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Wednesday
June 23, 1982

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

Tobacco Inspection; User Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: The Secretary of Agriculture is revising, effective July 1, 1982, the fees and charges assessed by the Department for the mandatory inspection and certification of quota tobacco, and other services, including administrative and supervisory costs, at tobacco auction markets, to reflect the Department's increased costs of operating the tobacco inspection program. The fees and charges assessed by the Department for the permissive inspection of tobacco, now performed upon request and paid for at a prescribed hourly fee, are also being increased. Inspection of tobacco at designated auction markets will continue to take precedence over permissive inspections.

DATES: Effective date: July 1, 1982. Comment date: Comments due on or before July 23, 1982.

ADDRESS: Send comments to J. T. Bunn, Deputy Director, Tobacco Division, Room 502, Annex Building, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C., 20250. Comments will be available for public inspection at this location during the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: J. T. Bunn, Deputy Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C., 20250 (202) 447–7235.

SUPPLEMENTARY INFORMATION: The Department promulgates these regulations as an interim final rule effective July 1, 1982, increasing fees and charges both for the permissive inspection and certification of tobacco conducted upon request and for the mandatory inspection and certification of producer tobacco sold at designated tobacco auction markets throughout the tobacco producing areas. These increased fees and charges shall, as nearly as practicable, cover the Department's costs of the services, including administrative and supervisory costs. The authority for these regulations is contained in the Tobacco Inspection Act (49 Stat. 731; 7 U.S.C. 511 *et seq.*) as amended by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35).

Prior to October 1, 1981, the Department, pursuant to the Tobacco Inspection Act, provided free and mandatory inspection of all quota tobacco sold at designated auction markets. The Omnibus Budget Reconciliation Act of 1981 directed the Secretary of Agriculture to promulgate regulations setting fees and charges under the Tobacco Inspection Program for the inspection and certification of tobacco, and other services, including administrative and supervisory costs for all quota tobacco sold on designated markets. These fees and charges were, as nearly as possible, to cover the Department's costs of performing these services. Effective October 1, 1981, the Department established these fees and charges at $.0045 per pound, as published in the **Federal Register** (46 FR 6239) on December 24, 1981. This fee had been calculated after a review of historical data regarding production and marketing. However, a current review of data not available prior to the implementation of user fees on October 1, 1981, has demonstrated that the initial fee of $.0045 per pound is insufficient to reimburse the Department for its costs of operating the tobacco inspection program at the level of service presently provided. The primary reasons for the need to increase the assessed fee are as follows: (1) The effective quota for flue-cured tobacco is the smallest since the inception of the acreage-poundage concept thereby reducing the revenue to the Department; (2) Government-wide salary increases; (3) Cost of workers' compensation and unemployment compensation previously paid for from USDA appropriated budget and which must now be included as part of the administrative costs of this program; and (4) The cost of recruitment and training resulting from the large number of resignations and retirements of tobacco inspectors. Therefore, it has been determined that in order to cover the Department's costs associated with the mandatory inspection and certification of tobacco and thereby maintain the present level of service requested by growers, warehousemen, and tobacco buyers, it is necessary to increase the fee to $.0055 per pound. This increase will generate the funds necessary to continue the level of service currently in effect.

This interim final rule also increases the fees and charges under which permissive tobacco inspection and grading services are provided to those requesting the service. The Tobacco Inspection Act requires that permissive inspections, as defined by 7 CFR 29.56, be made available to interested parties on a fee basis. This hourly fee schedule for permissive inspection has not been increased since February 3, 1981 (46 FR 10451). The Department has determined that the present fees for permissive inspections are insufficient to cover the Department's costs of inspection and certification, and other services, including administrative and supervisory costs. The major factors causing the need for an increase of the fees include the government-wide salary increase, and the cost of workers' compensation and unemployment compensation previously paid for from USDA appropriated budget and which must now be included as part of the administrative cost. Therefore, based on these factors, the Department has determined that, in order to cover the Department's present costs of providing permissive tobacco inspection, the hourly salary fee must be increased from a "basic hourly salary of $17.80," an "overtime rate of $21.30", and a "Sunday and holiday rate of $26.70", to "$20.45", "$24.40", and "$30.50" per hour, respectively.

As previously stated, the present fees are not providing sufficient revenue to reimburse the Department for its costs in providing the level of service being requested by tobacco growers, warehousemen and tobacco buyers. However, the Secretary is required by

the Omnibus Budget Reconciliation Act of 1981 and the Tobacco Inspection Act to recover the costs incurred by the Department for the inspection and certification of tobacco, the establishment of standards and other services, including administrative and supervisory costs, from the users of the inspection service. For these reasons, the Department has determined that a situation exists which warrants the publication of this action as an interim final rule effective on July 1, 1982, without the opportunity for a prior public comment period. Accordingly, under the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause shown that notice and other public procedures with respect to this action are impracticable, unnecessary, and contrary to the public interest, and good cause is found for publishing this interim final rule effective July 1, 1982, with opportunity for public comments after publication.

William T. Manley, Acting Director, Tobacco Division, AMS, has determined that the comment period on this interim final rule will end 30 days after publication hereof because all segments of the tobacco industry must be informed of any rule changes affecting the marketing process to continue orderly marketing of their crop and a 30-day comment period is adequate to provide all interested parties an opportunity to file views and comments. The Department, after evaluating the comments received, will issue a final rule concerning 7 CFR Part 29.

This interim final rule has been reviewed under U.S.D.A. procedures established to implement Executive Order 12291 and the Secretary's Memorandum 1515–1 and has been determined to be a "nonmajor rule" because it does not meet any of the criteria established for major rules under the Executive Order. Review of the regulations contained in 7 CFR Part 29, for need, currency, clarity, and effectiveness will be accomplished within the next 3 years.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601) full consideration has been given to the potential economic impact upon small business. All tobacco warehousemen and producers fall within the confines of "small business," as defined in the Regulatory Flexibility Act. The Department has informally advised all segments of the tobacco industry of the anticipated increase of user fees and that there would be no change in the level of the services provided. It has been determined that the economic impact upon small entities would not be adverse and would in no way affect normal competition in the market place. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the Tobacco Inspection program.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Tobacco.

PART 29—TOBACCO INSPECTION

Accordingly, the Department hereby amends the regulations under the Tobacco Inspection Act contained in 7 CFR Part 29 as follows:

§ 29.123 [Amended]

1. Section 29.123 Fees and Charges, is amended by removing the words "October 1, 1981," in line one and inserting in lieu thereof the words, "July 1, 1982."

2. Section 29.123(a) is amended by removing the figure "$.0045" in line two and inserting in lieu thereof "$.0055."

3. Section 29.123(b) is amended by removing the phrases "$17.80 per hour," "21.30 per hour," and "$26.70 per hour," and inserting in lieu thereof "$20.45 per hour," "$24.40 per hour," and "$30.50 per hour," respectively.

§ 29.9251 [Amended]

1. Section 29.9251 is amended by removing the phrases "$17.80 per hour," "21.30 per hour," and "$26.70 per hour," and inserting in lieu thereof "$20.45 per hour," "$24.40 per hour," and "$30.50 per hour," respectively.

Dated: June 17, 1982.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 82-17019 Filed 6-22-82; 8:45 am]

BILLING CODE 3410-02-M

Federal Crop Insurance Corporation

7 CFR Part 411

[Amdt. No. 2]

Grape Crop Insurance Regulations; Mediterranean Fruit Fly Damage

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith amends the Grape Crop Insurance Regulations, effective with the 1982 and succeeding crop years, by adding direct physical damage caused by the Mediterranean fruit fly making the fruit unmarketable as an insured cause of loss. This action is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: June 23, 1982.

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

The Final Impact Statement describing the options considered in developing this action and the impact of implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in the regulations to which this amendment applies (7 CFR Part 411—Grape Crop Insurance Regulations) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0001, 0563–0003, and 0563–0007. This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 (June 11, 1981). Merritt W. Sprague, Manager, FCIC, has determined that (1) this action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action does not increase the Federal paperwork burden for individuals, small businesses, or other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which this amendment applies are: Title-Crop Insurance; Number 10.450.

This action will not have a significant impact specifically upon area and community development; therefore, review as established in OMB Circular A–95 was not used to assure that units of local government are informed of this action.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

It has also been determined that this action does not constitute a review as to need, currency, clarity, and effectiveness of these regulations under the provisions of Secretary's Memorandum No. 1512–1 (June 11, 1981). That review will be completed prior to the sunset review date of May 30, 1985.

