie, TX 75051. Representative: Robert K. Frisch, 6606 LBJ Freeway, Suite 5135, Dallas, TX 75240; (214) 934–0963. Transporting *malt beverages* between San Antonio and Fort Worth, TX, on the one hand, and, on the other, Ft. Smith and Little Rock, AR, and points in Jefferson, Grant, Cleveland, Lincoln, Arkansas, Garland, and Union Counties, AR.

MC 153739 (Sub-2), filed April 16, 1982. Applicant: NATIONWIDE TRANSPORT & WAREHOUSE, INC., P.O. Box 4444, Industrial Station, Hillside, NJ 07205. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904; (201) 572–5551. Transporting *tires and tubes*, between points in the U.S. (except AK and HI), under continuing contract(s) with Dunlop Tire and Rubber Company, of Dayton, NJ.

MC 154469 (Sub-2), filed April 16, 1982. Applicant: WARREN L. ADAMS d.b.a. WARREN TRANSPORTATION, 2667 English St., Maplewood, MN 55109. Representative: Andrew R. Clark, 1600 TCF Tower, Minneapolis, MN 55402; 612–333–1341. Transporting *malt beverages*, between points in Shelby County, TN, on the one hand, and, on the other, points in Pierce, Dunn, Polk, and Burnett Counties, WI, Wright, Anoka, Hennepin, Ramsey Sherburne, Benton, and Stearns Counties, MN

MC 156469 (Sub-1), filed April 19, 1982. Applicant: J & N TRUCKING, Route 1, Box 12x1, Diboll, TX 79541. Representative: Robert J. Birnbaum, 3636 Executive Center Drive, Suite 151, Austin, TX 78731; (512) 346–4800. Transporting *adhesives* between points in the U.S. (except AK and HI), under continuing contract(s) with Borden Chemical Division, Borden Chemical, Inc., of Columbus, OH.

MC 156739 (Sub-1), filed April 15, 1982. Applicant: RICHARD L. SIMPSON d.b.a. RICHARD SIMPSON TRUCKING, 1224 So. Roosevelt, Harrisburg, IL 62946. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701; 217–544–5468. Transporting *petroleum products*, between points in IL, IN, KY and MO.

MC 157688, filed April 20, 1982. Applicant: TRANS COASTAL TRANSPORTATION, INC., 5434 South Parkside Ave., Chicago, IL 60638. Representative: Anthony E. Young, 29 South LaSalle St., Suite 350, Chicago, IL 60603; (312) 782–8880. Transporting *food and related products*, between Chicago, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161518, filed April 15, 1982. Applicant: SAMTOURS, INC., 114 Meadow View Drive, Newtown, PA 18940. Representative: Alan R. Squires, 818 Widener Bldg., 1339 Chestnut St., Philadelphia, PA 19107; (215) 564–3880. To operate as a *broker* at Philadelphia, PA, and Trenton, NJ, arranging for the transportation of *passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, between points in the U.S.

MC 161519, filed April 15, 1982. Applicant: CAROLINA TRANSPORT OF KERNERSVILLE, INC., P.O. Box 321, Kernersville, NC 27284. Representative: Gary Lee Wemlinger (same address as applicant), 919–788–6167. Transporting *furniture and fixtures*, between points in the U.S. (except AK and HI), under continuing contract(s) with Ladd Furniture Co., Inc., of High Point, NC.

MC 161548, filed April 16, 1982. Applicant: CASE'S HOT SHOT SERVICE, Route 2, Box 15A, Brookhaven, MS 39601. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205; (601) 948–8820. Transporting *metal products*, between points in Lincoln County, MS, on the one hand, and, on the other, points in AL, LA and TX.

MC 161549, filed April 16, 1982. Applicant: TOM BLACKETT, d.b.a. BLACKETT ENTERPRISE, 5928 Corona, Huntington Park, CA 90201. Representative: Tom Blackett (same address as applicant), (213) 582–4538. Transporting *automobile, truck and trailer parts and accessories*, between points in Los Angeles County, CA, on the one hand, and, on the other, points in TX, OR, AZ, NM, NV, and WA.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12058 Filed 5-3-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-125)]

Union Pacific Railroad Co. and Missouri-Kansas-Texas Railroad Co., Exemption for Contract Tariff ICC-UP-C-0029

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Petitioners are granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e). The contract tariff to be filed may become effective on one day's notice. This exemption may be revoked if protests are filed within 15 days of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr.; or Jane F. Mackall (202) 275–7656.

SUPPLEMENTARY INFORMATION: Union Pacific Railroad Company and Missouri-Kansas-Texas Railroad Company filed a petition on April 20, 1982, seeking an exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49

U.S.C. 10713(e). They request that we permit contract ICC–UP–C–0029 to become effective on one day's notice. The contract tariff was filed to become effective May 20, 1982. The tariff provides for the transportation of automobiles from Los Angeles to a destination in Texas.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 days' notice. There is no provision for waiving this requirement. However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

Petitioners have entered into a transportation service contract with an importer of automobiles, which will expire July 2, 1982. The automobiles are en route from Japan and scheduled to arrive in Los Angeles May 2, 1982. Petitioners state that delay in the shipment to final destination will create great difficulties and unnecessary expense for the shipper and its distributors and dealers. We find this to be the type of circumstance which warrants a provisional exemption.

Petitioners' contract may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings:

If the Commission permits the contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 49 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding on its own initiative or on complaint to review this contract and to disapprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30-day notice requirement in this instance is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. Further, we will consider revoking this exemption under 49 U.S.C. 10505(c) if protests are filed within 15 days of publication in the **Federal Register**.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

By the Commission, Division 1, Sterrett, Taylor, and Andre. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Dated: April 27, 1982.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12061 Filed 5-3-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

National Institute of Justice

Robbery-Murder and Robbery With Serious Victim Injury; Study; Grant Solicitation

The National Institute of Justice announces a competitive research grant to conduct a study of robbery-murder and robbery with serious victim injury in order to better understand the use of severe violence by some offenders and to develop more effective, precisely-focussed strategies of robbery prevention and control. The research will examine the nature and contexts of these crimes, including their incidence, patterns, and trends; the dynamics and consequences of their offender/victim confrontations; and the differences between these severely violent robberies and those which do not result in victim death or serious injury. The grant will be awarded for up to 24 months, at a maximum funding level of $300,000.

The solicitation requests submission of full proposals and requires that submitting organizations have experience in and resource capabilities for designing and conducting research on social issues. Additional qualifications include knowledge of the substantive areas of robbery and violent crime. Finally, familiarity with criminal justice case records and expertise in utilization of criminal justice and victimization survey data would also be desirable.

In order to be considered for funding, all proposals must be postmarked no later than June 11, 1982.

Copies of the solicitation may be obtained by sending a mailing label to: A Study of Robbery-Murder and Robbery with Serious Victim Injury, National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850.

Dated: April 21, 1982.

Approved:

James L. Underwood,

Acting Director, National Institute of Justice.

John J. Wilson,

Acting General Counsel, Office of General Counsel.

[FR Doc. 82-12104 Filed 5-3-82; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program; Extended Benefits; Montana

This notice announces the beginning of a new Extended Benefit Period in the State of Montana, effective on April 11, 1982.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implementd by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

In accordance with section 203(d) of the Act, each State unemployment compensation law provides that there is a State "on" indicator in the State for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured employment under the State unemployment compensation law equalled or exceeded the State trigger rate. The extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A benefit period will be in effect for a minimum of 13 consecutive weeks, and will end the third week after there is an "off" indicator.

Determinations of "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State, for the period consisting of the week ending on March 27, 1982, and the immediately preceding 12 weeks, rose to a point that equals or exceeds the State trigger rate, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on April 11, 1982.

Information for Claimants

The duration of extended benefits payable in a new Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins, and who has exhausted all rights under the State unemployment compensation law to regular benefits before the beginning of the new Extended Benefit Period. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment office or unemployment compensation claims office in their locality.

Signed at Washington, D.C., on April 26, 1982.

Albert Angrisani,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 82-12079 Filed 5-3-82; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; West Virginia

This notice announces the beginning of a new Extended Benefit Period in the State of West Virginia, effective on April 18, 1982.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

In accordance with section 203(d) of the Act, each State unemployment compensation law provides that there is a State "on" indicator in the State for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured employment under the State unemployment compensation law equalled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A benefit period will be in effect for a minimum of 13 consecutive weeks, and will end the third week after there is an "off" indicator.

Determinations of "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State, for the period consisting of the week ending April 3, 1982, and the immediately preceding 12 weeks, rose to a point that equals or exceeds the State trigger rate, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on April 18, 1982.

Information for Claimants

The duration of extended benefits payable in a new Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins, and who has exhausted all rights under the State unemployment compensation law to regular benefits before the beginning of the new Extended Benefit Period. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment office or unemployment compensation claims office in their locality.

Signed at Washington, D.C., on April 26, 1982.

Albert Angrisani,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 82-12080 Filed 5-3-82; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual of 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 CRF 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 May 14, 1982.

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 May 14, 1982.

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 26th day of April 1982.

Harold A. Bratt,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Compressed Gas Cylinders (workers)	West Milwaukee, Wis	Apr. 5, 1982	Mar. 26, 1982	TA-W-13,411	Tanks—High pressure—seamless.
Consolidated Aluminum Corp. (USWA)	Hannibal, Ohio	Apr. 7, 1982	Mar. 24, 1982	TA-W-13,412	Coil—Aluminum, sheet plate.
Hanna Mining Co. and Hanna Nickel Smelting Co. (USWA).	Riddle, Oregon	Apr. 9, 1982	Apr. 8, 1982	TA-W-13,413	Nickel—Mine and smelter.
Manhattan Fashions, Inc. (company)	Union City, N.J	Apr. 12, 1982	Apr. 6, 1982	TA-W-13,414	Coats—Ladies, fall.
Norah Fashions (ILGWU)	Dunmore, Pa	Apr. 7, 1982	Mar. 31, 1982	TA-W-13,415	Dresses—Ladies.
Ormet Corp. (USWA)	Hannibal, Ohio	Apr. 5, 1982	Apr. 2, 1982	TA-W-13,416	Aluminum reduction, billets, sows, pigs, slab—Primary.
Reactor Labs (OCAW)	Paterson, N.J	Mar. 26, 1982	Mar. 15, 1982	TA-W-13,417	Chemical dye bases.
United States Steel Mining Co., Inc., Gary #9 Mine (UMWA).	McDowell Co., W. Va	Apr. 19, 1982	Apr. 15, 1982	TA-W-13,418	Coal—Mining.
United States Steel Mining Co., Inc., Gary #10 Mine (UMWA).	do	Apr. 19, 1982	do	TA-W-13,419	Do.
United States Steel Mining Co., Inc., Gary #2 Mine (UMWA).	do	do	do	TA-W-13,420	Do.
United States Steel Mining Co., Inc., Gary #3 Mine, Alpheus Cleaning Plant, District Maintenance Shop & Contour Mine (UMWA).	do	do	do	TA-W-13,421	Coal—Mining, cleaning.
United States Steel Mining Co., Inc., Gary #4 Mine (UMWA).	do	do	do	TA-W-13,422	Coal—Mining.
Do	do	do	do	TA-W-13,423	Do.

[FR Doc. 82-12081 Filed 5-3-82; 8:45 am]

BILLING CODE 4510-30-M

AMI Medical Electronics, Inc., Ronkonoma, N.Y.; Affirmative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance; Correction

In FR Doc. 82-10042 appearing on page 15927 in **Federal Register** of April 13, 1982, the above captioned case was erroneously designated as a negative determination. This determination should be corrected to read as follows:

TA-W-12,750; AMI Medical Electronic, Inc., Ronkonoma, New York

A certification was issued in response to a petition received on June 9, 1980 covering all workers separated on or after December 1, 1980.

Signed at Washington, D.C. this 20th day of April 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-12090 Filed 5-3-82; 8:45 am]

BILLING CODE 4510-30-M

Deteminations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of deteminations regarding eligibility to apply for adjustment assistance issued during the period April 19, 1982–April 23, 1982.

In order for an affirmative detemination 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 signficant 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-12,458; Dante Fashions, Inc., Hoboken, NJ
TA-W-12,501; Rutgers Cloak Manufacturing Co., Inc., East Brunswick, NJ
TA-W-12,642; Rockport Log & Shake Co., Copalis Crossing, WA
TA-W-12,346; Crescent Knitting Mills, Inc., Philadelphia, PA
TA-W-13,192; Phelps Dodge Corp., Tyrone, NM
TA-W-12,537; Day Mines, Inc., Victoria, NV
TA-W-12,606; Hurn Shingle Co., Concrete, WA
TA-W-12,545; General Electric Co., General Purpose Motor Dept., Linton, IN
TA-W-12,324; Jeri Morton, New York, NY
TA-W-12,742; Jeri Morton, Beacon, NY
TA-W-12,086; Modine Manufacturing Co., Pemberville, Ohio, Plant No. 1
TA-W-12,377; American Biltrite, Inc., Boston Industrial Products Div., Cambridge, MA
TA-W-12,624; International Shoe Co., St. Clair, MO
TA-W-12,768; Standard Forgings Corp., East Chicago, IN
TA-W-12,079; Townsend Fastening Systems, Fallston, PA
TA-W-12,080; Townsend Fastening Systems, Ellwood City, PA
TA-W-12,182; Quad Knit, Inc., Philadelphia, PA
TA-W-12,139; A. E. Nettleton Shoe Co., Syracuse, NY
TA-W-12,178; F. A. Neider Co., Augusta, KY
TA-W-11,143; Town & Country Shoes, Inc., Sedalia, MO
TA-W-12,208; Town & Country Shoes, Inc., Clayton, MO
TA-W-12,209; Town & Country Shoes, Inc., Cape Girardeau, MO
TA-W-12,210; Town & Country Shoes, Inc., Houston, TX
TA-W-12,211; Town & Country Shoes, Inc., Columbia, MO
TA-W-12,212; Town & Country Shoes, Inc., St. Louis, MO

In the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-12,502; Thom McAn Shoe, Auburn, MA
TA-W-12,341; Herd Seeder Co., Inc., Logansport, IN
TA-W-11,725; Rockwell International, Rockville-Draper Div., Spartansburg, SC
TA-W-12,016; Supercraft Coats, Inc., Garfield, NJ
TA-W-12,486; Quality Art Corp., Lodi, NJ
TA-W-11,151; Sheller-Globe Corp., Superior Div., Lima, OH
TA-W-12,131; Gilda Fashions, Inc., New York, NY
TA-W-12,384; Torsion Balance Co., Clifton, NJ
TA-W-12,447; Cousin's Fashions, West New York, NJ
TA-W-11,281; Star Debs, Inc., New York, NY

In the following case the investigation revealed that criterion (3) had not been met for the reason specified.

TA-W-11,511; Jack Winter, Inc., Eveleth, MN
Aggregate U.S. imports of women's blouses did not increase as required for certification.
TA-W-12,169; Hyde Park Chemical Corp., Plainview, NY
The workers do not produce an article within the meaning of the Trade Act of 1974.