On November 30, 1981, FCIC published a notice of proposed rulemaking in the **Federal Register** at 46 FR 58089, in which FCIC proposed to

amend the Grape Crop Insurance Regulations (7 CFR Part 411), effective for the 1982 and succeeding crop years, by adding direct physical damage caused by the Mediterranean fruit fly making the fruit unmarketable as an insured cause of loss.

The public was given 60 days in which to submit written comments on the proposed rule, but none were received.

List of Subjects in 7 CFR Part 411

Crop insurance, Grapes.

Final Rule

PART 411—GRAPE CROP INSURANCE

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation herewith amends the Grape Crop Insurance Regulations (7 CFR Part 411), effective with the 1982 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR Part 411 is revised to read as follows:

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

2. Paragraph 1(a) of the "Terms and conditions" of the Grape Crop Insurance Policy (7 CFR 411.7(d)) is amended as follows:

§ 411.7 The application and policy.

* * * * *

(d) * * *

Grape Crop Insurance Policy

Terms and Conditions

1. *Causes of Loss.* (a) Causes of loss insured against. The insurance provided is against unavoidable loss of production resulting from adverse weather conditions, wildlife, earthquake, fire, or direct Mediterranean fruit fly damage occurring within the insurance period, subject to any exceptions, exclusions or limitations with respect to causes of loss shown on the actuarial table.

Direct Mediterranean fruit fly damage shall be actual physical damage to the grapes which, as determined by the Corporation, causes such grapes to be considered unmarketable or have a value of less than $50 per ton, and shall not include unmarketability of such grapes as a result of a quarantine, boycott, or refusal to accept the grapes by any entity without regard to actual physical damage to such grapes.

Done in Washington, D.C., on March 4, 1982.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: June 2, 1982.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 82-16981 Filed 6-22-82; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 439

[Amdt. No. 1]

Almond Crop Insurance Regulations; Mediterranean Fruit Fly Damage

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith amends the Almond Crop Insurance Regulations (7 CFR Part 439), effective with the 1982, and succeeding crop years, by adding direct physical damage caused by the Mediterranean fruit fly as an insured cause of loss and clarifying the production to count for unmarketable almonds. This rule is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: June 23, 1982.

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

The Final Impact Statement describing the options considered in developing this action and the impact of implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in the regulations to which this amendment applies (7 CFR Part 439—Almond Crop Insurance Regulations) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0001, 0563–0003, and 0563–0007. This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 (June 11, 1981). Merritt W. Sprague, Manager, Federal Crop Insurance Corporation (FCIC) has determined that (1) this action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action does not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which this amendment applies are: Title—Crop Insurance; Number 10.450.

This action will not have a significant impact specifically on area and community development; therefore, review as established in OMB Circular A–95 was not used to assure that units of local government are informed of this action.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

It has also been determined that this action does not constitute a review as to need, currency, clarity, and effectiveness of these regulations under the provisions of Secretary's Memorandum No. 1512–1 (June 11, 1981). That review will be completed prior to the sunset review date of May 30, 1985.

On November 30, 1981, FCIC published a notice of proposed rulemaking in the **Federal Register** at 46 FR 58089, in which FCIC proposed to amend the Almond Crop Insurance Regulations (7 CFR Part 439) effective for the 1982 and succeeding crop years by adding direct physical damage caused by the Mediterranean fruit fly making the fruit unmarketable as an insured cause of loss, and by adding a new subparagraph (d) to paragraph 8 of Terms and Conditions to clarify production to count for unmarketable almonds.

The public was given 60 days in which to submit written comments on the proposed rule, but none were received.

List of Subjects in 7 CFR Part 439

Crop insurance, Almonds.

Final Rule

PART 439—ALMOND CROP INSURANCE

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation herewith amends the Almond Crop Insurance Regulations (7 CFR Part 439), effective with the 1982 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR Part 439 revised to read as follows:

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

2. Paragraph 1(a) of the "Terms and conditions" of the Almond Crop Insurance Policy (7 CFR 439.7(c)) is amended as follows:

§ 439.7 The application and policy.

* * * * *

(c) * * *

Almond Crop Insurance Policy

Terms and Conditions

1. *Causes of loss.* (a) Causes of loss insured against. The insurance provided is against unavoidable loss of production resulting from adverse weather conditions, wildlife, earthquake, fire, or direct Mediterranean fruit fly damage occurring within the insurance period, subject to any exceptions, exclusions, or limitations with respect to causes of loss shown on the actuarial table.

Direct Mediterranean fruit fly damage shall be actual physical damage to the almonds which, as determined by the Corporation, causes such almonds to be considered unmarketable, and shall not include unmarketability of such almonds as a result of a quarantine, boycott, or refusal to accept the almonds by any entity without regard to actual physical damage to such almonds.

§ 439.7 [Amended]

3. Paragraph 8 of the "Terms and conditions" of the Almond Crop Insurance Policy (7 CFR 439.7(c) is amended by adding at the end thereof the following:

* * * * *

(d) No production will be counted for almonds which the Corporation determines cannot, due to an insurable cause, be marketed.

Done in Washington, D.C., on March 1, 1982.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: June 2, 1982.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 82-16982 Filed 6-22-82; 8:45 am]

BILLING CODE 3410-08-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40 and 70

Regional Licensing Program; Correction

In FR Doc. 82-14501 appearing at page 23138, in the issue of Thursday, May 27, 1982, make the following changes:

(1) On page 23139, middle column, in § 30.6, paragraph (b), introductory text, ninth line, the word "be" should follow after "Regions I and III must".

(2) On page 23140, in the first column, § 40.5, paragraph (b)(1), third line, a comma should appear after "modify" and before "suspend".

(3) On page 23140, middle column, in § 70.5, paragraph (b), introductory text, ninth line, "Regions I and II" should be changed to read "Regions I and III".

(4) On page 23140, third column, in § 70.5, paragraph (b)(2)(i), sixth line, the period that appears between "Delaware" and "Maine" should be a comma.

BILLING CODE 1505-01-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 611 and 614

Organization; Loan Policies and Operations

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration adopts regulations authorizing the incorporation of service organizations to perform services for or on behalf of Farm Credit System banks, and clarifying the delegation of supervisory and loanmaking authority by System banks. These amendments are primarily for the purpose of implementing the Farm Credit Act Amendments of 1980 (Pub. L. 96-592) and clarification.

FOR FURTHER INFORMATION CONTACT: Larry H. Bacon, Deputy Governor, Office of Administration, 490 L'Enfant Plaza, SW., Washington, DC 20578, (202-755-2181).

SUPPLEMENTARY INFORMATION: On November 23, 1981, the Farm Credit Administration ("FCA") noticed and published for public comment proposed new and amended regulations to 12 CFR Parts 611 and 614 (46 FR 57308-57322). The new regulation is § 611.1150. The amended or revised regulations are §§ 614.4020 and 614.4030. Also, § 614.4031 is being combined with § 614.4030.

Incorporation of Service Organizations

The new regulation, 12 CFR 611.1150, is added to implement Title IV, Part D of the Farm Credit Act of 1971, as added by the Farm Credit Act Amendments of 1980 (the amended statute being referred to hereinafter as "the Act") which authorizes the incorporation of service organizations by one or more banks of the Farm Credit System ("System") to perform services for or on behalf of the bank(s), except the extension of credit or the sale of insurance. Nine commentators submitted views on the proposed regulation.

All commentators felt that § 611.1150(a), as proposed, was considerably more restrictive than § 4.25 of the Act in that it would prohibit the creation of a service corporation to provide "other direct services to borrowers." The commentators recommended that the additional restriction be deleted. The Federal Farm Credit Board ("Board") accepted this suggestion and deleted the phrase "and the other direct services to borrowers" based on the fact that neither the Act nor its legislative history suggests that such a restriction was intended.