Affirmative Determinations

TA-W-12,364; Sheldon Machine, Co., Inc., Chicago, IL
A certification was issued in response to a petition received on February 20, 1981 covering all workers separated on or after February 9, 1980.
TA-W-12,365; Sheldon Machine, Co., Inc., Skokie, IL
A certification was issued in response to a petition received on February 20, 1981 covering all workers separated on or after February 9, 1980.
TA-W-12,020; The Adams Co., Home Products Div., Dubuque, IA
A certification was issued in response to a petition received on December 30, 1980 covering all workers separated on or after December 26, 1979.
TA-W-12,491; Crawfton Coat Co., North Bergen, NJ
A certification was issued in response to a petition received on March 9, 1981 covering all workers separated on or after February 27, 1980.
TA-W-11,640; A Soloff & Son Co., Fall River, MA
A certification was issued in response to a petition received on November 3, 1980 covering all workers separated on or after October 30, 1979 and before February 1, 1981.
TA-W-11,807; Jersey Fashions, Inc., Jersey City, NJ
A certification was issued in response to a petition received on November 20, 1980 covering all workers separated on or after January 11, 1981.
TA-W-11,817; Lou Levy & Sons Fashions, New York, NY
A certification was issued in response to a petition received on November 20, 1980 covering all workers engaged in employment related to the production of duplicates for ladies coats who became totally or partially separated on or after February 11, 1982.
TA-W-11,101; Bell & Howell Co., Consumer Products Div., Chicago, IL
A certification was issued in response to a petition received on September 18, 1980 covering all workers producing 8 millimeter movie projectors separated on or after August 5, 1979 and before July 1, 1981.

I hereby certify that the aforementioned determinations were issued during the period April 19, 1982–April 23, 1982. 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 business hours or will be mailed to persons who write to the above address.

Dated: April 27, 1982.

Harold A. Bratt,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-12089 Filed 5-3-82; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-82-34-C]

Old Ben Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Old Ben Coal Company, 500 North DuQuoin Street, Benton, Illinois 62812 has filed a petition to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its Mine No. 27 (I.D. No. 11-02544) located in Franklin County, Illinois. 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 concern the requirement that low and medium voltage resistance grounded systems include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity which ground check circuit shall cause the circuit breacker to open when either the ground or pilot check wire is broken.

2. A modification of the standard is requested for an underground shop in which the petitioner wishes to distribute power through the use of a standard panel box as would be used in a surface application. The shop is contructed with steel frame work, concrete block walls and a combination steel and concrete slab overhead. The ends are enclosed and equipped with steel doors. All of the electrical equipment is be installed and connected to the main panel box through the use of rigid conduit. All of the electrical equipment is grounded to the panel box with ground wires in the conduit of adequate size for the equipment power rating. The panel box is a General Electric, Type NHB, Style 2A, 225 Amp., 480 Volt, three phase. The panel is fed from a mine duty power center equipped with an MSHA-approved ground monitor, ground fault, undervoltage release, and thermal and magnetic overload protection. All aspects of the electrical installation conform to 1981 National Electrical Code requirements.

3. Petitioner states that the procedure outlined above will provide the same degree of safety for the miners affected as that afforded by the standard and for this reason request a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must must be filed with the Office on 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 June 3, 1982. Copies of the petition are available for inspection at that address.

Dated: April 26, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-12091 Filed 5-3-82; 8:45 am]

BILLING CODE 4510-43

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 82-72; Exemption Application No. D-2800]

Exemption From the Prohibitions for Certain Transactions Involving Allied International-American Eagle Trading Corporation Employees Profit Sharing Plan Located in Rye, New York

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

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the loan of $200,000 by the Allied International-American Eagle Trading Corporation Employees Profit Sharing Plan (the Plan) to the Allied International-American Eagle Trading Corporation (the Employer) for a ten-year period.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Hamilton 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) 523-7462. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 5, 1982, notice was published in the **Federal Register** (47 FR 9615) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above described transaction. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has complied with the requirements of the notice to interested persons as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is 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 soley 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 th Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a) 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 loan of $200,000 by the Plan to the Employer for a ten-year period provided the terms of the loan are not less favorable to the Plan than those obtainable in an arm's-length tranaction with an unrelated party.

The availabiltity of this exemption is subject ot 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 29th day of April, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-12086 Filed 5-3-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-73; Exemption Application No. D-3098]

Exemption From the Prohibitions for Certain Transactions Involving Impact Sales, Inc. Employees Retirment Plan Located in Newport Beach, California

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

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits a loan of $420,000 by the Impact Sales, Inc. Employees Retirement Plan (the Plan) to the 40th Street Investors Company (Investors), a party in interest with respect to the Plan; and the guarantee of repayment by Impact Sales, Inc. (the Employer).

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 12, 1982, notice was published in the **Federal Register** (47 FR 10927) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the transactions described in an application filed by legal counsel for the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held

relating to this exemption. The applicant has represented that it has complied with the requirements of the notification to interested persons as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among othe things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption if 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 transation.

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) 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 loan of $420,000 by the Plan to Investors provided that the terms and conditions of the transaction are at least as favorable to the Plan as those it could obtain from an unrelated party; and the guarantee of repayment by the Employer.

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 29th day of April 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–12087 Filed 5–3–82; 8:45 am]

BILLING CODE 4510–29–M

LIBRARY OF CONGRESS

Copyright Office

Policy Decision Announcing Fee for Special Handling of Applications for Copyright Registration

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of policy decision.

EFFECTIVE DATE: June 1, 1982.

1. Background

Section 708(a) of the Copyright Act, title 17 of the United States Code, prescribes a schedule of fees that must be remitted to the Copyright Office in payment of registration and other services rendered to the public under the Act. Subsection 11 of section 708(a) gives the Register of Copyrights the authority to fix a fee for any special services requiring a substantial amount of time or expense based on the cost of providing the special service.

Special handling is a procedure established within the Copyright Office to reduce the length of time required to process an application for registration of a claim to copyright. Special handling is granted at the discretion of the Register of Copyrights in a limited number of cases as a service to copyright registrants who have compelling reasons for the expedited issuance of a certificate of registration. In the past the Copyright Office absorbed the additional costs of special handling but cannot continue to do so in the face of the rising number of such requests and the fiscal restraints under which it must operate.

A request for special handling will be granted only in cases involving pending or prospective litigation, customs matters, or contract or publishing deadlines that necessitate the expedited issuance of a certificate. Special handling procedures may be applicable to cases pending in the Copyright Office, provided the previously mentioned criteria are met.

Special handling of requests for issuance of a certificate of registration impacts upon every step of the registration process. Under normal procedures applications for registration pass through the various processing steps in groups which are administratively efficient. A claim that receives special handling must be processed outside of the normal work flow necessitating individual handling at each step and individual routing between work stations. A separate system of controls must be maintained for the special handling of claims to assure both that they move expeditiously through the necessary procedures and that they can be located quickly if the need should arise. Each of these activities involves more employee time than claims in the normal work flow since employees could otherwise be more efficiently occupied processing ordinary claims.

2. Policy Decision

Under the authority of section 708(a)(11) the Register of Copyrights has determined that the requestor of special handling service should pay, in addition to the normal applicable registration fee, the cost of additional staff time involved in the special handling of cases, computed at overtime rates plus a reasonable administrative fee.

The fee for special handling of a registration of a claim to copyright has

been fixed by the Register of Copyrights at $120.00, based upon the cost of providing this service. To this must be added the basic registration fee of $10.00. The fee is chargeable for each application for registration for which special handling service is requested and granted. If the request for special handling is granted the $120.00 fee is not refundable. The fee may be charged to a deposit account established in the Copyright Office. If the deposit account contains insufficient funds to cover the total special handling fee, or if the remitter does not maintain a deposit account, the total special handling fee may be paid either in person at the Public Information Office or it may be remitted by mail. Such payment must be in cash or in the form of a certified check, cashier's check, or money order made payable to the Register of Copyrights.

3. Filing Requests For Special Handling

Requests for special handling may be made in person on the form available in the Public Information Office of the Copyright Office, Rm. LM–401, James Madison Memorial Building, Library of Congress. The Office will also consider requests by mail providing the Special Handling Request form is used or a cover letter is submitted containing answers to the following questions that are required to be answered in the special handling form: "Why is there an urgent need for special handling?; If it is because of litigation is the litigation actual or prospective?; Are you or your client the plaintiff or defendant?; What are the names of the parties and the name of the court where the action is pending or expected?" It is also necessary to certify that the answers to these questions are correct to the best of your knowledge. A mailed request for special handling should be sent to:

Library of Congress, Department DS, Washington, D.C. 20540, Attention: Acquisitions and Processing Division Office.

The outside of the envelope and the letter inside should clearly indicate that it is a request for special handling.

The request for special handling of a registration must be accompanied by a completed application, the required deposit copies, phonorecords, or identifying material, and the $130.00 fee ($120.00 special handling fee and $10.00 registration fee). A minimum of five working days must be allowed for processing a claim under special handling procedures.

Dated: April 21, 1982.

David Ladd,

Register of Copyrights.

Approved:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 82–12037 Filed 5–3–82; 8:45 am]

BILLING CODE 1410–03–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on Advanced Reactors; Meeting

The ACRS Subcommittee on Advanced Reactors will hold a meeting on May 17 and 18, 1982, at the Argonne National Laboratory, Building 208, Room C–234, Argonne, IL. The Subcommittee will continue discussion of a report on Liquid Metal Fast Breeder Reactor (LMFBR) safety philosophy. Notice of this meeting was published April 13.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Subcommittee finds it necessary to discuss proprietary information. One or more closed sessions may be necessary to discuss such information. (Sunshine Act Exemption 4). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Monday and Tuesday, May 17 and 18, 1982—8:30 a.m. until the conclusion of business each day

The Subcommittee and its consultants will discuss possible design considerations, issues, or criteria for future commercial advanced reactors.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the congnizant Designated Federal Employee, Mr. Paul Boehnert (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., e.s.t.

I have determined, in accordance with subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close some portions of this meeting to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: April 27, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82–12118 Filed 5–3–82; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Midland Plant Units 1 and 2; Meeting

The ACRS Subcommittee on Midland Plant Units 1 and 2 will hold a meeting on May 20 and 21, 1982, at the HOLIDAY INN, 1500 W. Wackerly Road, Midland, MI. The Subcommittee will review the application by Consumers Power Company for a license to operate Midland Plant Units 1 and 2. Notice of this meeting was published April 13.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions which will be closed to protect proprietary information (Sunshine Act Exemption 4). One or more closed sessions may be necessary to discuss such information. To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Thursday, May 20, 1982—8:30 a.m. until 12:30 p.m. and 6:00 p.m. until 9:00 p.m.

Friday, May 21, 1982—8:30 a.m. until the conclusion of business

During the initial portion of the meeting, the Subcommittee, along with

any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Consumers Power Company, the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. David Fischer (telephone 202/634–1413) between 8:15 a.m. and 5:00 p.m., e.s.t.

I have determined, in accordance with subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close portions of this meeting to public attendance to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: April 27, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82–12120 Filed 5–3–82; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Qualification Program for Safety Related Equipment; Meeting

The ACRS Subcommittee on Qualification Program for Safety Related Equipment will hold a meeting on May 19 and 20, 1982, at the AMFAC Hotel, Valle Grande Room, 2910 Yale Blvd., Albuquerque, NM. The Subcommittee will discuss three major program areas conducted by Sandia Laboratory and continue its review of equipment qualification requirements. Notice of this meeting was published April 13.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Emloyee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions which will be closed to protect proprietary information (Sunshine Act Exemption 4). One or more closed sessions may be necessary to discuss such information. To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Wednesday, May 19, 1982—8:30 a.m. until 12 NOON

Thursday, May 20, 1982—8:30 a.m. until the conclusion of business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employeee, Dr. Richard Savio or Staff Engineer, Mr. Anthony Cappucci (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., d.s.t.

I have determined, in accordance with subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close portions of this meeting to public attendance to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: April 29, 1982.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc. 82–12119 Filed 5–3–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–317]

Baltimore Gas & Electric Co.; Consideration of Issuance of Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–53 issued to Baltimore Gas and Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit No. 1 located in Calvert County, Maryland.

The amendment would revise the Safety Limits and Limiting Conditions for Operation, contained in the Appendix A Technical Specifications, for Calvert Cliffs Unit No. 1 in accordance with the licensee's application dated February 17, 1982. These changes are primarily the result of new safety analysis methods applied to the analysis for Cycle 6 operation of Calvert Cliffs Unit 1. The analysis presented provides for an increased operating period between refuelings.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 3, 1982, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for

leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

No later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Clark: (petitioner's name and telephone number), (date petition was mailed); (plant name); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to James A. Biddison, Jr., General Counsel, G and E Building, Charles Center, Baltimore, Maryland 21203, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 17, 1982, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Calvert County Library, Prince Frederick, Maryland.

Dated at Bethesda, Maryland this day of , 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch #3, Division of Licensing.

[FR Doc. 82-12110 Filed 5-3-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-329 OM & OL—50-330 OM & OL]

Consumers Power Co. (Midland Plant, Units 1 and 2); Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for these construction permit modification and operating license proceedings. As reconstituted, the Appeal Board for these proceedings will consist of the following members:

Christine N. Kohl, Chairman
Dr. John H. Buck
Thomas S. Moore

Dated: April 27, 1982.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 82-12115 Filed 5-3-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344]

Portland General Electric Co. et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 71 to Facility Operating License No. NPF-1, issued to Portland General Electric Company, the City of Eugene, Oregon, and Pacific Power and Light Company (the licensees), which revised Technical Specifications for operation of Trojan Nuclear Plant (the facility) located in Columbia County, Oregon. The amendment is effective as of the date of issuance.

The amendment deletes the isolation time requirement for six motor-operated containment isolation valves that are manually actuated.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated March 3, 1982, (2) Amendment No. 71 to License No. NPF-1 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Multnomah County Library, Social Science and Science Department, 801 SW 10th Avenue, Portland, Oregon 97205. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 21st day of April 1982.

For the Nuclear Regulatory Commission.

Charles M. Trammell,

Acting Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 82-12111 Filed 5-3-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-142 OL]

Regents of the University of California (UCLA Research Reactor); Proposed Renewal of Facility License; Prehearing Conference

April 28, 1982.

Please take notice that a prehearing conference in the above captioned matter will take place at 9:30 a.m., June

29 and 30, 1982, in the Customs Courtroom, on the eighth floor of the Federal Building, 300 N. Los Angeles Street, Los Angeles, California. The purpose of the conference is to resolve any remaining discovery disputes, set a schedule for the completion of discovery which has been deferred, set a schedule for the filing of motions for summary disposition and responses, and set a tentative date for the beginning of the evidentiary hearings.

Oral limited appearance statements will not be accepted at this conference; rather they will be scheduled during the forthcoming evidentiary hearings. Written limited appearance statements may be submitted at any time.

The Atomic Safety and Licensing Board.

John H. Frye III,

Chairman, Administrative Judge.

Bethesda, Maryland.

[FR Doc. 82-12117 Filed 5-3-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-244]

Rochester Gas & Electric Corp. (R. E. Ginna Plant); Issuance of Amendment To Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 49 to Provisional Operating License No. DPR-18, issued to Rochester Gas and Electric Corporation (the licensee), which revised the Technical Specifications for operation of the R. E. Ginna Plant (facility) located in Wayne County, New York. This amendment is effective as of its date of issuance.

The amendment authorizes technical specification changes that allow the containment fire detection instruments to be made inoperable during the containment integrated leak rate test.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment notarized April 23, 1982, (2) Amendment No. 49 to License No. DPR-18, and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Rochester Public Library, 115 South Avenue, Rochester, New York 14627.

A single copy of items (2) and (3) may be obtained by request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 23rd day of April 1982.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 82-12112 Filed 5-3-82; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guides; Issuance, Availability, Withdrawal

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.68.3, "Preoperational Testing of Instrument and Control Air Systems," describes a method acceptable to the NRC staff for complying with the Commission's regulations with respect to preoperational testing (1) to verify that instrument and control air systems and the loads they supply will operate properly at normal pressure and (2) to ensure the operability of functions important to safety at abnormal pressure conditions. The guide is a revision of and replaces Regulatory Guide 1.80, "Preoperational Testing of Instrument Air Systems," which was issued in June 1974 and is now being withdrawn. The withdrawal of Regulatory Guide 1.80 is in no way intended to alter any prior or existing licensing commitments based on its use.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of active guides may be purchased at the current Government Printing Office price. A subscription service for future guides in specific divisions is available through the Government Printing Office. Information on the subscription service and current prices may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publication Sales Manager.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 26th day of April 1982.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 82-12116 Filed 5-3-82; 8:45 am]

BILLING CODE 7590-01-M

State of Nebraska; Reassertion of Certain Regulatory Authority

In 1966, the State of Nebraska entered into an agreement with the U.S. Atomic Energy Commission pursuant to which the State assumed the authority to regulate byproduct, source, and special nuclear material of less than critical mass.