Seven of the commentators recommended deletion of paragraph (b)(3)(xii) because it effectively eliminates "the limited liability advantage to be gained by incorporating a service entity." The commentators recommended that the decision to honor unpaid creditors' claims in the event of the service corporation's insolvency be left to the stockholders' business judgment. Also, commentators understood the paragraph to require the Governor to determine the validity of the creditors' claims and suggested the deletion of the phrase "at the direction of the Governor." The Board does not believe that Congress intended that System banks, which are themselves corporate entities with limited liability, should be able to further limit their liability through service organizations. Rather, the authority to organize service corporations was provided merely to permit System banks to perform their joint undertakings more efficiently. Further, the Board believes that the chartering authority vested in the Governor by the Act is sufficient to require stockholders to pay valid claims of the service corporation's creditors in the event of its insolvency. Accordingly, paragraph (b)(3)(xii) is retained. However, the phrase "at the direction of the Governor" has been deleted because it was widely misunderstood by the commentators to require the Governor to determine the validity of the claims. The effect of this deletion is to require the stockholders to pay all valid claims of creditors of the service corporation in the event of insolvency. This change is consistent with the intent of the Board.

The commentators also recommended that paragraph (b)(3)(xiii) of the proposal be deleted on the basis that it is not necessary to promulgate a regulation in order for stockholders to share liabilities on an equitable basis. The Board accepted this suggestion and deleted paragraph (b)(3)(xiii).

Delegation of Authority

Sections 614.4020, 614.4030, and 614.4031 of existing regulations were combined and published for comment as proposed regulation § 614.4020. No comments were received regarding this regulation. However, during final review, FCA staff concluded that it would be inappropriate to combine present regulation § 614.4020 with §§ 614.4030 and 614.4031 because it could confuse the delegation of

supervisory authority with the delegation of loanmaking authority. Therefore, the only change to the present § 614.4020 invokes revision of the heading of the section to reflect more accurately its contents.

Sections 614.4030 and 614.4031 are now combined as § 614.4030, and some adjustments have been made to reflect more accurately the lending authority vested by the Act without changing the intent of the present two regulations. The purpose of the adjustments is to clarify that loanmaking authority of Federal land bank associations is derived by delegation from the Federal land banks, whereas loanmaking authority is vested directly in the production credit associations. However, the FCA finds it necessary and appropriate in the administration of the Act to require Federal intermediate credit banks, as a supervisory matter, to adopt policies that limit the exercise of loanmaking authorities of those production credit associations which do not demonstrate the ability to administer credit soundly.

List of Subjects in 12 CFR Parts 611 and 614

Agriculture, Banks, banking, Organization and functions, Credit, and Rural areas.

For the reasons set out in the preamble, Parts 611 and 614 of Chapter VI, Title 12, of the *Code of Federal Regulations* are amended as shown.

PART 611—ORGANIZATION

1. Part 611 is amended by revising § 611.1150 to read as follows:

Subpart F—General Rules for the Districts

* * * * *

§ 611.1150 Incorporation of service organizations.

(a) *General.* Any Farm Credit bank(s) may organize a corporation to perform, for or on behalf of the bank(s), any function or service that the bank(s) is authorized to perform under the Act and the regulations, except extending credit and providing the sale of insurance services. The bank(s) wishing to organize such a corporation shall submit an application to the Farm Credit Administration according to the application requirements of paragraph (b) of this section. If the proposal meets the requirements of the Act, the regulations, and any other conditions which the Governor may impose, the Governor may issue a charter for the service corporation making it a federally chartered instrumentality of the United States. Such service corporation shall be subject to supervision and examination by the Farm Credit Administration. Only Farm Credit banks are eligible to become stockholders in such a corporation. Each bank shall be eligible to become a stockholder of each service corporation organized under this section.

(b) *Application.* The application for a corporate charter shall include:

(1) The certified resolution of the board of each organizing bank authorizing the incorporation.

(2) A request signed by the president(s) of the organizing bank(s) to the Governor of the Farm Credit Administration to issue a charter, supported by a detailed statement demonstrating the need and the justification for the proposed entity.

(3) The proposed articles of incorporation addressing, at a minimum, the following:

(i) The name of the corporation;

(ii) The city and State in which the principal offices of the corporation are to be located;

(iii) The general purposes for which the corporation is formed;

(iv) The general powers of the corporation;

(v) The procedures under which a bank may become a stockholder;

(vi) The procedures by which bylaws may be adopted and amended;

(vii) The title, par value, voting and other rights, and authorized amount of each class of stock to be issued by the corporation, and the procedures by which each class may be retired;

(viii) The notice and quorum requirement for a meeting of shareholders, and the vote required for shareholder action on various matters;

(ix) The procedures and shareholder voting requirements for the merger, voluntary liquidation, or dissolution of the corporation or the distribution of corporate assets;

(x) The standards and procedures for the application and distribution of corporate earnings;

(xi) The duration of the corporation;

(xii) A requirement, which shall be binding on all stockholders, that in the event of insolvency of the service corporation, such stockholder(s) will pay the valid claims of the creditors of the corporation.

(4) The proposed bylaws which shall address general matters of corporate procedure.

(5) A statement as to the proposed amounts and sources of capitalization and operating funds.

(6) Any agreements between the organizing banks relating to the organization or the operation of the corporation.

(7) Any other supporting documentation as may be requested by the Governor of the Farm Credit Administration.

(c) *Approval.* The Governor may condition the issuance of a charter as he deems appropriate and for good cause may deny the application. Upon approval by the Governor of a completed application, which shall be kept on file at the Farm Credit Administration, the Governor shall issue a charter for the service corporation which shall thereupon become a corporate body and a Federal instrumentality.

(d) *Amendment of articles of incorporation.* The articles of incorporation of a service corporation may be amended in either of two ways:

(1) The board of directors of the corporation may request that the Governor amend the articles of incorporation by sending with its request a certified resolution of the board of directors of the service corporation and stating:

(i) The section(s) to be amended;

(ii) The reason(s) for the amendment;

(iii) The language of the articles of incorporation provision, as amended; and

(iv) That the requisite shareholder approval has been obtained. The request shall be subject to the approval of the Governor as stated in paragraphs (a) and (c) of this section.

(2) The Governor may at any time make any and all changes in the articles of incorporation of a service corporation that he deems necessary and appropriate for the accomplishment of the purposes of the Act.

(e) *Amendment of bylaws.* Amendments of the bylaws of a service corporation shall require prior approval of the Governor.

PART 614—LOAN POLICIES AND OPERATIONS

2. Section 614.4020 is amended by changing the section heading to read as follows:

Subpart A—General

* * * * *

§ 614.4020 Delegation of supervisory authority.

* * * * *

3. Section 614.4030 is revised to read as follows:

§ 614.4030 Policies for delegating loanmaking authorities.

(a) Federal land banks and Federal intermediate credit banks shall adopt policies and procedures governing the exercise of loanmaking authority by the associations subject to their supervision. Federal land banks may delegate loanmaking authority to Federal land bank associations that demonstrate the ability to extend and administer credit soundly, provided adequate control and supervisory measures are developed and exercised. The Federal intermediate credit banks shall adopt policies that limit the exercise of loanmaking authority by production credit associations that do not demonstrate the ability to extend and administer credit soundly.

(b) It shall be the responsibility of each bank board to adopt policies relating to the exercise of loanmaking authority by bank personnel and associations subject to the bank's supervision. Such policies shall require the bank to define authorities to be delegated; provide for documented evaluation of the capability and responsibility of individuals or associations where authority is delegated; provide for reporting of actions taken under delegated authority; provide procedures for periodic review and enforcement; and provide for withdrawal of authority where appropriate. Where associations' boards are authorized by the bank to redelegate loanmaking authority to employees, procedures of the supervisory bank shall require associations to utilize similar control measures.

§ 614.4031 [Removed]

4. Part 614, Subpart A, is amended by removing § 614.4031.

(Secs. 5.9, 5.12, 5.18, Pub. L. 92-181, 85 Stat. 619, 620, 621, 12 U.S.C. 2243, 2246 and 2252)

Kenneth J. Auberger,

Acting Governor.

[FR Doc. 82-16973 Filed 6-22-82; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 930

Interpretation of the Federal Consistency Term: "Directly Affecting the Coastal Zone"; Correction

AGENCY: National Oceanic and Atmospheric Administration (NOAA); Department of Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects the CFR citation to a National Oceanic and Atmospheric Administration rule that confirmed the effective date of the withdrawal of a final rule concerning the interpretation of the Federal consistency term "Directly affecting the Costal Zone", which was published in the **Federal Register** on May 11, 1982.

EFFECTIVE DATE: April 28, 1982.

FOR FURTHER INFORMATION CONTACT: Vickie Allin, Office of Costal Zone Management, 3300 Whitehaven Street, NW., Washington, D.C. 20235, Telephone: (202) 634-4245.