By letter dated February 18, 1982 Governor Charles Thone, State of Nebraska, requested that the NRC reassert authority to regulate source materials as they relate to *in situ* or solution uranium mining and uranium milling. He stated that at this time the State of Nebraska does not have the necessary legislation nor regulations to protect the public health and safety from these activities and that the State may receive a license application in the near future. The Governor also stated that the State does wish to review its options and, if in the best interest of Nebraska and its citizens, may at a later date submit an amended Agreement whereby the State could reassume regulatory control. There are no State-licensed uranium mining and milling activities in Nebraska at present.

In order to effect this transfer, section 274j of the Atomic Energy Act requires a

finding by the Commission that it is necessary for the Commission to terminate that part of Nebraska's agreement relinquishing NRC authority over these uranium mining and million activities (source material) and to reassert NRC licensing and regulation authority over these activities in Nebraska in order to protect the public health and safety.

Pursuant to the provisions of Section 274j of the Atomic Energy Act of 1954, as amended, the Nuclear Regulatory Commission found on April 20, 1982, that it is necessary to terminate that part of Nebraska's agreement relinquishing NRC authority over source materials involved in uranium milling and *in situ* or solution uranium mining activities and to reassert NRC licensing and regulatory authority over such activities in order to protect the public health and safety.[1] This reassertion of authority is effective May 4, 1982.

Persons seeking licenses for uranium recovery activities within Nebraska involving source material and byproduct material as defined in section 11e(2) of the Atomic Energy Act of 1954, as amended, should file such applications with the U.S. Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 26th day of April 1982.

For the United States Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

[FR Doc. 82-12114 Filed 5-3-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-280 and 50-281]

Virginia Electric & Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 77 to Facility Operating License No. DPR-32 and Amendment No. 78 to Facility Operating License No. DPR-37 issued to Virginia Electric and Power Company (the licensee), which revised Technical Specifications for operation of the Surry Power Station, Unit Nos. 1 and 2, respectively, (the facilities), located in Surry County, Virginia. The amendments are effective as of the date of issuance.

These amendments revise the Technical Specifications related to the auxiliary feedwater systems. One change adds the requirement that at least one of the three auxiliary pumps be operable when the temperature and pressure of the opposite unit are greater than 350°F and 450 psig, respectively. The other change adds an action statement which requires at least three auxiliary pumps be restored to operable status within 72 hours or be in hot shutdown within the next 12 hours. Other changes include a requirement for a source of water for the one auxiliary feedwater pump of the opposite unit, flow tests for all of the auxiliary feedwater pumps, and valve exercise tests for the pump discharge valves.

The application for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since these 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 applications for amendments dated December 28, 1979 and February 26, 1980, (2) Amendment Nos. 77 and 78 to License Nos. DPR-32 and DPR-37, 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 Swem Library, College of William and Mary, Williamsburg, Virginia 23185. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 27th day of April, 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-12113 Filed 5-3-82; 8:45 am]

BILLING CODE 7590-01-M

[1] The Commission presently has the authority to regulate byproduct material associated with uranium recovery activities (i.e., mill tailings) in Nebraska since the State of Nebraska has not acted to exercise authority over this material. (Pub. L. 96-106, 93 Stat. 796 (1978).)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-18670; File No. SR-MCC-82-5]

Self-Regulatory Organizations; Proposed Rule Change By Midwest Clearing Corp.; Proposed Price Revision Schedule

Pursuant to section 19(b)(1) of the Securites Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 9, 1982 the Midwest Clearing Corporation 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

Attached as Exhibit A is the Price Revision Schedule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.* The proposed pricing modifications, effective for services rendered beginning April 1, 1982, reflect cost savings experienced through automation in 1981 in conjunction with growth in activity. This has enabled MCC to retain almost all existing 1981 fees despite the impact of inflation on its overall operations and those of its participants. MCC, however, has increased fees for monthly fixed services and several labor intensive functions to more accurately reflect the expense associated with providing the particular service.

In addition, a new discount in the form of a credit will be instituted on trade settlement with MCC. Participants'

settling trades will receive a certain credit per trade on a graduated basis based upon the individual Participant's volume of settling trades in the system. Such graduated credits reflect economies of scale which are realized in the settlement process. The credit will be applied against the Participant's total monthly billing for all MCC services. This can result in an overall reduction in fees for any participant wishing to take advantage of such economies of scale and utilize the settlement services of MCC.

The proposed fee schedule is consistent with Section 17A of the Act in that the fee schedule will help remove impediments to and perfect the mechanism of a national system for the prompt and accurate settlement of securities transactions. In addition, the price changes provide for equitable allocation of reasonable dues, fees and other charges among MCC's participants.

(B) *Self-Regulatory Organization's Statement on Burden on Competition.* The proposed change in fees will have an impact on competition but such impact will not impose any burden on competition, but, rather, will relieve a burden on or otherwise promote competition between clearing agencies and between brokers. The proposed fee schedule will enable MCC to become more competitive with other major clearing/depository organizations in providing comprehensive and cost effective trade recording, settlement, custodial/safekeeping and related services to its Participants. In addition, the proposed fee schedule may enable a Participant to reduce its overall clearing costs by taking advantage of certain economies of scale, thus promoting competition with other brokers.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others.* Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

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 statments with respect to the proposed rule change that are filed with the Commssion, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before May 25, 1982.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 20, 1982.

George A. Fitzsimmons,

Secretary.

Exhibit A

MCC PRICE REVISIONS

	Former	New
Service Charges		
Participant account maintenance fee (month)	$125.00	$135.00
Trade Recording		
Pre-Compared (side)	0.52	0.52
Requiring Comparison (OTC) (side)	0.62	0.62
Settling Trade Volume Credit (Non-Specialist)		
1–2,000/side/month (side)		0.00
2,001–3,000/side/month (side)		0.12
3,001–3,500/side/month (side)		0.22
3,501–3,750/side/month (side)		0.32
Over 3,750/side/month (side)		0.42
Specialist Trade Recording and Settlement Fees (Including Accounting Service		
1–1,000	0.99	0.99
1,001–2,000	0.89	0.89
2,001–3,000	0.79	0.67
3,001–3,500	0.79	0.57
3,500–3,750	0.79	0.47
3,751–4,000	0.79	0.37
4,001–8,000	0.70	0.30
Over 8,000	0.60	0.20
Member-To-Member Stock Loan		
Delivery (loan or return of loan)	2.50	2.50
Receipt	2.50	2.50

MCC PRICE REVISIONS—Continued

	Former	New
Mandatory (item)	25.00	25.00
Request (item)	10.00	10.00
Voluntary (item)	5.00	0.00
Buy-Ins		
Charge to firms bought-in (item)	0.00	5.00
Charge to firms submitting buy-ins (item)	0.00	2.00
Charge to firms submitting buy-ins *not* executing (item)	0.00	50.00

[FR Doc. 82–12055 Filed 5–3–82; 8:45 am]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

Time-of-Day Ratemaking Standards and Assignment of Allocation of Benefits of Hydro Power in Residential Rate Design; Extension of Time for Written Comments and Changed Meeting

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of extension of time for written comments and change in location, date, and time of oral comment session.

SUMMARY: Notice of opportunity for further comment on the Time-of-Day Ratemaking Standard and on the assignment of the allocation of the benefits of hydro power in residential rate design was published in the Federal Register April 15, 1982 (47 FR 16241). In that notice it was announced that written comments would be received until May 5 and that an opportunity to present oral comments to the TVA Board would be provided following the conclusion of the formal agenda at the scheduled meeting of the TVA Board of Directors on May 5, 1982.

The purpose of this notice is to announce an extension of time for submitting written comments and a change in the location, date, and time at which the Board will receive oral comments. Written comments should now be received by 5 p.m. (e.d.t.). on May 10, 1982. Oral comments will be received by the TVA Board at the Ellington Agricultural Center Auditorium on Marchant Road in Nashville, Tennessee, on May 10, 1982 beginning at 9 a.m. (CDT).

Other details about this opportunity for further comment are not changed and are set out in the April 15, 1982, Federal Register notice.

FOR FURTHER INFORMATION CONTACT: Dawn S. Ford, Tennessee Valley Authority, 400 West Summit Hill Drive,

EPB6, Knoxville, Tennessee 37902, (615) 632-4402.

W. F. Willis,

General Manager.

[FR Doc. 82-12018 Filed 5-3-82; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 82-84]

Recordation of Trade Name; Son-Export, S.A. de C.V.

On December 17, 1981, there was published in the **Federal Register** (46 FR 61532) a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Son-Export, S.A. de C.V." The notice advised that prior to final action on the application, filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), consideration would be given to relevant data, views, or arguments submitted in opposition to the recordation and received not later than 30 days from the date of publication of the notice. No responses were received in opposition to the application.

The name "Son-Export, S.A. de C.V." is hereby recorded as the trade name of Son-Export S.A. de C.V., a company governed by the laws of The Republic of Mexico, located at Plutarco Elias Calles y Rosales #124, Desp. 3003, Hermosillo, Sonora, Mexico. The trade name is applied to fresh frozen shellfish (shrimp).

Dated: April 27, 1982.

A. Piazza,

Acting Director, Entry Procedures and Penalties Division.

[FR Doc. 82-12092 Filed 5-3-82; 8:45 am]

BILLING CODE 4820-02-M

Office of the Secretary

[Department Circular Public Debt Series No. 12-82]

Treasury Notes of May 15, 1992; Series B-1992

April 29, 1982.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $4,000,000,000 of United States securities, designated Treasury Notes of May 15, 1992, Series B-1992 (CUSIP No. 912827 NE 8). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing securities held by them.

2. Description of Securities

2.1. The securities will be dated May 17, 1982, and will bear interest from that date, payable on a semiannual basis on November 15, 1982, and each subsequent 6 months on May 15 and November 15, until the principal becomes payable. They will mature May 15, 1992, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered, and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Wednesday, May 5, 1982. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, May 4, 1982, and received no later than Monday, May 17, 1982.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10 percent. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for from a commercial bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will

be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successfully higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.750. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Monday, May 17, 1982. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, May 13, 1982. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriated identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In evey case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrended to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 82-12148 Filed 4-30-82; 12:52 pm]

BILLING CODE 4810-40-M

[Department Circular Public Debt Series No. 11-82]

Treasury Notes of May 15, 1985; Series M-1985

April 29, 1982.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $5,250,000,000 of United States securities, designated Treasury Notes of May 15, 1985, Series M-1985 (CUSIP No. 912827 ND 0). The securities will be sold at auction, with bidding on the basis of yield. Payment

will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing securities held by them.

1.2. If the interest rate determined in accordance with this circular is identical to the rate on an outstanding issue of United States notes, and the terms and conditions of such outstanding issue are otherwise identical to terms and conditions of the securities offered by this circular, this shall be considered an invitation for an additional amount of the outstanding securities and this circular will be amended accordingly. Payment for the securities in that event will be calculated on the basis of the auction price determined in accordance with this circular plus accrued interest from the last preceding interest payment date on the outstanding securities.

2. Description of Securities

2.1. The securities will be dated May 17, 1982, and will bear interest from that date, payable on a semiannual basis on November 15, 1982, and each subsequent 6 months on May 15 and November 15, until the principal becomes payable. They will mature May 15, 1985, and will not be subject to call for redemption prior to maturity. In the event an interet payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered, and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Tuesday, May 4, 1982. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, May 3, 1982, and received no later than May 17, 1982.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders,s must also shows the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of

applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

845. Payment and Delivery

5.1. Settlement for alloted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Monday, May 17, 1982. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, May 13, 1982. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 82-12147 Filed 4-30-82; 12:52 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Advisory Committee on Health-Related Effects of Herbicides; Meeting

The Veterans Administration gives notice under the provisions of Pub. L. 92-463 that a meeting of the Advisory Committee on Health-Related Effects of Herbicides will be held in Room 119 of the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, D.C., on May 13, 1982, at 8:30 a.m. The purpose of the meeting will be to assemble and analyze information concerning toxicological issues which the Veterans Administration needs to formulate appropriate medical policy and procedures in the interest of veterans who may have encountered herbicidal chemicals used during the Vietnam Conflict.

The meeting will be open to the public to the seating capacity of the room from 8:30 a.m. until 12 noon to discuss research and other agency activities relative to the herbicide issue. A closed session will be held from 1:00 p.m. to 5:00 p.m. to permit the Committee to review the portions of the proposed design of the epidemiological study of exposure to herbicides in Vietnam which are not available to the public. Premature disclosure of this information would be likely to significantly frustrate implementation of a proposed agency action, namely conduct of the epidemiological study mandated by Pub. L. 96-151, amended by Pub. L. 97-72. Thus, the closing is in accordance with the provisions set forth in section 552b, subsection (c)(9)(B), Title 5, United States Code and the determination of the Administrator of Veterans Affairs pursuant to section 10(d) of Pub. L. 92-463.

Members of the public may direct questions, in writing only, to the Chairman, Barclay M. Shepard, M.D., and submit prepared statements for review by the Committee. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Transcripts of the open proceedings and rosters of the Committee members may be obtained from Mr. Donald Rosenblum, Office of the Special Assistant to the Chief Medical Director for Environmental Medicine (102), Room 848, Department of Medicine and Surgery, Veterans Administration Central Office, Washington, D.C. 20420 (Telephone: (202) 389–5411).

Due to administrative delays this notice will not appear 15 days prior to the meeting date.

Dated: April 27, 1982.

Robert P. Nimmo,

Administrator.

[FR Doc. 82–12049 Filed 5–3–82; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 86
Tuesday, May 4, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., Tuesday, May 11, 1982.

PLACE: 2033 K Street, N.W., Washington, D.C., fifth floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Gross Collection of Exchange set Margins
Portfolio Stock Indexes—Stock Market, Transport, Gas and Electric

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–653–82 Filed 4–30–82; 4:00 pm]

BILLING CODE 6351–01–M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10 a.m., Thursday, May 6, 1982.

LOCATION: Third Floor Hearing Room, 1111 18th Street, N.W., Washington, D.C.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *FY 83 Priorities*
The Commission will consider priorities for fiscal year 1983.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Deputy Secretary, Office of the Secretary, Suite 342, 5401 Westbard Avenue, Bethesda, MD 20207; Telephone (301) 492–6800.

[S–648–82 Filed 4–30–82; 1:27 pm]

BILLING CODE 6355–01–M

3

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: 10 a.m., Monday, May 10, 1982.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204

Dated: April 30, 1982.

James McAfee,

Associate Secretary of the Board.

[S–650–82 Filed 4–30–82; 2:39 pm]

BILLING CODE 6210–01–M

4

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors; continuation of the meeting of April 20, 1982.

TIME AND DATE: 9 a.m. (closed portion); 10:30 a.m. (open portion); Wednesday, May 12, 1982.

PLACE: Offices of the Corporation, seventh floor board room; 1129 20th Street N.W., Washington, D.C.

STATUS: The first part of the meeting from 9 a.m. to 10:30 a.m. will be closed to the public. The open portion of the meeting will start at 10:30 a.m.

MATTERS TO BE CONSIDERED: No change from the agenda previously announced.

CONTACT PERSON FOR INFORMATION: Information with regard to this meeting may be obtained from the Secretary of the Corporation (202) 653–2959. Public observers planning to attend the open portion of this meeting should check for any changes with the Corporate Secretary.

DATE PREVIOUSLY ANNOUNCED: Friday, April 9, 1982; 47 FR 15477.

Friday, April 30, 1982.

Elizabeth A. Burton,

Corporate Secretary.

[S–652–82 Filed 4–30–82; 3:52 pm]

BILLING CODE 3210–01–M

5

POSTAL SERVICE

(Board of Governors)

Notice of Meetings

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold meetings on Monday, May 10, at 2:00 P.M. in closed session, and Tuesday, May 11, 1982 at 8:00 A.M., in Conference Room 208, second floor of the Atlanta Management Sectional Center, 3900 Crown Road, Atlanta, Georgia. Except as indicated below, the Tuesday meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meetings should be addressed to the Assistant Secretary of the Board, W. Allen Sanders, at (202) 245–4635.

On April 6, 1982, the Board of Governors of the USPS voted to close to public observation portions of meetings of the Board to be held on May 10 and 11, and all of a meeting of the Audit Committee of the Board to be held on May 10, which are expected to be attended by the following persons: Governors Hardesty, Babcock, Camp, Hughes, Jenkins, McKean, and Sullivan; Postmaster General Bolger; Deputy Postmaster General Benson; Assistant Secretary of the Board Sanders; Counsel to the Governors Califano; Senior Assistant Postmaster General Finch; and Assistant Postmaster General Cummings.

The Board meeting on May 10 will consist of a discussion of Postal Service strategic planning. A part of the Board meeting scheduled for May 11, and the entirety of the Audit Committee meeting scheduled for May 10, are to consist of a discussion of a process for the selection of an independent certified public accounting firm to certify the accuracy of Postal Service financial statements as required by 39 U.S.C. 2008(e), the selection of such a firm being one of the matters that is reserved for decision by

the Board of Governors under section 3.4 of the Bylaws of the Board (39 CFR 3.4).

Agenda

1. Minutes of the Previous Meeting.
2. Remarks of the Postmaster General.
   (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)
3. Recommendation on Officer Compensation.
4. Report of the Regional Postmaster General.
   (Mr. Cooper, Regional Postmaster General, will report on postal conditions in the Southern Region.)
5. Quarterly Report on Financial Performance.
   (Mr. Finch, Senior Assistant Postmaster General, Finance Group, will present the quarterly summary of financial performance.)
6. Quarterly Report on Service Performance.
   (Mr. Benson, Deputy Postmaster General, will present the quarterly summary on service performance.)
7. Implementation of Board of Governors Resolution 81–9.
   (The Board will resume its consideration of the implementation of this Resolution during the remainder of fiscal year 1982, discussion of this agenda item not having been completed at the Board's meeting of April 6.)
8. Procurement of Services to Study USPS EEO Practices in light of the *Chisholm* Decision.
   (In keeping with its decision at its January 7, 1982, meeting to engage knowledgeable persons from outside the Postal Service to determine whether practices like those involved in *Chisholm* are operative elsewhere and whether techniques can be developed for resolving EEO problems without recourse to litigation for a study of these matters.)
9. Selection of independent certified public accounting firm.
   (As stated in the foregoing Notice, the Board will discuss in closed session the process for selection of an independent certified public accounting firm.)

W. Allen Sanders,

Assistant Secretary.

[S–649–82 Filed 4–30–82; 2:14 pm]

BILLING CODE 7710–12–M

6

SYNTHETIC FUELS CORPORATION

Meeting of the Board of Directors

ACTION: Notice of closed meeting.

SUMMARY: Interested members of the public are advised that a closed meeting of the Board of Directors of the United States Synthetic Fuels Corporation, the closing of which was approved by a resolution of the Board adopted in open session on April 26, 1982, will be held on the date and at the place specified below by telephone conference call. This public announcement is made pursuant to the open meeting requirements of Section 116(f)(1) of the Energy Security Act (9 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1)) and Section 4 of the Corporation's Statement of Policy on Public Access to Board Meetings.

CLOSED MEETING: Consideration of matters relating to the Tosco loan guarantee.

DATE AND TIME: May 10, 1982.

PLACE: 1900 L Street, N.W., Washington, D.C. 20586.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, Please contact Mr. Owen J. Malone, Office of General Counsels, (202) 653–4230.

April 30, 1982.

United States Synthetic Fuels Corporation.

Edward E. Noble,

April 30, 1982.

Chairman of the Board.

[S–651–82 Filed 4–30–82; 3:34 pm]

BILLING CODE 0000–00

federal register

Tuesday
May 4, 1982

Part II

Department of Education

Student Assistance General Provisions and Pell Grant Program

DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 690

Student Assistance General Provisions and Pell Grant Program

AGENCY: Education Department.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend Subparts B and G of the Student Assistance General Provisions Regulations. These regulations are being amended to incorporate a postsecondary education community self-regulation initiative in the area of standards of satisfactory progress at institutions participating in student financial assistance programs authorized by title IV of the Higher Education Act and to implement the recommendations of an Office of Management and Budget report on adjudicatory hearings.

The Secretary also proposes to amend Subpart H of the regulations for the Pell Grant Program to implement the recommendations of the Department of Health, Education and Welfare Audit Agency concerning institutional accountability under the Pell Grant Alternate Disbursement System.

DATE: Comments must be received on or before June 3, 1982.

ADDRESS: Comments should be addressed to Mr. Brian Kerrigan, Office of Student Financial Assistance, U.S. Department of Education, Room 4318, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Brian Kerringan or Andrea Foley, (202) 472–4300.

SUPPLEMENTARY INFORMATION:

I. Student Assistance General Provisions

The Secretary is proposing amendments in two areas of the Student Assistance General Provisions: (1) Section 668.16(e), Standards of satisfactory progress, and (2) Subpart G, Fine, limitation, suspension and termination proceedings. The following is a discussion of the proposed amendments.

A. Standards of Satisfactory Progress (Subpart B, Section 668.16(e))

Section 484 of the Higher Education Act (HEA), as amended requires that a student be maintaining satisfactory progress in the course of study he or she is pursing according to the standards and practices of the institution in which he or she is enrolled in order to receive financial aid under the student financial assistance programs authorized by title IV of the HEA. These programs include the Pell Grant, National Direct Student Loan, College Work-Study, Supplemental Educational Opportunity Grant, Guaranteed Student Loan, Auxiliary Loans to Assist Students (PLUS), and State Student Incentive Grant programs. Therefore, the establishment, publication and application of reasonable standards for measuring students' progress is currently a regulatory requirement for all institutions participating in these programs (34 CFR 668.16(e)). Although institutions are required to set reasonable satisfactory progress standards, the Secretary views the specific standards themselves, under current legislation, to be a matter of institutional discretion.

In recent years, two studies conducted by the General Accounting Office (GAO) on the management of Federal student financial aid programs pointed out some general problems in the area of institutional satisfactory progress standards. And, in a recently published GAO study which deals specifically with satisfactory progress standards at a cross-section of postsecondary institutions, the lack of reasonable standards and adequate enforcement is cited as a serious abuse of Federal aid programs. In addition to cases in which institutions failed to enforce their published standards, this study cites the use of standards by institutions which do not adequately measure students' "progress" toward their educational objective. As an example, students at one of the institutions in the GAO study remain eligible for Federal aid according to the satisfactory progress policies of the institution even though they are never required to attain the institution's 2.00 grade point average graduation requirement. As another example, because of an institution's policies allowing the excessive withdrawals, a student earned a total of only 14 credit hours during six full-time semesters for which she received $11,645 in title IV aid. The recent study, *Quality in the Basic (Pell) Grant Delivery System*, also noted as a source of inaccurate grant payments, the lack of enforcement by institutions of their 1980–81 satisfactory progress standards.

In addition, the Education Amendments of 1980 removed the provision limiting the number of academic years of eligibility for aid from the Pell Grant and Supplemental Educational Opportunity Grant Programs. As a result of the statutory change and the above reports, the Secretary believes that there exists a need for guidance in this area without encroaching on the institution's statutory prerogative to establish and use specific satisfactory progress standards, since the establishment and enforcement of reasonable satisfactory progress standards are playing increasingly critical roles in the equitable distribution of limited program funds.

The need to ensure the use of reasonable standards of satisfactory progress was the subject of debate during enactment of the Education Amendments of 1980. At that time, a proposal was considered to require all student aid recipients to successfully complete at least three-quarters of the workload undertaken during an academic period in order to retain their eligibility. When Congress retained institutional discretion in the Education Amendments of 1980 rather than setting a legislative minimum standard of satisfactory progress or granting the Secretary authority to set specific standards, the Secretary and the postsecondary education community took the opportunity to work together toward effective self-regulation in this area. The outcome is the provisions proposed in § 668.16(e), which are based on a set of guidelines specifically developed and approved by the American Council on Education, the American Association of Collegiate Registrars and Admission Officers, and the National Association of Student Financial Aid Administrators, to assist in the achievement of self-regulation. The Secretary believes that this postsecondary education community-based initiative preserves essential institutional discretion in setting specific standards of satisfactory progress while establishing parameters to help ensure the integrity of the student financial aid programs.

As in current § 668.16(e), an institution is required to establish, publish, and apply reasonable standards of satisfactory progress. However the proposed amendment also equates reasonable standards with the adherence to policies of good practice in this area as accepted by the postsecondary education community and the Secretary. Adherence to these practices is demonstrated by conformance with the standards of satisfactory progress set by the institution's nationally recognized accrediting agency and incorporation of certain basis elements developed by the community. If no agency standards exist, or if an institution is not accredited, the proposed amendment requires the institution to incorporate into its standards of satisfactory progress, the basic elements developed by the postsecondary education

community. The Secretary agrees that these elements represent the basis of a reasonable and comprehensive satisfactory progress policy.

The proposed amendment does not require accrediting agencies to develop standards, but simply recognizes that some agencies have already set and enforce such standards. In addition, the proposed elements outlined below would form the basis of all institutions' standards.

Two of the proposed elements are ones which are already considered by the Secretary to be basic components of all institutions' reasonable satisfactory progress standards. (See page 3–8 of the *Federal Student Financial Aid Handbook 1981–82.)* These elements are grades, work projects completed, or comparable factors which are measurable against a norm, and a time frame in which an educational objective (i.e., degree or certificate) is to be successfully completed.

Another proposed element requires consistent application of an institution's standards to all students within categories of students and programs established by the institution. This permits institutions to be responsive to the diversity of their students by relating their satisfactory progress standards to any categories of students and programs established by that institution. For example, an institution with varying enrollment categories (e.g., full-time, half-time, night students), may define a different time frame in which students in each category are to successfully complete their objective. Or, if an institution identifies other categories of students or programs for purposes of satisfactory progress standards, its standards may specifically relate to those groups (e.g., a lower grade point average requirement for first year nursing students).

Another requires institutions to incorporate into their standards, policies which define the effect of course incompletes, withdrawals, repetitions and non-credit remedial courses on satisfactory progress. Enforcement of a reasonable policy in this area prevents distortion in measuring a student's real progress toward his or her objective. The last proposed element requires that an institution incorporate into its standards, specific procedures for appeal of a determination not to be making satisfactory progress and for reinstatement of aid upon correction of satisfactory progress deficiencies. Inclusion of such procedures clearly indicates to students their rights concerning an appeal of an adverse determination and their responsibilities in relation to reinstatement of aid.

The Secretary is also proposing that in order to be considered reasonable, an institution's standards for measuring whether a student receiving aid under any title IV program is maintaining satisfactory progress must be the same as or stricter than the institution's standards for determining progress toward and successful completion of the educational objective. This proposal is intended to prevent the type of abuse cited in the GAO study where by use of a "double standard" a student may remain eligible for title IV aid according to the institution's satisfactory progress standards even though he or she is never required to attain the institution's minimum requirement for graduation.

B. Fine, Limitation, Suspension and Termination Proceedings (Subpart G)

At the end of the 1980 fiscal year (September 30, 1981), the Office of Student Financial Assistance had imposed 11 fines against institutions, and had initiated 24 emergency actions, 86 limitations, and 117 termination procedures against institutions of postsecondary education. A mass termination proceeding was initiated against 166 postsecondary institutions which failed to execute a Program Participation Agreement for the title IV student assistance programs. An additional mass termination proceeding was initiated against 193 postsecondary institutions which failed to submit required student aid program audits on a timely basis.

In the course of these proceedings, several serious deficiencies became evident. Concurrently, the U.S. Office of Management and Budget (OMB) released a "Study on Equity, Fairness and Competition." As required by the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95–224), the OMB Committee on Administrative Review, Appeal and Finality surveyed the various appeal and review procedures being used by Government agencies and departments.

The OMB *Report* and our experience emphasizes three major values regarding the review and appeals process: Fairness, Efficiency, and Participant Satisfaction. These proposed regulations incorporate these three values to the extent appropriate with the Secretary's responsibility for maintaining program integrity. The following is a discussion of the major provisions of the proposed regulations.

Informal Compliance Procedures. This section, currently § 668.73, is proposed to be deleted as a "formal" process embodied in regulations. Although the OMB *Report* stresses that there should be "preliminary investigation and informal negotiation" on compliance issues, these informal negotiations precede a more structured review or appeal. Therefore the OMB Report recommends that the informal negotiation process not be codified in regulations.

The Office of Student Financial Assistance always conducts informal negotiations with institutions on compliance issues. These informal negotiations are initiated at the conclusion of a program review at the institution and continue first at the regional office level and then, if necessary, at Department headquarters level, until the disputed compliance issues are resolved. Generally, this informal negotiation process is a minimum of six months in length but instances of informal negotiations proceeding for 12 or 18 months is not unusual.

The vast majority of compliance disputes between the Department and institutions are settled in this manner. The Department will continue to conduct this process without this section of the regulations.

Standards of Conduct. The Secretary is proposing to incorporate into the regulations the standards of conduct required of institutions participating in the student financial assistance programs. These standards reflect the view of the Secretary and various Administrative Law Judges presiding over termination proceedings. The Secretary and the Administrative Law Judges view institutions as acting in a fiduciary capacity in their administration of student assistance programs and therefore the institutions must meet the highest standards of care and diligence in their administration of the programs and in their accounting to the Government of program funds they received.

Pre-hearing Conference. A pre-hearing conference is occasionally a part of the current fine, limitation, suspension and termination proceedings if required by the Administrative Law Judge assigned to the proceeding. This new section complies with the recommendation of the OMB *Report* that strongly encourages the use of pre-hearing conferences. A pre-hearing conference offers another opportunity to informally settle or limit the compliance dispute.

Under the proposed regulations, a conference must be convened if requested by the designated ED official, the institution or the Administrative Law Judge. The type of the conference is flexible and may be held by conference telephone call, formal or informal

meeting of the parties, or through the submission of written material.

The current regulation provides no procedural requirements since the Department of Education had limited experience in participating in a conducting hearing on the record. The Secretary now believes that the Department has the request experience to establish such procedures. These procedures are spelled out in § 668.77.

The three values of fairness, efficiency and participant satisfaction underlie these proposed regulations on hearings. In order to provide fairness and efficiency for both the institution and the Department, several legal clarifications are established concerning formal rules of evidence, the burden or proof, the exchange of information, and the relevancy of evidence.

Authority and Responsibility of the Administrative Law Judge. This new proposed section offers a framework within which the Administrative Law Judge acts. The Administrative Law Judge regulates the course of the proceedings, the conduct of the parties during the proceeding, and takes whatever measures are appropriate to expedite the proceeding. However, the regulation specifies that the Administrative Law Judge has no authority to issue subpoenas.

Reinstatement After Termination. Currently nothing prevents a school owner convicted of a crime related to abuses of title IV programs from having his or her school reinstated. Similarly nothing prevents the reinstatement of a school or institution which still employs the financial aid or fiscal officers convicted of a crime related to abuse of title IV program. Therefore, in § 668.84, it is proposed to amend the reinstatement provision to preclude a school or institution from being reinstated if it continues to employ criminal or incompetent administrators in financial aid or fiscal positions or is owned by persons convicted of a title IV related criminal offense.