In this notice, appearing at 47 FR 20110-20111 in the issue of May 11, 1982, make the following corrections:

On page 20110, in the second column, remove the citation "15 CFR Part 931." In its place, add the citation "15 CFR Part 930."

On page 20110, in the third column after Supplementary Information, remove the heading "List of Subjects in 15 CFR Part 931." In its place, add the heading "List of Subjects in 15 CFR Part 930."

Dated: June 17, 1982.

JoAnn Chandler,

Director, Policy, Evaluation and External Relations Staff, Office of Coastal Zone Management.

[FR Doc. 82-16918 Filed 6-22-82; 8:45 am]

BILLING CODE 3510-08-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 2H5330/T93; PH-FRL-2153-6]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a food additive regulation for the plant growth regulator ethephon in the milling fractions of barley and wheat except for their flours. This regulation is established in conjunction with an experimental use permit requested by the Union Carbide Company. This rule will permit the marketing of the milling fractions of barley and wheat except for their flours while further data are collected on ethephon.

EFFECTIVE DATE: Effective on: June 23, 1982.

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

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of February 24, 1982 (47 FR 8089) that Union Carbide Agricultural Products Co., Inc., P.O. Box 12014 Research Triangle Park, NC 27709, had filed a food additive petition (FAP 2H5330). This petition proposed that 21 CFR Part 193 be amended by establishing a regulation permitting the residues of the plant growth regulator ethephon [(2-chloroethyl)phosphonic acid] in wheat germ up to 1.0 part per million (ppm) and wheat bran up to 1.7 ppm resulting from application of the plant growth regulator to growing small grain (cereal) crops in conjunction with a proposed experimental program. The petition was subsequently amended by changing the proposed tolerance to 5.0 ppm for the milling fractions of barley and wheat except for their flours.

No comments were received by the Agency in response to this notice of filing.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances included an acute oral toxicity study in rats with a median lethal dose (LD_{50}) of 4.2 grams (g)/kilogram (kg) of body weight (bw); a 90-day rat feeding study with a NOEL of 200 ppm; a 3-generation rat reproduction study with a NOEL of 1,500 ppm; a neurotoxicity study up to 1,000 milligrams (mg)/kg/day; a 2-year dog chronic feeding study with a NOEL of 30 ppm (for cholinesterase inhibition) and a NOEL of 3,000 ppm for systemic effects and a rat chronic feeding/oncogenic study with a systemic NOEL of 3,000 ppm; and a NOEL of 30 ppm for cholinesterase effects and no observed oncogenic effects.

Desirable studies that are lacking, or to be repeated, are a teratology study and a screening battery of mutagenicity tests. The petitioner has agreed to perform these studies.

Tolerances have previously been established for ethephon. The dog 2-year chronic feeding study with a systemic NOEL of 300 pm was used with a safety factor of 100 to calculate the ADI. The current tolerances occupy 9.57 percent

of the acceptable daily intake (ADI) and the current theoretical maximum residue contribution (TMRC) is 0.4304 mg/day/1.5 kg. Granting these tolerances will change the percentage of the occupied ADI to 12.29 percent. The new TMRC will be 0.5531 mg/day/1.5 kg.

The metabolism of ethephon is adequately understood, and an adequate analytical method is available for enforcement purposes. A related document establishing a temporary feed additive regulation [FAP 2H5330/T94] for residue of ethephon appears elsewhere in this issue of the **Federal Register.**

The pesticide is considered useful for the purpose for which the regulation is sought, and it is concluded that the pesticide can be safely used in accordance with the provisions of the experimental use permit which was issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat. 973; 76 U.S.C. 136 *et seq.*). Therefore, a food additive regulation is established for the milling fractions of barley and wheat except for their flours as set forth below.

Any person adversely affected by this regulation may on or before July 23, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945). Effective on: June 23, 1982.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1)))

List of Subjects in 21 CFR Part 193

Food additives Pesticides and pests.

Dated: June 15, 1982.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

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

Therefore, 21 CFR 193.186 is revised to read as follows:

§ 193.186 Ethephon.

(a) [Reserved]

(b) A food additive regulation is established for the plant growth regulator ethephon [(2-chloroethyl)phosphonic acid] in or on the following food commodities resulting from application of ethephon to growing crops in accordance with an experimental use program.

Foods	Parts per million	Company	Expiration date
Barley, milling fractions, except flour	5.0	Union Carbide	Apr. 20, 1984.
Sugarcane, molasses	7.0	Union Carbide	Feb. 12, 1983.
Wheat, milling fractions, except flour	5.0	Union Carbide	Apr. 20, 1984.

(c) The following conditions for the regulation in paragraph (b) of this section shall be met.

(1) Residues in the food in excess of the established tolerance resulting from the use described in paragraph (b) of this section remaining after expiration of the experimental use program will not be considered to be actionable if the plant growth regulator is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and the food additive regulation.

(2) The Company concerned shall immediately notify the Environmental Protection Agency of any findings for the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

[FR Doc. 82-16925 Filed 6-22-82; 8:45 am]

BILLING CODE 6560-50-M

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21 CFR Part 561

[FAP 2H5330/T94; PH-FRL-2153-5]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an animal feed additive regulation for the plant growth regulator ethephon in the milling fractions of barley and wheat except for their flours. This regulation is established in conjunction with an experimental use permit requested by the Union Carbide Company. This rule will permit the marketing of the milling fractions of barley and wheat except for their flours while further data are collected on ethephon.

EFFECTIVE DATE: Effective on: June 23, 1982.

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

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of February 24, 1982 (47 FR 8089) that Union Carbide Agricultural Products Co., Inc., P.O. Box 12014 Research Triangle Park, NC 27709, had filed a feed additive petition [FAP 2H5330). This petition proposed that 21 CFR Part 561 be amended by establishing a regulation permitting the residues of the plant growth regulator ethephon [(2-chloroethyl)phosphonic acid] in wheat shorts at 1.2 parts per million (ppm) and barley hulls at 1.6 ppm resulting from application of the plant growth regulator to growing small grain (cereal) crops in conjunction with a proposed experimental program. The petition was subsequently amended by changing the proposed tolerance to 5.0 ppm for the milling fractions of barley and wheat except for their flours.

No comments were received by the Agency in response to this notice of filing.

The metabolism of ethephon is adequately understood, and an adequate analytical method is available for enforcement purposes. The data submitted in the petition and other

relevant material have been evaluated and discussed in a related document establishing a temporary food additive regulation [FAP 2H5330/T93] appearing elsewhere in this issue of the Federal Register.

The pesticide is considered useful for the purpose for which the regulation is sought, and it is concluded that the pesticide can be safely used in accordance with the provisions of the experimental use permit which was issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat. 973; 76 U.S.C. 136 *et seq.*). Therefore, a feed additive regulation is established for the milling fractions of barley and wheat except for their flours as set forth below.

Any person adversely affected by this regulation may, on or before July 23, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24945). Effective on: June 23, 1982.

(Sec. 409(c)(1), 72 Stat. 1786; (21 U.S.C. 346(c)(1))).

List of Subjects in 21 CFR Part 561

Animal feeds, Pesticide and pests.

Dated: June 15, 1982.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

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

Therefore, 21 CFR 561.225 is revised to read as follows:

§ 561.225 Ethephon.

(a) A feed additive regulation is established permitting residue of the plant growth regulator ethephon [(2-chloroethyl) phosphonic acid] in or on the following feed commodities.

Feeds	Parts per million
Raisin waste	65.0

(b) A feed additive regulation is established for ethephon in or on the following feed commodities resulting from the application of ethephon to growing crops in accordance with an experimental use program.

Feeds	Parts per million	Company	Expiration date
Barley, milling fractions, except flour	5.0	Union Carbide	Apr. 20, 1984.
Wheat, milling fractions, except flour	5.0	Union Carbide	Apr. 20, 1984.

(c) The following conditions for the regulation in paragraph (b) of this section shall be met.

(1) Residues in the feed in excess of the established tolerance resulting from the use described in paragraph (b) of this section remaining after expiration of the experimental program will not be considered to be actionable if the plant growth regulator is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and the feed additive regulation.

(2) The Company concerned shall immediately notify the Environmental Protection Agency of any findings for the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

[FR Doc. 82-16924 Filed 6-22-82; 8:45 am]

BILLING CODE 6560-50-M

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21 CFR Part 561

[FAP 9H5223/T89; PH-FRL-2151-2]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation to permit the residues of the insecticide methamidophos in or on the commodity peanut meal resulting from its use in an experimental program involving application of the insecticide on the growing crop peanuts. This regulation to permit the marketing of peanut meal, while further data are being collected, was requested by Mobay Chemical Corp.