II. Pell Grant Program

The following is a discussion of the proposed amendments to Subpart H of the regulations for the Pell Grant Program concerning institutional accountability under the Alternate Disbursement System.

Eligible institutions of higher education may participate in the Pell Grant Program under either the Regular Disbursement system or the Alternate Disbursement System. (ADS). Institutions which, for one reason or another, elect to participate through the ADS enter into a program participation agreement with the Secretary of Education under which they agree to certify the accuracy of records regarding the institution's academic calendar, the student's attendance, enrollment status, and cost of attendance and the eligibility of the course of study in which the student is enrolled.

In order for the student to be paid a Pell Grant, the ADS institution and the student must sign and certify ED Form 304 or 304–1 and return the completed form to the Department of Education. The amount of the student's Pell Grant award is calculated and the student receives Pell Grant funds directly from the U.S. Treasury.

During the 1979–80 award year, Pell Grant funds totalling $26 million were disbursed through the ADS to approximately 26,000 students attending over 900 postsecondary institutions. For the 1980–81 award year about $30 million were disbursed to approximately 32,000 students at 950 postsecondary institutions. It is anticipated that, during the 1981–82 award year, approximately 36,000 students attending about 1,000 postsecondary institutions will receive an estimated $34 million through the ADS.

The proposed regulations incorporate the recommendations of the Department of HEW Audit Agency Report on the ADS. The Audit Agency's review of the ADS was directed primarily towards (1) identifying significant ADS weaknesses which could lead to fraudulent and abusive situations, and (2) evaluating the adequacy of ED's administration of the Pell Grant Program under ADS.

The Audit Agency Report found that a significant number of improper Pell Grant payments were made to students because of inaccurate information reported to ED by both institutions and students. Also cited in the Report were the lack of institutional—

(1) Accountability for inaccurate information,
(2) Liability for overpayments, and
(3) Recordkeeping.

Finally the Report indicated that ED had neither established adequate monitoring procedures of ADS activity nor addressed the issue of ADS institutional liability for repayment of Pell Grant funds.

In revising the regulations for the ADS, a number of objectives have been established. The first objective is to make the regulations more easily understandable. The existing regulations (Subpart H) have been reorganized for logical coherence and clarification. Secondly, the recommendations of the HEW Audit Agency have been incorporated. The third objective has been to respond to problems in program operation which program experience has indicated are not sufficiently addressed in current regulations.

On the basis of the HEW Audit Agency Report, amendments have been made to certification procedures to prevent program abuse both by institutions and student recipients. These procedures have been developed in an effort to achieve a balance between good program control and an administration of the program which would not be burdensome to the ADS institution.

It should be noted that these regulations are not the only ones which are applicable to the Pell Grant Program ADS institution. The Student Assistance General Provisions (34 CFR Part 668) which were published as final regulations on December 31, 1980, apply to all institutions which participate in any of the Federal student assistance programs including the Pell Grant Program's ADS institutions. The Student Assistance General Provisions regulations contain general definitions, student consumer information services requirements, standards of administrative capability and fiscal responsibility, misrepresentation criteria and fine, limitation, suspension and termination procedures.

A description of the major changes to the regulations for ADS institutions is given below, organized by section.

Section 690.92 Institutional Participation Agreement

This section was revised to parallel § 690.72 of the regulations governing the RDS agreement. It should be noted that Section 487(a) of the HEA as amended by the Education Amendments of 1980 requires any institution which participates in a title IV student assistance program to enter into an agreement with the Secretary of Education.

Section 690.96 Verification of Information on the SAR

As a means of strengthening the effort to control error and abuse in the Pell Grant Program by students at ADS institutions, § 690.96 "Verification of Information on the SAR" has been added. The SAR (Student Aid Report) is the new name for the current SER (Student Eligibility Report). The procedures in this section pertain to verifying the information on the SAR before the institution certifies ED Form 304 or 304–1. Since eligibility for Pell Grant assistance is based on need which is determined solely on the basis of information supplied by the applicant (and the parents of dependent

applicants), it is imperative that the pertinent data be accurate. Therefore, the Secretary is extending the verification of information requirement (with which Regular Disbursement System institutions already comply) to the ADS institutions.

Currently the Department of Education performs the verification process for students attending ADS institutions. However, the delays involved with centrally verifying the ADS validation cases cause, in some instances, undue hardship for the students involved. While the ADS institution will incur some additional responsibilities due to this section, the impact, in terms of time lost to the student will be minimal. Further, the closer scrutiny that an institutional aid officer can give at the local level should produce a more accurate eligibility index in most cases.

Verification of an applicant's data (called validation) is almost universally considered to be a very necessary aspect of need-based student aid. In this respect all institutions, including those participating in Pell Grants under ADS, are currently required, under 34 CFR 668.16(f), to develop an adequate system to verify the consistency of information they receive from different sources with respect to a student's application for financial aid under title IV programs. Section 690.96, therefore clarifies the ADS institution's responsibilities specifically under the Pell Grant Program.

Section 690.97 Withdrawals and Refunds

This section has been amended to conform with § 668.21, Distribution of Refunds, of the Student Assistance General Provisions which governs withdrawals and refunds for all title IV aid programs. This section is not a new requirement.

Section 690.98 Recovery of Overpayments

As a result of the recommendations of the HEW Audit Agency Report, this section has been added to parallel the liability responsibilities of students and institutions for overpayments that are currently in Subpart G of the Pell Grant regulations which govern Regular Disbursement System institutions. This section delineates institutional responsibilities and reporting procedures regarding overpayments made to students on the basis of inaccurate information.

Section 690.99 Recalculation of a Grant Award

Embodying current ADS program operations, this section has been added to these regulations. Section 690.99 parallels § 690.81(a) governing the Regular Disbursement System. The section stipulates that the Secretary will recalculate a student's Pell Grant if there is a change in the student's expected family contribution. An ADS institution does not incur any additional responsibilities under this section because the recalculation is performed by the Secretary.

Section 690.101 Submission of Reports

Paralleling § 690.84, this section has been added to delineate the authority of the Secretary to require ADS institutions to submit reports on Pell Grant activity as may be necessary.

Invitation To Comment—Change in Enrollment Status. The Secretary is aware that the enrollment status of Pell Grant recipients in schools using academic terms often changes during a term. For example, a full-time student carrying 12 hours of credit who withdraws from or otherwise does not complete a three-credit course during an academic period would be a three-quarter-time student at the end of that period. The Secretary believes that this system may lead to an abuse of the program. This will occur if a large number of students who are paid on the basis of their enrollment status at the beginning of a term do not complete the courses for which they were paid. In fact, the recent GAO study dealing with institutional standards of satisfactory progress cites as an abuse, the payment of Federal aid to students for uncompleted courses regardless of whether the students were meeting institutional standards of satisfactory progress. The Secretary is soliciting comment from the financial aid community on the extent of abuse in this area.

In light of this potential abuse, the Secretary is also soliciting comments on three possibilities for restructuring the Pell Grant payment method at institutions using academic terms and suggestions for implementing these methods: (1) The first method would require that institutions award and disburse grants retroactively. That is, the grant would be paid only after the end of an academic term based on the student's enrollment status at the end of the term. This would effectively eliminate any problem arising from a student's changing status during the payment period. (2) A second method would require the institution to adjust grant payments in the subsequent payment period to compensate for courses from the previous payment period which were not successfully completed and for which credit was not awarded. Courses which students failed, withdrew from, or otherwise did not successfully complete would be subtracted in determining enrollment status and payment in the subsequent term. (3) A third method is for the institution to adjust payments in the subsequent payment period as described in the second method, but only to adjust for courses not completed. As in the above suggestion, adjustments would be made for courses from which a student withdrew or did not complete, but not for failed courses.

Any other suggestions for changes to the payment method at institutions using academic terms and the implementation of such changes are invited.

It should be noted that any changes would pertain only to the Pell Grant Program and would not impact the determination of enrollment status for any of the other title IV programs.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations establish guidelines for institutional standards of satisfactory progress and revise the fine, limitation, suspension and termination procedures for institutions participating in title IV student financial aid programs.

These regulations also revise certain institutional requirements concerning the administration of payments under the Pell Grant Regular and Alternate Disbursement Systems. About 785 postsecondary institutions participate in the Pell Grant Program. Many of these institutions are small entities, but approximately 50% of the institutions have fewer than 10 Pell Grant recipients. Therefore, the revised requirements will not have a significant economic impact on the small entities affected.

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Loan programs—education, Grant programs—education, Student aid.

34 CFR Part 690

Administrative practice and procedure, Education, Education of disadvantaged, Grant programs—education, Student aid.

Information From Institutions of Higher Education. The Secretary

requests comments on whether these proposed regulations would require institutions of higher education to transmit information that is already being gathered by or is available from any other agency or authority of the United States.

Burden Reduction. To assist the Department in complying with the specific requirements of Executive Order 12291 and its overall objective of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these regulations, especially with regard to paperwork and compliance requirements.

Address for Comments. Written comments and recommendations may be sent to the address given at the beginning of this preamble. The Secretary will consider in the development of the final regulations all comments received on or before June 3, 1982.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Regional Office Building 3, Room 4318, 7th and D Streets, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday of each week, except Federal holidays.

Executive Order 12291. These regulations have been reviewed in accordance with Executive Order 12291. They are classified as nonmajor because they do not meet the criteria for major regulations established in the order.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalogue of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; Guaranteed Student Loan Program, 84.032; Auxiliary Loan Program (PLUS), 84.032; College Work-Study Program, 84.033; National Direct Student Loan Program, 84.038; Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069)

Dated: April 27, 1982.

T. H. Bell,

Secretary of Education.

The Secretary proposed to amend Parts 668 and 690 of Title 34 of the Code of Federal Regulations as set forth below:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. In § 668.16, the introductory text is republished and paragraph (e) is revised to read as follows:

§ 668.16 Standards of administration capability.

To participate in a title IV student financial aid program, an institution must be able to adequately administer those programs. The Secretary considers an institution to have that capability if it establishes and maintains required student and financial records and if it—

* * * * *

(e)(1) Establishes, publishes, and applies reasonable standards for measuring whether a student receiving aid under any title IV program is maintaining satisfactory progress in his or her course of study;

(2) The Secretary considers an institution's standards to be reasonable if the standards—

(i) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits the insitution, if the institution is accredited by such an agency, and if the agency has such standards;

(ii) Include the elements provided in paragraph (e)(3) of this section; and

(iii) Are the same or stricter than the institution's standards for students who are not receiving aid under a title IV program;

(3) The elements referred to in paragraph (e)(2) of this section include—

(i) Grades, work projects completed, or comparable factors which are measurable against a norm;

(ii) A time frame in which the educational objective, i.e., degree or certificate, is to be successfully completed;

(iii) Consistent application of standards to all students within categories of students, e.g., full-time, part-time, undergraduates, graduate students, and programs established by the institution;

(iv) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress; and

(v) Specific procedures for appeal of a determination by not making satisfactory progress and for reinstatement of aid upon correction of deficiencies;

* * * * *

2. Section 668.73 is revised to read as follows:

§ 668.73 Standard of conduct.

(a) A participating institution acts in the nature of a fiduciary in its administration of the title IV student financial assistance programs.

(b) In the capacity of a fiduciary, the institution is subject to the highest standards of care and diligence in administering the programs and in accounting to the Government for the funds received under those programs.

(20 U.S.C. 1070 *et seq.*)

3. In § 668.74, the introductory text of paragraph (a) and (a) (1) and (2) are revised to read as follows:

§ 668.74 Emergency action.

(a) The Secretary, through a designated ED official, may take emergency action to withhold funds from an institution or its students and to withdraw the authority of an institution to obligate funds under any or all title IV student assistance programs covered under the subpart if the designated ED official—

(1) Receives information which the official determines is reliable, that the institution is violating applicable laws, regulations, special arrangements, agreements or limitations; and

(2) Determines that immediate action is necesary to halt a loss of Federal funds.

(3) * * *

* * * * * *

§ 668.75 [Amended]

4. Section 668.75 is amended by revising "presiding officer" to read "administrative law judge" each place it appears, by removing paragraph (b)(5), and by redesignating paragraph (b)(6) as paragraph (b)(5).

§ 668.76 [Amended]

5. Section 668.76 is amended by revising "presiding officer" to read "administrative law judge" each place it appears, by removing paragraph (b)(5), and by redesignating paragraph (b)(6) as paragraph (b)(5).

§ 668.77 [Amended]

6. Section 668.77 is amended by revising "presiding officer" to read "administrative law judge" each place it appears, by removing paragraph (b)(5), and by redesignating paragraph (b)(6) as paragraph (b)(5).

§§ 668.78–668.85 Redesignated as §§ 668.81–668.88

7. Sections 668.78 through 668.85 are redesignated as §§ 668.81 through 668.88, respectively.

8. New §§ 668.78, 668.79, and 668.80 are added to read as follows:

§ 668.78 Pre-hearing conference.

(a)(1) A pre-hearing conference shall be convened by the administrative law judge at the request of—

(i) The designated ED official;

(ii) The institution; or

(iii) The administrative law judge.

(2) The purpose of a pre-hearing conference is to allow the parties to settle or narrow the dispute.

(b) Instead of a formal meeting, if as agreed to by the administrative law judge, the designated ED official and the institution, a pre-hearing conference may be held by—

(1) A conference telephone call,

(2) An informal meeting, or

(3) The submission of written material by the institution without oral presentation.

(20 U.S.C. 1094)

§ 668.79 Hearing on the record.

(a) A hearing on the record is an orderly presentation of agruments and evidence conducted by an administrative law judge.

(b) The hearing process may be limited as agreed upon by the administrative law judge, the designated ED official and the institution. These limitations include, but are not limited to, the following—

(1) A restriction on the number of submissions,

(2) A hearing by telephone conference call,

(3) A review limited to the written record, or

(4) A certification by the parties to facts and issues not in dispute.

(c)(1) The formal rules of evidence and procedures applicable to proceedings in a court of law are not applicable.

(2) *Burden of proof.* The institution shall have the burden of proving that the causes of the action set forth in the notice of intent to fine, limit, suspend or terminate are in error or, if accurate, do not justify a decision to fine, suspend, limit or terminate.

(3) *No discovery.* There is no discovery as conducted under the Federal Rules of Civil Procedures, but the parties are encouraged to exchange relevant documents or information.

(4) *Evidence.* The administrative law judge accepts only evidence that is relevant and material to the proceeding. Parties may object to evidence that they consider to be irrelevant, immaterial, or unduly repetitious.

(d) A transcribed record shall be made of the proceedings and shall be made available to an institution upon request and upon payment of any appropriate fee as prescribed under the Department of Education Freedom of Information Act regulations (34 CFR Part 5).

(20 U.S.C. 1094)

§ 668.80 Authority and responsibilities of the administrative law judge.

(a) The administrative law judge regulates the course of the proceedings and the conduct of the parties during the hearing and take all steps necessary to conduct a fair and impartial proceeding.

(b)(1) The administrative law judge is not authorized to issue subpeonas.

(2) If requested by the administrative law judge, the Secretary and the institution shall provide available personnel from ED and the institution respectively, who have knowledge about the matter under review for oral or written examination.

(c) The administrative law judge shall take whatever measures are appropriate to expedite the proceeding. These measures may include, but are not limited to, the following—

(1) Scheduling of conferences,

(2) Setting time limits for hearings and submission of written documents, and

(3) Terminating the hearing and issuing a decision against a party if that party does not meet those time limits.

(d) If the administrative law judge ends a hearing under paragraph (c)(3) of this section, he or she shall deliver to the designated ED official and the institution, a written decision generally within 30 days after the termination of a hearing.

(20 U.S.C. 1094)

§§ 668.81—668.86, 668.88 [Amended]

9. Redesignated §§ 668.81 through 668.86 and 668.88 are amended by revising "presiding officer" to read "administrative law judge" each place it appears.

10. Redesignated § 668.87 is revised to read as follows:

§ 668.87 Reinstatement after termination.

(a) An institution whose participation has been terminated my file a request for reinstatement as a participating eligible institution. However, this request may not be made before the expiration ot the 18th month after the effective date of the termination.

(b)(1) The reinstatement request must be in writing and must show that the institution has corrected the violation(s) on which its termination was based, including payment in full to the Secretary or to designated recipients of funds that the institution improperly received, withheld, disbursed, or caused to be disbursed.

(2) The institution must meet all the qualifications for participation in title IV student assistance programs as provided in subpart B of this part.

(3) If an institution was terminated as both a participating institution and a lender under the Guaranteed Student Loan or PLUS programs, the institution may not be reinstated as a lender until it is reinstated as a participating institution. However, the institution may request reinstatement as both an eligible institution and a lender at the same time.

(c) The Secretary will not grant reinstatement to an institution if it—

(1) Is owned, in whole or in part, by a person(s) who has been convicted of a crime related to the abuse of title IV programs; or

(2) Continues to employ an individual who was shown to be an incompetent administrator during the termination proceedings or who was convicted of a crime related to the abuse of title IV programs.

(d) The Secretary, within 60 days of receiving the reinstatement request, shall—

(1) Grant the request,

(2) Deny the request, or

(3) Grant the request subject to limitations.

(20 U.S.C. 1094)

PART 690—PELL GRANT PROGRAM

11. The table of contents for Subpart H and Subpart H of Part 690 are revised to read as follows:

Subpart H—Administration of Grant Payment—Alternate Disbursement System

Sec.

690.91 Scope.
690.92 Institutional participation agreement—Alternate Disbursement System (ADS).
690.93 Disbursement system changes.
690.94 Termination of agreement—Alternate Disbursement System.
690.95 Application procedures—general.
690.96 Verification.
690.97 Withdrawals and refunds.
690.98 Recovery of overpayments.
690.99 Recalculation of a grant award.
690.100 Maintenance and retention of records.
690.101 Submission of reports.

Subpart H—Administration of Grant Payments—Alternate Disbursement System

§ 690.91 Scope.

(a) This subpart deals with program administration by an institution of higher education under the Alternate Disbursement System (ADS). Under the ADS, the Secretary calculates and pays the Pell Grant awards.

(20 U.S.C. 1070a)

§ 690.92 Institutional participation agreement—Alternate Disbursement System (ADS).

(a) The Secretary may enter into an agreement with an institution of higher education under which the Secretary will calculate and pay Pell Grant awards to students enrolled at that institution based upon the information provided to the Secretary by the institution and the student.

(b) The agreement will be on a standard form provided by the Secretary and will contain the necessary terms to carry out this subpart.

(20 U.S.C. 1070a)

§ 690.93 Disbursement system changes.

(a) *Change to Regular Disbursement System (RDS).* (1) The Secretary may allow an ADS institution to change its method of participation in the Pell Grant Program to the Regular Disbursement System.

(2) In order to make the change, the institution shall—

(i) Notify the Secretary no later than January 1 of its desire to make the change for the succeeding award year;

(ii) Submit all required reports by April 30; and

(iii) Sign a new participation agreement.

(3) If the Secretary agrees to the change, the new participation agreement goes into effect on July 1 of the succeeding award year.

(b) *Change to Alternate Disbursement System (ADS).* (1) The Secretary may allow an RDS institution to change its method of participation in the Pell Grant Program to the Alternate Disbursement System.

(2) In order to make the change, the institution shall—

(i) Notify the Secretary no later than January 1 of its desire to make the change for the succeeding award year;

(ii) Submit all required reports through the February 15 Progress Report for that award year by April 30; and

(iii) Sign a new participation agreement.

(3) If the Secretary agrees to the change, the new participation agreement goes into effect on July 1 of the succeeding award year.

(20 U.S.C. 1070a)

§ 690.94 Termination of agreement—Alternate Disbursement System.

(a) *Termination by the Secretary.* The Secretary may terminate the agreement with an institution according to the procedures established by Subpart G of the Student Assistance General Provisions (34 CFR 668).

(b) *Termination by the institution.* The institution may terminate the agreement by giving the Secretary written notice. The termination becomes effective on June 30 of the award year in which the institution provides the written notice. The institution must carry out the agreement for the reaminder of the award year.

(c) *Termination because of change in ownership that results in a change of control.* (1) The agreement terminates when an institution undergoes a change of ownership that results in a change of control.

(2) The Secretary may enter into an agreement with the new owner after the institution complies with the requirements of § 668.18 of the Student Assistance General Provisions regulations (34 CFR 668.18).

(d) *Limitation of agreement.* (1) The Secretary and the institution may jointly agree to limit the agreement.

(2) The Secretary may limit the agreement in accordance with Subpart G of the Student Assistance General Provisions Regulations, 34 CFR 668.71–668.88.

(20 U.S.C. 1070a)

§ 690.95 Application procedures—general.

An eligible student attending an ADS institution applies for a Pell Grant as follows:

(a)(1) The student submits an SAR (Student Aid Report) to the institution.

(2) The student is subject to the deadline date for submitting the SAR to the institution set forth in § 690.61(b) and the limitation set forth in § 690.61(d).

(b)(1) Upon receipt of an SAR, the institution gives the student ED Form 304 which the student uses to request a Pell Grant payment from the Secretary.

(2) On ED Form 304, the student provides his or her name, social security number and address and signs the statement of educational purpose. (This statement is the same statement set forth in § 690.79).

(3) On ED Form 304, the institution provides information regarding a student's eligibility to receive a Pell Grant, as well as the student's enrollment status, cost of attendance and dates of attendance.

(4) With regard to the student's eligibility for a Pell Grant, the institution shall determine whether the student—

(i) Presents a valid SAR to the institution required by § 690.61;

(ii) Meets the eligibility requirements set forth in § 690.4;

(iii) Is maintaining satisfactory academic progress in his or her course of study;

(iv) Is not in default on any National Defense/Direct Student Loan made by the institution or any Guaranteed Student Loan received for attendance at that institution; and

(v) Does not owe a refund on a Pell Grant, a Supplemental Grant, or a State Student Incentive Grant received for attendance at that institution.

(5) If an institution determines that, at the beginning of a payment period, the student is not maintaining satisfactory academic progress, but reverses itself BEFORE the end of the payment period, the institution may certify ED Form 304 for the entire payment period.

(6) If an institution determines that, as of the date the institution is expected to complete ED Form 304 at the beginning of a payment period, the student is not maintaining satisfactory academic progress, but reverses itself AFTER the end of the payment period, the institution may not certify ED Form 304 for that payment period. The Secretary will not make adjustments in subsequent Pell Grant payments to compensate for the loss of Pell Grant aid for that payment period.

(c) If the institution determines that the student has valid SAR and is eligible for a Pell Grant, it certifies the accuracy of the information it provides and returns the SAR and the certified ED Form 304 to the student.

(d) The student submits both the verified SAR and the certified ED Form 304 to the Secretary before the deadline date established in § 690.61.

(e) Upon receipt of the SAR and ED Form 304 properly certified by the institution, the Secretary will calculate a student's award in accordance with Subpart F of this part.

(f)(1) In each payment period, the Secretary will pay a student at such times and in such installments as the Secretary determines will best meet the student's needs.

(2) The Secretary will make only one payment to a student if a portion of an academic year occurring within one award period is less than three months.

(3) The Secretary may pay funds due a student for any completed period of enrollment in one lump sum. The student's enrollment will be determined according to work already completed.

(g)(1) The Secretary also sends the student an ED Form 304–1. This form is used to request other payments from the Secretary during the award year.

(2) The institution must provide the information requested and must certify that the information included on the form is accurate.

(3) The student submits the certified ED Form 304–1 to the Secretary for an additional grant payment before the deadline date established in §690.61.

(20 U.S.C. 1070a)

§ 690.96 Verification.

(a) An institution shall require that a student verify the information included on his or her SAR if—

(1) Directed to by the Secretary;

(2) The institution has documentation which indicates that the information on the SAR used to calculate the student's award is inaccurate; or

(3) If the institution has a reasonable basis for believing information on the SAR used to calculate the student's award is inaccurate.

(b) The Secretary shall publish procedures to be used to verify information on SARs.

(c)(1) If the institution requests that the student verify the information on his or her SAR for the reasons stated in paragraph (A)(1) or (2) of this section, it may not certify the student's ED Form 304 until it is satisfied that the information on the SAR is correct.

(2) If the institution requests that the student verify the information on his or her SAR for the reason stated in paragraph (a)(3) of this section, it shall—

(i) Certify ED Form 304; and

(ii) Notify the Secretary.

(d)(1) If, as a result of the verification process, the SAR needs to be corrected, the student must correct the SAR by—

(i) Putting accurate information on the SAR,

(ii) Getting the appropriate signatures on the SAR, and

(iii) Resubmitting the SAR to the Secretary

(2) The student must resubmit the new SAR he or she receives to the institution.

(3) The institution shall certify ED Form 304 if it is satisfied that the information on the resubmitted SAR is accurate.

(e)(1) If a student submits an SAR with a student aid index to the institution before the deadline date established in § 690.61 but is required to reapply for another SAR based on the requirements of this section, that student may submit the verified SAR to the institution after the appropriate deadline specified in §690.61, but within an established time period set by the Secretary. However, the Secretary will pay such a student only up to the amount of the payment based on the originally submitted SAR.

(2) If the student does not provide the requested documentation, and if necessary a reprocessed, verified SAR, within the established time period—

(i) The student will forfeit the Pell Grant for the award year: and

(ii) Any grant payments received must be returned to the Secretary.

(f) Under certain conditions as determined by the Secretary, including, but not limited to suspected fraud and/or abuse, no further Pell Grant applications will be processed for the student unless he or she verifies the information alleged to be discrepant or the Secretary decides there is no further need for verification.

(20 U.S.C. 1070a)

§690.97 Withdrawals and refunds.

(a)(1) The institution shall notify the Secretary of the date a student officially or unofficially withdraws or is expelled for a payment period for which the student was paid.

(2) If the institution also participates in any other title IV program, the institution must comply with §668.21 of the Student Assistance General Provisions and provide the Secretary with the information required by § 668.21(a)(3).

(3) For purposes of this section, the date of a student's unofficial withdrawal shall be determined under § 668.21(c)(4).

(b) If the date provided by the institution in paragraph (a) is before the mid-point of the payment period for which the student has been paid, the student will refund a prorated portion of the payment as determined by the Secretary.

(20 U.S.C. 1070a)

§ 690.98 Recovery of overpayments.

(a) The student is liable for any overpayment made to him or her.

(b)(1) The institution is liable for any overpayment made to a student by the Secretary on the basis of inaccurate information provided by the institution.

(2) The institution shall repay to the Secretary the amount of the overpayment for which it is liable even if the overpayment cannot be collected from the student.

(c) If an overpayment is made for which the institution is not liable, the institution shall help the Secretary to recover the overpayment by providing the Secretary with the student's name, social security number, most recent address, and other relevant information.

(20 U.S.C. 1070a)

§ 690.99 Recalculation of a grant award.

(a)(1) If the student's expected family contribution changes, the Secretary will recalculate his or her Pell grant award.

(2) Except as provided in § 690.96(f)(2)(ii), the Secretary will adjust the award and pay the student the amount he or she is entitled to for the award period if the expected family contribution is recalculated because of—

(i) A clerical or arithmetic error under § 690.15, or

(ii) Extraordinary circumstances which affect the expected family contribution under Sections 690.49 and 690.57.

(3) If a student's expected fmaily contribution is recalculated because of a correction of the information requested under § 690.96, the student's grant for the award period will be adjusted by the Secretary. Where possible, the adjustment will be made within the same award period.

(4) If the recalculation takes place in a subsequent award period, the student will be—

(i) Eligible to receive payment unless prohibited under the provisions of § 690.96(f), and

(ii) Required to return any overpayment at the time of recalculation.

(20 U.S.C. 1070a)

§ 690.100 Maintenance and retention of records.

(a) Each institution must establish and maintain the following records—

(1) The "Student Aid Report" for each student;

(2) A copy of ED Form 304 and Form 304–1 for each student;

(3) The name and social security number for each student;

(4) The student's cost of attendance;

(5) How the student's full or part-time enrollment status was determined;

(6) The student's enrollment period;

(7) Information collected in compliance with § 690.96; and

(8) Information necessary to determine whether the student was eligible to receive a grant.

(b)(1) Records shall be—

(i) Systematically organized;

(ii) Maintained for five years after the award period in which the student ceased enrollment; and

(iii) Readily available for review by the Secretary or the designated ED official at the geographical location where the students will receive their degrees or certificates of program or course completion.

(2) An institution may substitute micro-film copies in lieu of original records in meeting the requirements of this section.

(20 U.S.C. 1070a)

§ 690.101 Submission of reports.

The institution must submit the their reports and information the Secretary requires in connection with the participation of an institution in the Alternate Disbursement System and must comply with the procedures the Secretary finds necessary to ensure that the reports are correct.

(20 U.S.C. 1070a)

[FR Doc. 82–11996 Filed 5–3–82; 8:45 am]
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Tuesday
May 4, 1982

Part III

Department of the Interior

Bureau of Land Management

Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention To Hold Mining Claims, Mill or Tunnel Sites

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3830

Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention To Hold Mining Claims, Mill or Tunnel Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The amendments made by this proposed rulemaking will clarify questions that have arisen in connection with the procedures established by the regulations on Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention to Hold Mining Claims, Mill or Tunnel Sites, since they became effective in January 1977. The amendments are also designed to make the regulations clearer and easier to understand.

DATE: Comments by June 3, 1982.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: George Schmidt, (202) 343–8537,
or
Robert C. Bruce, (202) 343–8735.

SUPPLEMENTARY INFORMATION: Since the regulations on the Recordation of Mining Claims and Filing of Proof of Annual Assessment Work of Notice of Intention to Hold Mining Claims, Mill or Tunnel Sites became effective on January 27, 1977, questions about certain aspects of those regulations have arisen. In addition to the amendment already made, the public's and the Bureau of Land Management's experience with the regulations, as amended, has indicated further changes that will make the regulations easier to understand and comply with. This proposed rulemaking incorporates these changes.

In addition, the proposed rulemaking incorporates changes recommended in comments submitted in response to the February 1981 request of the Secretary of the Interior for the public to identify those regulations that were burdensome or counter-productive.

In order to shorten the existing regulations, the effect of failure to record mining claims and sites, located prior to October 21, 1976, with the Bureau of Land Management within the statutory three years, would be put in one paragraph in § 3833.1. As a result, appropriate changes woud be made in certain sections, and §§ 3822.1–2(b) and 3833.2–1(a) would be deleted in their entirety. The remaining paragraphs in each of those sections would be renumbered.

One of the changes that would be made by the proposed rulemaking is the addition of some new terms to the definition section to clarify some apparent misunderstandings that have arisen during the period the regulations have been in effect, including a new definition of what constitutes timely filing. Another change would include in the regulations instructions supplied Bureau field offices on the information required at the time of filing of a mining claim. Yet another change is the removal of the filing fee as an item required at the time of submission of a mining claim.

A change has been made to the section dealing with the filing of affidavits of assessment work, § 3833.2–1. The requirement for filing of instruments set forth in section 314 of the Federal Land Policy and Management Act is susceptible to more than one construction. The Interior Broad of Land Appeals in its examination of the requirement has construed it as requiring the filing of the affidavit during the calendar year covered by the work. In order to carry out the policy of the Department of the Interior to preserve claims, we have amended the section on filing of affidavits of assessments to clarify the question of overlapping calendar periods and promote diligent performance of the assessment work required by law. Another change covering this same area would limit a notice of intention to hold a mining claim to the year in which it is filed.