EFFECTIVE DATE: Effective on June 23, 1982.

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

FOR FURTHER INFORMATION CONTACT: William Miller, Product Manager (PM) 16, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 211, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2600).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the Federal Register of July 11, 1979 (45 FR 40556) which announced that Mobay Chemical Corp., P.O. Box 4913, Kansas City, MO 64120, had submitted feed additive petition 9H5223 to the EPA proposing that 21 CFR 561.277 be amended by establishing a regulation permitting the residues of the insecticide methamidophos (*O,S*-dimethyl phosphoramidothioate) in or on the feed commodity peanut meal at 0.2 ppm.

No comments were received in response to this notice of filing.

The data submitted in the petition and all other relevant material have been evaluated and it has been determined that the pesticide may be safely used in accordance with the provisions of the experimental use permit which has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The toxicological data considered in support of the tolerance included an acute oral lethal dose (LD_{50}) rat study, an acute dermal LD_{50} rabbit study, primary dermal rabbit irritation study, primary rabbit eye irritation study, a 90-day dog feeding study with a no-observed-effect level (NOEL) of 1.5 ppm (0.0375 milligrams (mg)/kilogram (kg) of body weight (bw)) based on

cholinesterase inhibition, a 90-day rat feeding study with a cholinesterase NOEL of 2.0 ppm (0.1 mg/kg of bw), a rabbit teratology study with no-observed effects at the 2.5 mg/kg dosage level, an acute delayed neurotoxicity study (hen) with no-observed effects at the 50.63 mg/kg dosage level, and an interim report of an oncogenic study (mouse).

Desirable data that are currently lacking and the projected dates of completion of these studies are as follows: A chronic feeding/oncogenic study (rat)—August 1984; the final report of the oncogenic study (mouse)—January 1983; a teratology study (rat)—October 1982; a reproduction study (rat)—June 1984; and mutagenic studies (Ames and dominant lethal, August 1982).

Although there are significant data gaps for the chemical, the available toxicity data are adequate to support the tolerance since the proposed use will result in an insignificant increase (0.33 percent) in the current theoretical maximum residue contribution (TMRC) to the human diet. As stated in the **Federal Register** of May 11, 1979 (44 FR 27932–27954) the "Agency will generally consider as insignificant an increase in the TMRC of 1.0 percent or less."

A related document (PP 9G2151/T371) establishing a temporary tolerance for residues of the insecticide methamidophos in or on peanuts and peanut hulls appears elsewhere in this issue of the **Federal Register.**

The established tolerances for the combined residues of acephate and cholinesterase-inhibiting metabolite, methamidophos in meat, milk, poultry, and eggs at 0.1 ppm (40 CFR 180.108) are adequate to cover any secondary residues occurring in this commodity from the proposed use of methamidophos on peanuts. An adequate analytical method (gas chromatographic procedure using a cesium bromide thermionic detector) is available for enforcement purposes and the nature of the residues is adequately understood.

Tolerances have previously been established for residues of methamidophos in or on a variety of raw agricultural commodities (40 CFR 180.315). There are no regulatory actions pending against continued registration of the pesticide and there are no other considerations involved in establishing this feed additive regulation.

The insecticide is considered useful for the purpose for which the regulation is sought, and it is concluded that the insecticide may be safely used in accordance with the prescribed manner when such uses are in accordance with the label and labeling registered pursuant to FIFRA as amended, (86 Stat. 973, 89 Stat. 751, U.S.C. 135(a) *et seq.*) Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, on or before July 23, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

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

Effective on: June 23, 1982.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1)))

List of Subjects in 21 CFR Part 561

Animal feeds, Pesticides and pests.

Dated: June 9, 1982.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

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

Therefore, 21 CFR 561.277(a) is amended by adding an entry for "peanut meal" in the table to read as follows:

§ 561.277 Methamidophos.

(a) * * *

Feed	Parts per million	Company	Expiration date
Peanut meal	0.2	Mobay Chemical.	June 10, 1984.
*	*	*	*

[FR Doc. 82-16491 Filed 6-22-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-9-FRL 1871-6]

Lake Tahoe Basin Nonattainment Area Plans and Regulations, States of California and Nevada

AGENCY: Environmental Protection Agency.

ACTION: Notice of final rulemaking.

SUMMARY: On September 10, 1980, the Environmental Protection Agency (EPA) published a notice of proposed rulemaking for the Lake Tahoe Basin nonattainment area plans (NAPs) for ozone (O_3) and carbon monoxide (CO). That notice proposed to conditionally approve the overall NAPs, since they contain minor deficiencies with respect to Part D of the Clean Air Act, "Plan Requirements for Nonattainment Areas."

On March 3, 1981, EPA published a notice of final rulemaking redesignating the Lake Tahoe Basin to attainment for ozone. The effect of this redesignation was to remove the Part D requirements for ozone. EPA is today taking final action to fully approve the ozone portions of the NAPs under Section 110 of the Act as revisions to the California and Nevada State Implementation Plans (SIPs) since they contain measures which strengthen the existing SIPs.

EPA is also approving California's request for an extension to 1987 for attainment of the CO standards in the California portion of the Lake Tahoe Basin.

Further, since the States have provided assurances to correct the minor deficiencies in the NAPs for CO, EPA is today taking final action to conditionally approve the NAPs for CO under Part D as revisions to the California and Nevada SIPs. This action removes the prohibition on construction of major new or modified sources in this area.

This notice provides a brief summary of the proposed rulemaking notice, describes recent revisions which supplement the NAP, discusses public comments, and describes EPA's final action on the revisions.

DATES: This action is effective June 23, 1982.

ADDRESS: A copy of the revisions mentioned above is located at: The Office of the Federal Register, 1100 "L" Street, NW., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT:

Director, Air and Hazardous Materials Division, Environmental Protection

Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Attn: Douglas Grano (415) 556–2938.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act, as amended in 1977, requires states to revise their SIPs for all areas that have not attained the National Ambient Air Quality Standards (NAAQS). The Governor's designee for California submitted revisions to the California SIP consisting of control strategies and regulations for the California portion of the Lake Tahoe Basin on May 23 and August 21, 1979 and February 11, 1980. The Governor of Nevada submitted revisions to the Nevada SIP consisting of control strategies and regulations for the Nevada portion of the Lake Tahoe Basin on July 24, 1979 and March 17, 1980. These revisions constitute the Lake Tahoe Basin NAPS for O_3 and CO.

On September 8, 1980 (45 FR 59177) EPA proposed to approve the State's rescission of Nevada's Indirect Source Review Program (ISRP) based on EPA's proposed conditional approval of Nevada's NAPs. The ISRP is not addressed in this notice but is the subject of a separate **Federal Register** rulemaking action.

On September 10, 1980 (45 FR 59591) EPA published a notice of proposed rulemaking for the Lake Tahoe Basin NAPs. That notice provided a description of the NAPs, summarized the applicable Clean Air Act requirements into 13 criteria, compared the NAPs to those criteria, and proposed to approve or conditionally approve portions of the NAPs. The September 10, 1980 notice should be used as a reference in reviewing today's action.

O_3

EPA proposed to fully approve all but one portion of the Lake Tahoe Basin NAPs for O_3. The permit program portion was found to contain a minor deficiency with respect to Part D and was proposed to be approved with the condition that the deficiency be corrected by a specified deadline.

Supplemental Revisions

California Environmental Quality Act (CEQA)

The September 10, 1980 notice proposed to conditionally approve the California NAP for CO based upon the submittal of those portions of CEQA that relate to the requirement providing for an analysis of alternatives for new sources which demonstrates that benefits of the source outweigh the environmental costs (Section 172(b)(11)(A) of the Clean Air Act).

On October 20, 1980, the State submitted the following portions of CEQA:

Sections 2100; 21001; 21002; 21002.1; 21061; 21063; 21065; 21080.1; 21080.4(a); 21080.5 (a), (b), (c) and (d); 21081; 21082; 21100; 21104; 21151; 21153; and 21160.

As discussed in a previous rulemaking notice (January 21, 1981, 46 FR 5967), EPA has determined that these portions of CEQA satisfy the requirements of Section 172(b)(11)(A) of the Clean Air Act and therefore this minor deficiency has been corrected.

Public Comments

During the public comment period, EPA received comments from the Nevada Department of Conservation and Natural Resources (NDCNR) and the California Air Resources Board (CARB). This notice discusses only those comments that caused EPA to change certain proposed actions. All comments received are specifically identified and responded to in EPA's Public Comment Technical Support Document (contained in Document File NAP–CA–NV–01 at the CARB, NDCNR, Tahoe Regional Planning Agency (TRPA), EPA Region 9 Office, and EPA Library in Washington, D.C.). A discussion of National comments received is also contained in the Technical Support Document.

Both California and Nevada indicated that an additional period of time is necessary for satisfying the conditions of approval. The assumptions and strategies in both NAPs are significantly affected by the recently revised Tahoe Regional Planning Compact (Pub. L. 96–55, December 19, 1980) which may require complicated amendment to several aspects of the plans. Accordingly, EPA is extending all conditional approval deadlines to 180 days from the date of publication of this notice. However, EPA is extending the submittal date for the NSR condition only to November 7, 1981, because of the national schedule for submittal/approval of permitting provisions established on August 7, 1980, (see 45 FR 52676).

California commented that resource commitments should be required in the annual report for each year, rather than as binding multi-year budget commitments. EPA will allow for the submittal of future resource needs in this manner. Therefore, EPA is revising this condition to require that the State submit annual resource commitments.

Both Nevada and California commented that the Tahoe Basin is now attainment for ozone. EPA published on March 3, 1981, a notice of final rulemaking redesignating the area to attainment (see 46 FR 14892). As a result of this redesignation, the States are no longer subject to the requirements of Title I, Part D of the Clean Air Act for ozone in the Lake Tahoe Basin, including the proposed condition respecting the permit program for the California ozone NAP.

EPA Actions

Introduction to Action on NAPs

It is important for reviewers of this notice to understand the overall nature of NAPs and of EPA's review and approval role. Central to such an understanding is recognition that action may be taken on a portion of the NAPs for a specific pollutant or rule. Therefore, a portion of the NAPs may be adequate for one pollutant but inadequate for others. Further, a rule may be adequate under Section 110 but inadequate under Part D. It is EPA's policy to take final action on all portions of the NAPs for each pollutant. As a result, this notice contains a series of actions for each pollutant and for each portion of the NAPs rather than a single action. One of the following three actions may be taken for each portion of the NAPs:

1. Disapproval where the State does not agree to correct minor deficiencies or where deficiencies are of such magnitude as to significantly interfere with the basic objective; or

2. Approval where the portion of the NAP under consideration meets all requirements; or

3. Approval with conditions where deficiencies exist, but where the effect of the deficiency is not judged to be major and the State has agreed to take those steps necessary to correct the deficiency.

In this case, it is EPA's intent that the State proceed expeditiously to correct the noted deficiency by certain dates.

EPA's final actions on the Lake Tahoe Basin NAPs are described below and are based on the proposed rulemaking notice, supplemental revision, and the public comments received by EPA.

Rules

EPA is taking final action under Section 110 of the Clean Air Act to approve all of the volatile organic compound rules listed in the September 10, 1980 proposed rulemaking notice. Also, EPA is taking final action under Section 110 of the Act to approve the new source review (NSR) rules listed in the notice of proposed rulemaking, with exception of Placer County's banking

rule, Rule 508(I)(C)(3)(h). Rules governing the operation of the bank need to be submitted. EPA will soon be publishing guidance in the form of a policy statement in the **Federal Register** describing minimum conditions required of State in establishing rules governing the creation, holding (i.e., "banking"), and use of emission reduction credits.

Approved Portions of the NAPs

Following the redesignation of the Lake Tahoe Basin to attainment for ozone under Section 107(d) of the CAA, the ozone portions of the NAPs need not satisfy the provisions of Part D and EPA's Criteria for NAP submittals. EPA is taking final action today to approve the entire ozone portions of the NAPs and to incorporate them into the California and Nevada SIPs. The effect of this action is to reorder, update, and make more stringent the ozone portions of the SIPs for the Lake Tahoe Basin. The revisions 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 proposed in the September 10, 1980 notice, EPA is taking final action under Part D of the Clean Air Act to approve the following portions of the Lake Tahoe Basin NAPs for CO: emission inventory, modeling (California plan), attainment provision (California plan), reasonable further progress, emissions growth, annual reporting, permit program (Nevada plan), public and government involvement, and public hearing.

As stated in the September 10, 1980 notice, EPA is accepting portions of the Transportation Improvement Program and Regional Transportation Plan that were submitted with the California plan for informational purposes only and not as a part of the Federally-enforceable SIP.

Conditionally Approved Portions of the NAPs

As discussed in the September 10, 1980 notice, the following portions of the Lake Tahoe Basin NAPs for CO contain minor deficiencies and the States have provided assurances to correct these deficiencies: Modeling (Nevada plan), emission reduction estimates, attainment provision (Nevada plan), legally adopted measures, permit program (California plan), resources, and extension requirements (California plan).

Therefore, EPA is taking final action to conditionally approve these portions of the NAPs.

The material required to satisfy conditions of approval must be submitted as an SIP revision as specified below:

California/CO

1. By November 7, 1981, NSR rules for El Dorado and Placer Counties (Tahoe portion) must be revised and submitted as SIP revisions. The rules must satisfy Section 173 and 40 CFR 51.18, "Review of new sources and modifications." In revising the counties' NSR rules, the State must address all the requirements in EPA's amended regulations for NSR (45 FR 31307, May 13, 1980 and 45 FR 52676, August 7, 1980) which the counties' rules do not currently satisfy, including those deficiencies cited in EPA's Evaluation Report which still apply despite new EPA NSR requirements (contained in Document File NAP–CA–NV–01 at the CARB, NDCNR, TRPA, EPA Region 9 office, EPA Library in Washington, D.C.) As EPA noted on August 7, 1980 in promulgating the revised NSR requirements (see 45 FR 52687), if the revised NSR rules have not been submitted and approved by November 7, 1981, a construction moratorium will take effect in the California portion of the Lake Tahoe Basin.

2. By December 20, 1982, the State must submit emission reduction estimates for each adopted control measure or package of control measures.

3. By December 20, 1982, the State must submit written evidence that all adopted measures are supported by sufficient implementation commitments or that adopted schedules for obtaining such commitments will ensure that all measures will be implemented consistent with reasonable further progress. As an alternative, the State may submit equivalent control strategies supported by commitments and full legal adoption.

4. By December 20, 1982, the State must provide a commitment to submit annual implementing agency fiscal and personnel commitments to implement the Lake Tahoe Basin NAP.

5. By December 20, 1982, the State must submit written evidence of commitments by agencies with legal authority to establish, expand, or improve public transportation to meet basic transportation needs.

6. By December 20, 1982, the State must submit a schedule to analyze alternative packages of transportation control measures, including but not limited to those measures listed in Section 108(f)(1)(A) of the Clean Air Act. The State must also submit a commitment to initiate implementation of those measures shown to be reasonably available.

Nevada/CO

1. By December 20, 1982, the State must submit emission reduction estimates for each adopted control measure or package of control measures.

2. By December 20, 1982, the State must submit a fully documented modeling analysis indicating attainment by 1982 based upon legally adopted control measures.

3. By December 20, 1982, the State must submit written evidence that all adopted measures are supported by sufficient implementation commitments or that adopted schedules for obtaining such commitments will ensure that all measures will be implemented consistent with reasonable further progress. As an alternative, the State may submit equivalent control strategies supported by commitments and full legal adoption.

4. By December 20, 1982, the State must submit evidence of the necessary resource commitments to implement the Lake Tahoe Basin NAP.

Final Action on the NAPs

As described in the September 10, 1980 notice, only minor deficiencies remain in the Lake Tahoe Basin NAPs for CO. Therefore, EPA is taking final action today to conditionally approve the overall Lake Tahoe Basin NAPs for CO with respect to Part D. As noted above, EPA is fully approving the NAPs for O_3 under Section 110. As a result, the prohibition on construction of certain major new or modified sources in the Lake Tahoe Basin is no longer in effect.

EPA has a responsibility to take final action as soon as possible in order to lift the construction prohibitions, since the States have submitted conditionally approvable NAPs for the Lake Tahoe Basin. Therefore, EPA finds that good cause exists for making this action immediately effective.