An additional change made by the proposed rulemaking will resolve questions that have arisen with regard to the filing of a notice of intention to hold a mining claim. A new § 3833.2–3(a) modifies the basis for the view of this question taken by the Interior Board of Land Appeals in a couple of recent decisions. A notice of intent may be filed at the election of the claimant. That is, the claimant may file a notice even if assessment work has been performed and may file a notice whenever, for whatever reason (not limited to situations where assessment work is excused under the mining law), the annual assessment work is not performed by the mining claimant.

A new § 3833.2–2(b) would be added by the proposed rulemaking for the purpose of ensuring that a mining claim will not be deemed abandoned and void because of a defect in an affidavit of assessment work. This change is effected to make it clear that the filing of an affidavit of assessment will be accepted as evidence of continued intention to hold a mining claim, even if the exact document contemplated by the mining law is not submitted.

Since the issuance of the recording regulations, there have been instances where a mining claimant has applied for a patent to a mining claim and, through ignorance or inadvertence, has neglected to make a timely annual filing of the affidavit of annual assessment work as the law requires.

This failure has resulted in the claim being declared abandoned by operation of law, and void. This action seems unusually harsh given the fact that the purpose of section 314 of the Federal Land Policy and Management Act was to make known to the United States which mining claims were still active and their location. Since claims in a patent application are of record and the application is being diligently pursued, it would appear that the purpose of the Act has been complied with. In compliance with this concept, § 3833.2–4 would be amended to delete references to the issuance of a final certificate, and provide that filing of an application for patent complies with the requirements of section 314 of the Act. This change in the regulations would not relieve the mining claimant of the necessity of *performing* the annual assessment work required under the mining law, or of recording it in compliance with State law. Should the application for patent of a mining claim be withdrawn, timely annual filings of affidavits of assessment work or notices of intention to hold will thereafter be required with the Bureau of Land Management as well as in the local recording office.

A new § 3833.4(b) has been added to clarify the effect of a claimant's failure to file the information called for by regulation. (Section 3833.4(a) details the effect of failure to file the instruments or documents themselves.) Consistent with instructions issued to the Bureau of Land Management, failure to file such information, including sufficient recordation fees, shall be treated as a curable defect. The authorized officer shall call for the information or fees by decision allowing a reasonable time, usually not less than 30 days, in which to cure the filing. Failure to cure the filing shall be grounds for rejecting the filing by an appealable decision. Upon final affirmance of such a rejection the claim or site will be deemed abandoned and void. See Topaz Beryllium v. United

States, 649 F. 2d 775 (1981) (No. 79–2255) (10th Cir. 1981) slip opinion at 6–7. The appeals procedures of Part 4 of Title 43 CFR shall apply to such appeals.

The other changes are of a minor nature and have been made to clarify the intent of the regulations.

These regulations are intended to apply retroactively where to do so would be to the benefit of the claimant, would not injure the interest of the United States or interfere with third party rights.

The principal author of this proposed rulemaking is George R. Schmidt, Division of Mineral and Geothermal Resources, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management, and the staff of the Office of the Solicitor, Department of the Interior.

The information collection requirements contained in 43 CFR Part 3833 have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3507. The collection of this information will not be required until it has been approved by the Office of Management and Budget.

It is hereby determined that these rules do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 US.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (Pub. L. 96–354).

Subject Listings for 43 CFR Part 3830

Mines, Public lands—mineral resources.

Under the authority of section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744) and section 2319 of the Revised Statutes (30 U.S.C. 22), it is proposed to amend Subpart 3833, Part 3830, Group 3800, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

§ 3833.0–2 [Amended]

1. Section 3833.0–2 is amended by revising the second sentence to read as follows:

"* * * Other objectives are to remove the cloud on the title to those lands because they are subject to mining claims that may have been abandoned and to provide information as to the location and status of active mining claims."

§ 3833.0–3 [Amended]

2. Section 3833.0–3(e) is amended by removing the period at the end and by adding the words "which provide for setting reasonable fees."

§ 3833.0–5 [Amended]

3. Section 3833.0–5 is amended by:

a. Amending paragraph (b) by removing the figure "34" where it appears and replacing it with the figure "43";

b. Amending paragraph (g) by adding at the end thereof the sentence "Notwithstanding the requirements of § 1821.2–1(d) of this title, filings made under this subpart in Alaska may be filed in either office in that State.";

c. Revising paragraph (i) by revising the first sentence as follows:

* * * * *

(i) "Copy of the official record" means a legible reproduction or duplicate, except microfilm, of the instrument which was or will be filed in the local jurisdiction where the claim or site is located, or other evidence acceptable to the proper BLM office, of such instrument.; and

* * * * *

d. Adding new paragraphs (j), (k), (l) and (m) as follows:

* * * * *

(j) "Affidavit of assessment work" means a sworn statement that labor or improvements, valued at not less than $100, have been made upon or for the benefit of the mining claim during the previous assessment year.

(k) "Notice of intention to hold a mining claim" means a letter, or other notice, in the form required in § 3833.2–3 of this title which has been or will be recorded in the county or local office of recordation indicating that the owner continues to have an interest in the claim.

(l) "Notice of intention to hold a mill or tunnel site" means a letter, or other notice, in the form required in § 3833.2–3 of this title indicating that the owner continues to hold an interest in the site.

(m) "Filed or file" means being received and date stamped by the proper BLM office. 'Timely filed' means being filed within the time period prescribed by law, or a clearly dated postmark affixed by the United States Postal Service within the period prescribed by law and received within 20 calendar days after period prescribed by law. (See § 1821.2–2(e) of this title where the last day falls on a date the office is closed.)

4. Section 3833.1 is revised to read:

§ 3833.1 Recordation of mining claims.

Mining claims and sites which had been located prior to October 21, 1976, the effective date of the Act, but which had not been recorded in the proper BLM office on or before October 22, 1979, as required by the Act, are by law conclusively deemed abandoned and void. There is no statutory provision for accepting a notice or certificate of location for such an abandoned and void claim or site.

§ 3833.1–2. [Amended]

5. Section 3833.1–2 is amended by:

a. Amending paragraph (a) by removing from the first sentence the words "on or before" and replacing them with the words "after", by removing the words "shall file (file shall mean being received and date stamped by the proper BLM office)" and replacing them with words "shall file within 90 days after the date of location of that claim or site", and by removing from the second sentence the notation "(c)" and replacing it with "(b)";

b. Removing paragraph (b) in its entirety;

c. Renumbering paragraph "(c)" as paragraph "(b)";

d. Amending renumbered paragraph (b)(6) by inserting after the phrase "or a narrative or" the word "a";

e. Amending renumbered paragraph (b)(7) by adding at the end of the sentence "A placer claim described by legal subdivisions, section, township, range, meridian and State, conforms with the requirements of subparagraphs (5) and (6) of this paragraph."; and

f. Removing paragraph (d) in its entirety.

§ 3833.1–3 [Redesignated 3833.1–4].

6. Section 3833.1–3 is renumbered § 3833.1–4 and is revised as follows:

§ 3833.1–4 When recordation not required.

(a) Mining claims and mill sites located on or before October 21, 1976, which are described in mineral patent applications filed prior to October 22, 1979, shall be deemed in compliance with the recordation requirements of section 314(b) of the Act. Claims and sites described in such applications which are on file as of the date of the Act shall be deemed recorded as of October 21, 1976. The dates of recordation for claims and sites filed between October 21, 1976, and October 22, 1979, shall be the dates of filing of such applications.

(b) If the owner of an unpatented mining claim or mill site located after October 21, 1976, applies for a mineral survey within 90 days after the date of

location, no other recordation shall be necessary if such application contains the information required under § 3833.1–2(c) of this title.

7. A new § 3833.1–3 is added as follows:

§ 3833.1-3 Recordation fee.

Each claim or site filed shall be accompanied by a one time non-refundable recordation fee of $5.

§ 3833.2–1 [Amended]

8. Section 3833.2–1 is amended as follows:

a. Remove paragraph (a) in its entirety.

b. Renumber paragraph (b) as paragraph "(a)";

c. Paragraph (a)(1) is amended by removing the phrase "shall file" where they appear and replacing it with the phrase "established after September 28, 1976, shall have filed or caused to have been filed";

d. Renumber paragraph (c) as paragraph "(b)";

e. Paragraph (b) is amended by inserting immediately after the figure "(b)" the figure "(1)", by adding immediately after the phrase "National Park System" the phrase "established on or before September 28, 1976, shall have filed or caused to have been filed", and by adding a new paragraph (b)(2) to read:

* * * * *

(b) * * *

(2) An affidavit of assessment work performed which is filed under these regulations at any time during the assessment year in which the work was performed shall be deemed to have been filed on or before the December 30, following the end of such assessment year.; and

* * * * *

f. Renumber pargraph (d) as paragraph "(c)";

g. Paragraph (c) is amended by adding immediately after the phrase "National Park System" the phrase "established on or before September 28, 1976," and immediately after the phrase "United States Forest Service" the phrase "shall have filed or caused to have been filed".

§ 3833.2–2 [Amended]

9. Section 3833.2–2(b) is amended by removing immediately after the phrase "(30 U.S.C. 28–1)" the word "and" and replacing it with the phrase "which was or will be".

10. Section 3833.2–3 is revised as follows:

§ 3833.2–3 Form—notice of intention to hold claim or site.

(a) A notice of intention to hold a mining claim or group of mining claims may be filed at the election of the owner, regardless of whether the assessment has been suspended, deferred or not yet accurued or has in fact been performed. However, the claimant shall file with the Bureau of Land Management the same documents which have been or will be recorded with the county or local office of recordation. A notice of intention to hold a mining claim shall be effective only for the year in which it is filed.

(b) A notice of intention to hold a mining claim or group of mining claims shall be in the form of either:

(1) An exact legible reproduction or duplicate, except microfilm, of a letter, or other notice, signed by the owner of the claim or his/her agent, which was or will be filed for record pursuant to section 314(a)(1) of the Act in the local jurisdiction of the State where the claim is located and recorded setting forth the following information:

(i) The serial number assigned to each claim by the authorized officer upon filing in the proper BLM office of a copy of the notice or certificate of location. Filing the serial number shall comply with the requirement in the Act to file an additional description of the claim;

(ii) Any change in the mailing address, if known, of the owner or owners of the claim;

(iii) A statement that the claim(s) is held by the owner(s) for the valuable mineral contained therein; and

(iv) The reason why the annual assessment work has not been performed or why and affidavit of assessment work or a detailed report of geological, geochemical or geophysical survey under § 3833.2–2 of this title has not been filed; or

(2) A reference to the decision on file in the proper BLM office by date and serial number which granted a deferment of the annual assessment work required by 30 U.S.C. 28, so long as the decision is in effect on the date requried for filing of a notice of intention to hold a mining claim under § 3833.2–1 of this title; or

(3) A reference to a petition for deferment of the annual assessment work requried by 30 U.S.C. 28 by date of filing and serial number and with the proper BLM office, a copy of which has been recorded with the appropriate local office, which has not been acted on by the authorized officer.

(c) An affidavit of assessment work which is on its face defective shall be accepted and treated as a notice of intention to hold the mining claim.

(d) A notice of intention to hold a mill or tunnel site or group of mill or tunnel sites shall be in the form of a letter or other notice signed by the owner(s) of such sites or their agents setting forth the following information:

(1) The serial number assigned to each site by the authorized officer upon filing in the proper BLM office of a copy of the official record of the notice or certification of location;

(2) Any change in the mailing address, if known, of the owner(s) of the site(s);

(3) In the case of a mill site, a statement that a claim-related site will continue to be used for mining or milling purposes or that an independant mill site will continue to be used for the purposes of a quartz mill or reduction works; or

(4) In the case of a tunnel site, a statement that the owner(s) will continue to prosecute work on the tunnel with reasonable diligence for the discovery or development of a vein or lode.

11. Section 3833.2–4 is revised as follows:

§ 3833.2–4 When evidence or notice not required.

Evidence of annual assessment work performed or a notice of intention to hold a mining claim need not be filed on unpatented mining claims or mill sites for which application for mineral patent which the authorized officer determines complies with Part 3860 of this title has been filed. The filing of an application shall be deemed full compliance with the requirements of section 314(a) of the Act and the owner(s) of that claim or site shal be exempt from the filing requirements of § 3833.2–1 of this title. Until final certificate is issued, however, the owner(s) shall continue to be responsible for the performance of assessment work required by 30 U.S.C. 28 and local recorrdation of affidavits of assessment work in compliance with State law.

12. Section 3833.4 is amended by renumbering paragraph (b) as paragraph (c) and revising it to read as set forth below and by adding a new paragraph (b) as follows:

§ 3833.4 Failure to file.

* * * * *

(b) The failure to file the information required in §§ 3833.1–2(b), 3833.1–3, 3833.2–2(a) and (b) or 3833.2–3(b) and (c) shall not be deemed conclusively to constitute an abandonment of the claim or site, but such informtion shall be filed within the time allowed by decision of the authorized officer calling for the information. Failure to file such

information within the time allowed by decision shall cause the filing to be rejected by a decision appealable under the procedures of Part 4 of this title. Final affirmance of such rejection for failure to file such information shall be deemed conclusive evidence of abandonment of the mining claim, mill or tunnel site and such mining claim, mill or tunnel site shall be void.

(c) The fact that an instrument is filed in accordance with other laws permitting filing for record thereof and is defective or not timely filed for record under those laws shall not be considered failure to file under this subpart. The fact that an instrument is filed for record under this subpart by or on behalf of some, but not all of the owners of the mining claim, mill or tunnel site shall not affect the validity of this filing.

§ 3833.5 [Amended]

13. Section 3833.5(d) is revised as follows:

* * * * *

(d) In the case of any action or contest initiated by the United States affecting an unpatented mining claim, mill or tunnel site, only those owners who have recorded their claim or site pursuant to § 3833.1–2 of this title, filed a notice of transfer of interest pursuant to § 3822.3 of this title or owners whose names show on annual filings shall be considered by the United States as parties whose rights are affected by such action or contest and shall be personally notified. All methods reasonably calculated to ensure that those parties receive actual notice of the action or contest shall be employed. If those methods are not successful, the interested parties shall be notified by publication in accordance with Part 4.450 of this title. Owners who have not recorded a claim or site may not be personally served but shall be bound by any contest proceeding even though they have not been personally served. This section applies to all unpatented mining claims, mill or tunnel sites located after October 21, 1976, only after they have been recorded pursuant to § 3833.1–2 of this title.

David C. Russell,

Acting Assistant Secretary of the Interior.

February 26, 1982.

[FR Doc. 82–12046 Filed 5–3–82; 8:45 am]

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Tuesday
May 4, 1982

Part IV

Department of Energy

Regulatory Agenda

DEPARTMENT OF ENERGY

10 CFR Ch. II, III, and X

Regulatory Agenda

AGENCY: Energy Department.

ACTION: April 1982 Regulatory Agenda.

SUMMARY: The Department of Energy (DOE) is publishing an agenda of proposed regulations that are either presently outstanding or that DOE expects to issue in the next six months. As required under Executive Order 12291 (46 FR 1393, February 19, 1981), the Agenda includes each major rule being considered. In addition, the Agenda includes each rule that DOE expects to propose or promulgate which is "likely to have a significant economic impact on a substantial number of small entities," as required by the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 602). Many of these rules relate to programs that are inconsistent with the Administration's policies and DOE is promulgating such rules only because they are required by statute to be promulgated. The Agenda also includes a list of existing rules that have been under review for possible modification under Executive Order 12291.

FOR FURTHER INFORMATION CONTACT:

General

For further information on the Agenda in general, contact: Jeffrey D. Stoermer (Office of General Counsel), Department of Energy, Room 6A–113, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6754.

Specific

For further information about any particular item on the Agenda, contact the individual listed under that item.

SUPPLEMENTARY INFORMATION: Executive Order 12291, "Federal Regulation" (46 FR 13193, February 19, 1981), requires each Federal agency to publish, in October and April of each year, an agenda of proposed regulations that the agency has issued or expects to issue, and currently effective rules that are under agency review. At a minimum, the agenda must include: (1) A summary of the nature of each major rule[1] being considered, the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any major rule for which the agency has issued a notice of proposed rulemaking; (2) the name and telephone number of a knowledgeable agency official for each item on the agenda; and (3) a list of existing regulations to be reviewed under the terms of Executive Order 12291, and a brief discussion of each such regulation.

Executive Order 12291 also provides that the regulatory agenda may be incorporated with the "regulatory flexibility agenda" required under the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 602). The regulatory flexibility agenda must contain: (1) A brief description of the subject area of and a summary of the nature of any rule which the agency expects to propose or promulgate which is "likely to have a significant economic impact on a substantial number of small entities"; (2) the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking; and (3) the name and telephone number of an agency official knowledgeable concerning each such rule.

Appended to this Notice is DOE's April 1982 Regulatory Agenda, reflecting the status of rules listed as of April 1, 1982. Incorporated in this Agenda is the regulatory flexibility agenda required under 5 U.S.C. 602.

Many of these rules are required by statute to be promulgated. Were it not for these legal requirements, DOE would not promulgate these rules because the Administration has indicated that these programs are inconsistent with the Administration's policies. Rules of this type are hereinafter denoted with the symbol (†). DOE will, of course, in promulgating these rules comply with the requirements of Executive Order 12291 and the Regulatory Flexibility Act.

The rules listed in the Agenda are divided into four categories. The first three categories list those proposed rules DOE expects to issue in the next six months as well as currently pending proposed rules that have already been issued. These three categories are:

(1) Major rules likely to have a significant economic impact on a substantial number of small entities;[2]

(2) Non-major rules likely to have significant economic impact on a substantial number of small entities;[2] and

(3) Major rules *not* likely to have a significant economic impact on a substantial number of small entities.

Proposed rules that are *not* major rules and *not* likely to have a significant economic impact on a substantial number of small entities are not included. The fourth category lists those currently effective rules, not already listed in one of the first three categories, that DOE has been reviewing for possible modification as directed by the Presidential Task Force on Regulatory Relief under section 3(i) of Executive Order 12291.

On April 12, 1982, a draft of this Agenda was transmitted to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for comment, if any, to fulfill the requirement of 5 U.S.C. 602(b). In addition to publication of this Agenda in the **Federal Register**, DOE has endeavored to give notice of this Agenda to small entities by forwarding copies to a number of trade associations that represent small entities. Small entities are invited to submit comments on any item in the Agenda. Comments should be submitted to: William Funk, Assistant General Counsel for Regulatory Oversight, Department of Energy, Room 6A–141, Forrestal Building, 1000 Independence Avenue, S.W., Washington D.C. 20585. (202) 252–6736.

DOE's next Regulatory Agenda will be published in October 1982.

Issued in Washington, D.C. this April 29, 1982.

R. Tenney Johnson,

General Counsel.

DOE's April 1982 Regulatory Agenda is as follows:

I. Major Rules Likely To Have a Significant Economic Impact on a Substantial Number of Small Entities

Conservation and Renewable Energy

1. Energy Efficiency Standards for Five Types of Consumer Products †.
2. Commercial and Apartment Conservation Service Program †.
3. Federal Standby Residential Conservation Service Plan †.

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[1] Executive Order 12291 defines "major rule" as any regulation that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual 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.

[2] The rules listed in categories (1) and (2)—those rules likely to have a significant economic impact on a substantial number of small entities—include some rules for which a notice of proposed rulemaking (NOPR) was issued prior to January 1, 1981. Although these rules are listed in the Agenda, under section 4 of the Regulatory Flexibility Act the regulatory flexibility analyses specified in 5 U.S.C. 603–604 are *not* required, and such analyses will not be completed in regard to these rules. These rules, where an NOPR was issued prior to January 1, 1981, are hereinafter denoted with an asterisk (*).

II. Non-Major Rules Likely To Have a Significant Economic Impact on a Substantial Number of Small Entities

Environmental Protection, Safety, and Emergency Preparedness

1. Standby Procedures for Emergency Purchases and Allocation of Natural Gas During a Declared Emergency*.

III. Major Rules Not Likely To Have a Significant Economic Impact on a Substantial Number of Small Entities

Economic Regulatory Administration

1. Review and Establishment of Natural Gas Curtailment Priorities for Interstate Pipelines*.

IV. Other Rules Undergoing Review Under Executive Order 12291

Conservation and Renewable Energy

1. Residential Conservation Service Program Regulations.

I. Major Rules Likely To Have a Significant Economic Impact on a Substantial Number of Small Entities

CONSERVATION AND RENEWABLE ENERGY

1. Energy Efficiency Standards for Five Types of Consumer Products †

Section 325 of the Energy Policy and Conservation Act ("EPCA," Pub. L. 94–163), as amended by section 422 of the National Energy Conservation Policy Act (Pub. L. 95–619 required DOE to prescribe rules by December 13, 1981, regarding minimum energy efficiency standards for five consumer product types: humidifiers/dehumidifiers, clothes washers, television sets, dishwashers, and heat pumps, if possible. In the alternative, DOE may, under section 325(b)(2) of EPCA, as amended, determine by rule that the establishment of a standard is not technologically feasible or economically justified, or that such a standard would not result in significant conservation, and thereby prescribe no standard.

DOE's budget request for fiscal year 1983 requested no funds for this program.

Schedule: In advance notice of proposed rulemaking for four products was published in the **Federal Register** on December 13, 1979 (44 FR 72276). An advance notice of proposed rulemaking for heat pumps (the fifth product) was published in the **Federal Register** on January 23, 1980 (45 FR 5602). DOE intends to issue two notices of proposed rulemaking—one for the four products and the other for heat pumps—as soon as practicable.

Contact: Michael J. McCabe (202) 252–9127.

2. Commercial and Apartment Conservation Service Program †

Title VII of the National Energy Conservation Policy Act ("NECPA," Pub. L. 95–619), as amended by Subtitle D of Title V of the Energy Security Act ("ESA," Pub. L. 96–294) required the DOE to issue a proposed rule by October 28, 1980, to establish a utility audit program for multifamily dwellings (those with more than four units) with a central heating or cooling system and for small commercial buildings. The program would require large gas and electric utilities to provide energy audits and certain other services to their customers upon request. Heating oil suppliers could volunteer to provide energy audits.

No funds were requested for this program by DOE for the 1982 or 1983 fiscal years.

Schedule: A notice of proposed rulemaking (NOPR) was published in the **Federal Register** on January 16, 1981 (46 FR 4482). A portion of this NOPR was withdrawn November 12, 1981 (46 FR 55836). DOE intends to issue a revised NOPR in August 1982 to modify and repropose the remaining portions of the January 16, 1981 NOPR.

Contact: Mark Friedrichs (202) 252–1650.

3. Federal Standby Residential Conservation Service Plan †

Section 219 of the National Energy Conservation Policy Act ("NECPA," Pub. L. 95–619) requires DOE to promulgate a Residential Conservation Service (RCS) Plan to be implemented by covered regulated utilities upon order of DOE in any State that does not have an approved State RCS Plan, or in which the State plan has been found to be inadequately implemented. This rule would provide such a standby plan.

DOE's budget for the 1982 and 1983 fiscal years requested no funds for the RCS program.

Schedule: A notice of proposed rulemaking (NOPR) was published in the **Federal Register** on January 9, 1981 (46 FR 2522). This NOPR was withdrawn November 12, 1981 (46 FR 55836). DOE intends to issue a new NOPR in August 1982.

Contact: Mark Friedrichs (202) 252–1650.

II. Non-Major Rules Likely To Have a Significant Economic Impact on a Substantial Number of Small Entities

ENVIRONMENTAL PROTECTION, SAFETY, AND EMERGENCY PREPAREDNESS

1. Standby Procedures for Emergency Purchases and Allocation of Natural Gas During a Declared Emergency*

DOE has proposed a rule providing standby procedures for the authorization of emergency natural gas purchases and for emergency natural gas allocations under sections 302 and 303, respectively, of the Natural Gas Policy Act of 1978 ("NGPA," Pub. L. 95–621), and standby procedures for emergency prohibitions on the burning of natural gas by electric powerplants and major fuel-burning installations under section 607 of the Public Utility Regulatory Policies Act of 1978 ("PURPA," Pub. L. 95–617). The rule would be activated by a declaration by the President of a natural gas supply emergency under section 301 of the NGPA. The adoption of standby procedures is intended to enable the Government to take action as soon as possible to reduce the impact of the emergency and to promote a greater degree of coordination between DOE and the natural gas industry.

It has not yet been determined whether this rule is likely to have a significant economic impact on a substantial number of small entities. In any case, a regulatory flexibility analysis is not required since the notice of proposed rulemaking was issued before January 1, 1981.

Schedule: A notice of proposed rulemaking was published in the **Federal Register** on December 8, 1980 (45 FR 81012). It has not yet been determined whether to issue the final rule.

Contact: Romullo Diaz (202) 252–4000 or Samuel M. Bradley (202) 252–2443.

III. Major Rules Not Likely To Have a Significant Economic Impact on a Substantial Number of Small Entities

ECONOMIC REGULATORY ADMINISTRATION

1. Review and Establishment of Natural Gas Curtailment Priorities for Interstate Pipelines*

The proposed rule establishes natural gas curtailment priorities applicable to deliveries by interstate pipelines during periods when not enough gas is available to supply all customers. The proposed rule implements the rulemaking requirements of Title IV of the Natural Gas Policy Act of 1978 by

establishing curtailment priorities for high priority uses and for esential agricultural and essential industrial feedstock and process uses. Statutory authority for this rule is found in sections 301(b) and 402(a)(1)(E) of the Department of Energy Organization Act (Pub. L. 95–91) and sections 401, 402 and 403 of the Natural Gas Policy Act of 1978 (Pub. L. 95–621).

A final determination has not yet been made as to whether this rule is "likely to have a significant economic impact on a substantial number of small entities" under the Regulatory Flexibility Act (Pub. L. 96–354). In any case, a regulatory flexibility analysis is not required in regard to this rule since the notice of proposed rulemaking was issued prior to January 1, 1981.

Schedule: A notice of proposed rulemaking was issued on June 24, 1980 (45 FR 45098, July 2, 1980). the Federal Energy Regulatory Administration (FERC) is currently reviewing the proposed rule pursuant to section 404 of the DOE Organization Act. Issuance of a final rule is planned for six weeks after FERC concurrence is received.

Contact: Paula Daigneault (202) 633–9296.

IV. Other Rules Undergoing Review Under Executive Order 12291

CONSERVATION AND RENEWABLE ENERGY

1. Residential Conservation Service Program Regulations

The National Energy Conservation Policy Act (Pub. L. 95–619) required DOE to adopt regulations to implement the Residential Conservation Service (RCS) Program, 10 CFR Part 456. These regulations require large utilities to offer to perform "energy audits" of homes or apartments (which are four or less dwelling units) of their customers, pointing out ways to conserve energy. Because the Administration believes that there are sufficient incentives in the free market to encourage persons to save fuel absent this program and that, therefore, the burdens associated with this program are unnecessary, the Administration requested no funds for this program in the 1982 or 1983 fiscal years.

On March 25, 1981, the Presidential Task Force on Regulatory Relief directed DOE to review these regulations, stating that "the requirements for these inspections are complex and expensive." Pursuant to that direction, DOE has reviewed the RCS program for possible modification in an effort to reduce regulatory burdens. This review indicated that some of, but probably not most of, the burdens imposed on States, utilities, and industry participants by the RCS Program could be mitigated by revisions to the regulations. Accordingly, DOE published on November 12, 1981, a notice of proposed rulemaking (NOPR) to modify the RCS Program regulations to reduce the burdens of the Program to the extent permitted under the statute.

On October 8, 1980, DOE published a notice of proposed rulemaking (45 FR 66960) to amend the RCS regulations in conformance with section 549(b) of the Energy Security Act (ESA) (Pub. L. 96–294). These proposed amendments concern utility supply, installation and financing of energy measures, utility cost and accounting requirements, and warranties required of manufacturers, suppliers and installers participating in the RCS Program. This NOPR has been withdrawn and the proposed amendments have been incorporated in the November 12 NOPR. Subtitle B of Title V of ESA also requires DOE to extend coverage of the RCS program to include residential buildings of more than four dwelling units that are neither centrally heated or cooled. (The existing program is limited to residential buildings with up to four units.) On January 16, 1981, DOE published a NOPR (46 FR 4482) to incorporate this provision in the RCS rule. The portion of the NOPR that would accomplish this has been withdrawn and the proposed amendments have been incorporated in the November 12 NOPR. Finally, DOE proposed the withdrawal of the NOPR (January 27, 1981, 46 FR 8996), concerning urea-formaldehyde foam insulation standards, in the November 12, 1981 proposal.

Schedule: A notice of proposed rulemaking was published in the Federal Register on November 12, 1981 (46 FR 55836). A final rule is planned to be issued by June 1982.

Contact: Mark Friedrichs (202) 252–1650.

[FR Doc. 82–12121 Filed 5–3–82; 8:45 am]

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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
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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.

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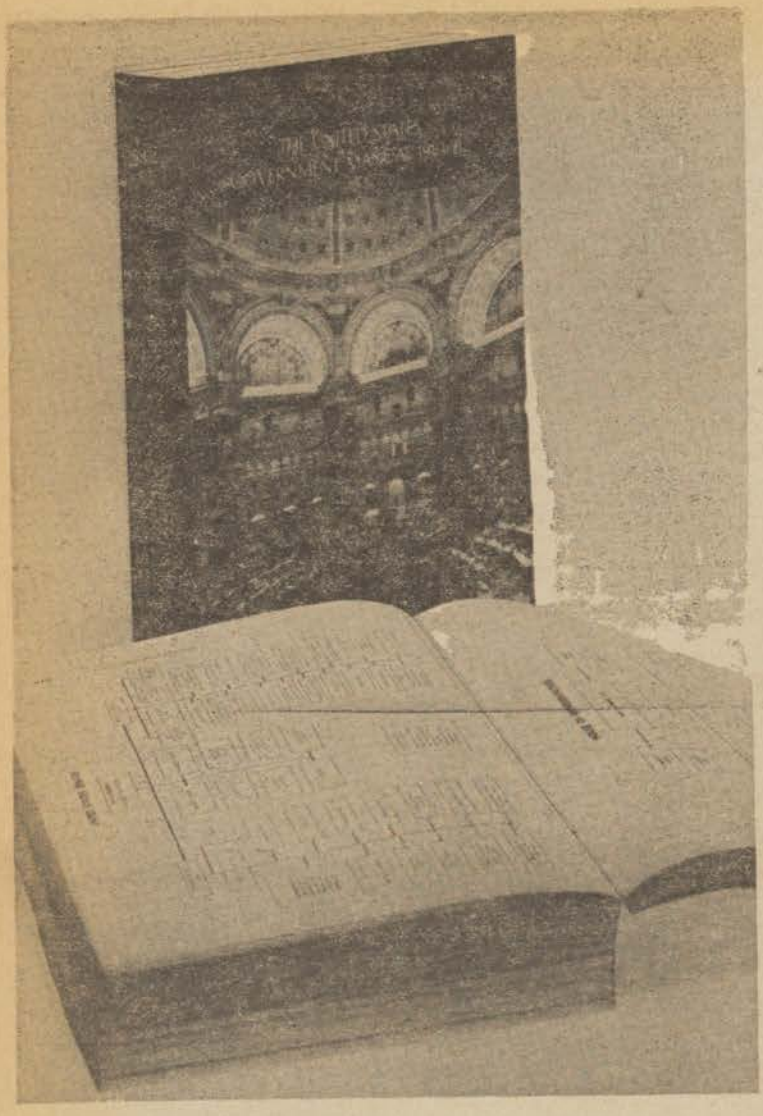

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