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

Conditional Approval Procedure

A discussion of conditional approval and its practical effect appears in two supplements to the General Preamble (44 FR 38583 (July 2, 1979) and 44 FR 67192 (November 23, 1979)). Conditional approval requires the States to submit

additional material by the deadlines specified in today's notice. There will be no extensions granted to the conditional approval deadlines being promulgated today. EPA will follow the procedures described below when determining if the States have satisfied the conditions.

1. If the States submit the required additional documentation according to schedule, EPA will publish a notice in the **Federal Register** announcing receipt of the material. The notice of receipt will also announce that the conditional approval is continued pending EPA's final action on the submission.

2. EPA will evaluate the States' submittal to determine if the conditions are fully met. After EPA's review is completed, a **Federal Register** notice will be published proposing or taking final action to either (1) find the conditions have been met and approve the NAPs, or (2) find the conditions have not been met, withdraw the conditional approval, and disapprove the NAPs. If the NAPs are disapproved, the Section 110(a)(2)(I) restrictions on construction would be reimposed.

3. If the States fail to submit the required materials to meet a condition, EPA will publish a **Federal Register** notice shortly after the expiration of the deadline. The notice will announce that the conditional approval is withdrawn, the NAPs are disapproved, and the Section 110(a)(2)(I) restrictions on construction are in effect.

Certain deadlines for satisfying conditions have been changed from those proposed and are being promulgated today without further notice and comment. EPA finds that for good cause additional notice and comment on these deadlines are unnecessary (See 5 U.S.C. 553 (b)(B), Administrative Procedure Act). The States are the parties responsible for meeting the deadlines. In addition, the public has an opportunity to comment generally on the concept of conditional approval and on what deadlines should apply for these conditions (44 FR 38583, July 2, 1979 and 45 FR 59591, September 10, 1980).

40 CFR Part 52 Rescissions

As a result of EPA's final promulgation of conditional approval for the Lake Tahoe Basin CO NAPs and final promulgation of approval for the ozone NAPs EPA is also taking final action to rescind Federally promulgated regulations from 40 CFR Part 52. Several of the regulations proposed were rescinded in a final action published for the San Diego Air Basin NAP on April 14, 1981 (46 FR 21749). The remaining regulations: 40 CFR 52.245, 52.255, and 52.264 are being rescinded in today's final action.

Attainment Dates

The 1980 edition of 40 CFR Part 52 lists, in the Subparts for California and Nevada, the applicable deadlines for attaining the NAAQS (attainment dates) required by Section 110(a)(2)(A) of the Act. For each nonattainment area where a NAP provides for attainment by the deadlines required by Section 172(a) of the Act, the new deadlines are substituted on the attainment date chart for California and Nevada in 40 CFR Part 52.

The earlier attainment dates will be referenced in a footnote to the chart. Sources subject to plan requirements and deadlines established under Section 110(a)(2)(A) prior to the 1977 Amendments remain obligated to comply with those requirements, as well as the new Section 172 requirements.

Congress established new attainment dates under Section 172(a) to provide additional time for previously regulated sources to comply with new, more stringent requirements, and to permit previously uncontrolled sources to comply with the newly applicable emission limitations. These new deadlines were not included to give sources that failed to comply with pre-1977 plan requirements by the earlier deadlines more time to comply with those requirements. As noted by Congressman Paul Rogers in discussing the 1977 Amendments:

> Section 110(a)(2) of the Act made clear that each source had to meet its emission limits "as expeditiously as practicable," but not later than three years after approval of a plan. This provision was not changed by the 1977 Amendments. It would be a perversion of clear congressional intent to construe Part D to authorize relaxation or delay of emission limits for particular sources. The added time for attainment of the National Ambient Air Quality Standards was provided, if necessary, because of the need to tighten emission limits or bring previously uncontrolled sources under control. Delays or relaxation of emission limits were not generally authorized or intended under Part D (123 Cong. Rec. H 11958, daily ed. November 1, 1977).

To implement Congress' intention that sources remain subject to pre-existing plan requirements, sources cannot be granted variances extending compliance dates beyond the attainment dates established prior to the 1977 Amendments. EPA cannot approve such compliance date extensions, even though a NAP with a later attainment date has been approved. However, a compliance date extension beyond a pre-existing attainment date may be granted if it will not contribute to a violation of an ambient standard or a PSD increment (44 FR 20373–74, (April 4, 1979)).

In addition, sources subject to pre-existing plan requirements may be relieved of complying with such requirements if a NAP imposes new, more stringent control requirements that are incompatible with controls required to meet the pre-existing regulations. Decisions on the incompatibility of requirements will be made on a case-by-case basis.

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

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

Note.—Incorporation by reference of the State Implementation Plans for the States of California and Nevada was approved by the Director of the Federal Register on July 1, 1981.

(Secs. 110, 129, 171, to 178, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7429, 7501 to 7508, and 7601(a)))

List of Subjects in 40 CFR Part 52

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

Dated: May 26, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subparts F and DD of Chapter I, Title 40 of the Code of Federal Regulations are amended as follows:

Subpart F—California

1. Section 52.220, paragraph (c) is amended by adding subparagraphs (51)(xiv)(B), (80)(i)(B), (80)(ii), and (81)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(51) * * *

(xiv) * * *

(B) New or amended Rules 102, LAER, stationary source, and modifications; 213; and 214.

* * * * *

(80) * * *

(i) * * *

(B) New or amended Rules 212, 213, 508 (except Paragraph (I)(C)(3)(h)), and 514.

(ii) Chapter 8, Lake Tahoe Basin Control Strategy, including Support Documents and Appendices. The Transportation Improvement Program and Regional Transportation Plan are for informational purposes only.

(81) * * *

(i) * * *

(B) New or amended Rules 501 to 506, 508 to 510, and 516 to 518.

* * * * *

2. Section 52.222 is amended by adding paragraph (d)(2) to read as follows:

§ 52.222 Extensions.

* * * * *

(d) * * *

(2) Lake Tahoe Basin for CO.

* * * * *

3. Section 52.223 is amended by adding paragraph (d)(1) to read as follows:

§ 52.223 Approval status.

* * * * *

(d) With the exceptions set forth in this subpart, the Administrator approves the plan with respect to Part D, Title I of the Clean Air Act, as amended in 1977, for the nonattainment areas listed in this paragraph.

(1) Lake Tahoe Basin for CO.

* * * * *

4. Section 52.232 is amended by adding paragraph (a)(8) to read as follows:

§ 52.232 Part D conditional approval.

(a) * * *

* * * * *

(8) Lake Tahoe Basin.

(i) For CO:

(A) By December 20, 1982, NSR rules for El Dorado and Placer Counties (Tahoe portion) must be revised and submitted as an SIP revision. The rules must satisfy Section 173 and 40 CFR 51.18, "Review of new sources and modifications." In revising the counties' NSR rules, the State must address all the requirements in EPA's amended regulations for NSR (45 FR 31307, May 13, 1980 and 45 FR 52676, August 7, 1980) which the counties' rules do not currently satisfy, including those deficiencies cited in EPA's Evaluation Report which still apply despite new EPA NSR requirements (contained in Document File NAP-CA-NV-01 at the EPA Library in Washington, D.C. and the Region 9 Office).

(B) By December 20, 1982, the submittal of the following as SIP revisions.

(*1*) Emission reduction estimates for each adopted control measure or package of control measures.

(*2*) Written evidence that all adopted measures are supported by sufficient implementation commitments or that adopted schedules for obtaining such commitments will ensure that all measures will be implemented consistent with reasonable further progress. As an alternative, the State may submit equivalent control strategies supported by commitments and full legal adoption.

(*3*) Provide a commitment to submit annual implementing agency fiscal and personnel commitments to implement the Lake Tahoe Basin NAP.

(*4*) Written evidence of commitments by agencies with legal authority to establish, expand, or improve public transportation to meet basic transportation needs.

(*5*) A schedule to analyze alternative packages of transportation control measures, including but not limited to those measures listed in Section 108(f)(1)(A) of the Clean Air Act. The State must also submit a commitment to initiate implementation of those measures shown to be reasonably available.

5. Section 52.233 is amended by revising paragraphs (d)(3), (d)(18), (g)(1)(iii) and (g)(1)(xvi) to read as follows:

§ 52.233 Review of new sources and modifications.

* * * * *

(d) * * *

(3) El Dorado County APCD (Mountain Counties Intrastate portion).

* * * * *

(18) Placer County APCD (Mountain Counties Intrastate portion).

* * * * *

(g) * * *

(1) * * *

(iii) El Dorado County APCD (Mountain Counties Intrastate portion).

* * * * *

(xvi) Placer County APCD (Mountain Counties Intrastate portion).

* * * * *

6. In § 52.238, the entries for the Lake Tahoe Intrastate are added as follows:

* * * * *

Air quality control region and nonattainment area	Pollutants						
	TSP		SO_2		NO_2	CO	O_3
	Primary	Secondary	Primary	Secondary			
*	*	*	*	*	*	*	*
Lake Tahoe Intrastate	(d)	(a)	(e)	(e)	(e)	(i)	(e)
*	*	*	*	*	*	*	*

* * * * *

§§ 52.245, 52.264 [Removed and Reserved]

7. Sections 52.245 and 52.264 are removed and reserved.

8. Section 52.255 is amended by revising paragraph (b) to read as follows:

§ 52.255 Gasoline transfer vapor control.

* * * * *

(b) This section is applicable in the Metropolitan Los Angeles, Sacramento Valley, and San Joaquin Valley Intrastate Air Quality Control Regions, with the following exceptions:

* * * * *

Subpart DD—Nevada

9. Section 52.1470, paragraph (c) is amended by adding subparagraph (16)(vii) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(16) * * *

(vii) Lake Tahoe Basin Nonattainment Area Plan.

* * * * *

10. Section 52.1472 is amended by adding paragraph (b)(7) to read as follows:

§ 52.1472 Approval status.

* * * * *

(b) * * *

(7) Lake Tahoe Basin for CO.

* * * * *

11. Section 52.1474 is amended by adding paragraph (a)(4) to read as follows:

§ 52.1474 Part D conditional approval.

(a) * * *

(4) The Lake Tahoe Basin portion of the Nevada SIP is approved as satisfying Part D requirements for carbon monoxide provided the following conditions are met.

(i) By December 20, 1982, the State must submit, as a SIP revision, emission reduction estimates for each adopted control measure or package of control measures.

(ii) By December 20, 1982, the State must submit, as a SIP revision, a fully documented modeling analysis indicating attainment by 1982 based upon legally adopted control measures.

(iii) By December 20, 1982, the State must submit, as a SIP revision, written evidence that all adopted measures are supported by sufficient implementation commitments or that adopted schedules for obtaining such commitments will ensure that all measures will be implemented consistent with reasonable further progress. As an alternative, the State may submit equivalent control strategies supported by commitments and full legal adoption.

(iv) By December 20, 1982, the State must submit, as a SIP revision, evidence of the necessary resource commitments to implement the Lake Tahoe Basin NAP.

12. In § 52.1480, the entry for the Lake Tahoe Basin is added immediately under "Northwest Nevada Intrastate" as follows:

§ 52.1480 Attainment dates for national standards.

* * * * *

Air quality control region and nonattainment area	Pollutants						
	TSP		SO_2		NO_2	CO	O_3
	Primary	Secondary	Primary	Secondary			
* * * * * * *							
Northwest Nevada Intrastate Lake, Tahoe Basin.	July 1975	July 1977	C	C	C	e	C
* * * * * * *							

* * * * * * *

13. Section 52.1481 is amended by adding paragraph (b)(7) to read as follows:

§ 52.1481 Extensions.

* * * * *

(b) * * *

(7) Lake Tahoe Basin for CO.

* * * * *

[FR Doc. 82-16827 Filed 6-22-82: 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-9-FRL 1871-5]

Nevada State Implementation Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: On September 8, 1980, the Environmental Protection Agency (EPA) published a notice of proposed rulemaking concerning the indirect source review program (ISRP) contained in the Nevada State Implementation Plan (SIP). The September 8 notice proposed to approve the State's requested rescission of Nevada's ISRP, since the State's nonattainment area plans were also proposed to be conditionally approved. Today's notice approves the rescission of Nevada's ISRP.

DATE: This action is effective July 23, 1982.

ADDRESS: A copy of today's revision to the Nevada SIP is located at: The Office of the Federal Register, 1100 "L" Street, NW., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Director, Air and Hazardous Materials Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Attn: Douglas Grano (415) 556-2938.

SUPPLEMENTARY INFORMATION:

Background

An ISRP provides for the preconstruction review of such facilities as shopping centers, sports complexes, and apartment developments, which induce or attract significant traffic. The purpose of this program is to ensure that the substantial increase in traffic resulting from the construction of such facilities will not cause violations of the National Ambient Air Quality Standards (NAAQS) for transportation related pollutants.

On October 16, 1979 (44 FR 59561), EPA proposed to approve revisions to the Nevada SIP which would remove all indirect source review rules. The Governor submitted the revisions on December 29, 1978 and July 24, 1979 which were received by EPA in January and August 1979, respectively. A complete list of the rules being proposed is contained in the October 16, 1979 notice.

EPA's proposed action was based on the view that Section 110(a)(5)(A)(iii) of the Clean Air Act, as amended, permits a state to rescind its ISRP so long as the State complies with the procedural requirements in Section 110. During the 60 day comment period, EPA received comments opposing the proposed approval as well as comments favoring it.

On December 6, 1979 the U.S. Court of Appeals in *Manchester Environmental Coalition v. U.S. Environmental Protection Agency*, 612 F.2d 56, 59 (No. 79-4062, 2d Cir. dec. December 6, 1979), held that Section 110(a)(5)(A)(iii) requires the Agency to ensure that a State's SIP revision rescinding an ISRP meets both the procedural and substantive requirements of section 110. The Court held that before deciding whether to approve such a rescission, EPA must also consider whether the rescission would render the SIP inadequate to attain and maintain the NAAQS. Accordingly, EPA reevaluated the October 16, 1979 proposed action to determine the impact on the NAAQS.

On September 9 and 10, 1980, EPA published rulemaking notices proposing to conditionally approve nonattainment area plans (NAPs) for the areas of the State which have not attained the NAAQS for transportation related pollutants. Since the State's NAPs were proposed to be conditionally approved, EPA determined that the ISRP rescission would not render the SIP inadequate to attain and maintain the NAAQS. Thus EPA proposed to approve the ISRP rescission in the September 8, 1980 **Federal Register**. The September 8 notice should be used as a reference in reviewing today's action.

Public Comments

EPA received comments from the California Air Resources Board, the California State Water Resources Control Board, the California Office of Planning and Research, the California Department of Transportation, the Council on Environmental Quality, and on behalf of the League to Save Lake Tahoe and the Sierra Club, Joseph J. Brecher. A document containing a summarization of the substantive comments and EPA's response to each, entitled "EPA Public Comment Technical Support Document", has been mailed to the commentors and is also available for public inspection at the EPA Library in Washington, D.C., at the EPA Region 9 Office in San Francisco, Cal. and at the Department of

Conservation and Natural Resources in Carson City, Nev.

EPA Actions

EPA has determined that the NAPs submitted by the State of Nevada meet the requirements of the Clean Air Act, with certain minor deficiencies, for the areas of the State which are not attaining the NAAQS for transportation related pollutants. Since the remainder of the State is attaining and maintaining these NAAQS, EPA has determined that the control stategies currently in effect are adequate. Therefore, EPA is taking final action to approve the State's rescission of the ISRP.

Regulatory Process

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

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

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

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

List of Subjects in 40 CFR Part 52

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

Dated: May 26, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart DD of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart DD—Nevada

1. Section 52.1470, paragraph (c) is amended by adding subparagraphs (14)(vi) and (16)(viii) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(14) * * *

(vi) Nevada Revised Statute 445.493, Limitations on Enforcement of Regulations as to Indirect Sources and Authority to Review New Indirect Sources.

* * * * *

(16) * * *

(viii) Repeal and removal of all references to Indirect (Complex) Sources in the following rules or portions of rules in the Nevada Air Quality Regulations. Article 1—Definitions: 1.12, 1.95, 1.147(b), and 1.202. Article 2—Registration Certificates and Operating Permits: 3.1.9, 3.2.1, 3.2.2, and 3.2.5. Article 13—Point Sources: 13.1.1, 13.1.2, 13.2, and 13.2.1 to 13.5.3.

* * * * *

[FR Doc. 82-16926 Filed 6-22-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL 2154-2]

Approval and Promulgation of Implementation Plans; Ohio; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction.

SUMMARY: EPA is today correcting clerical errors in footnotes f (1) and (2) to the table in 40 CFR 52.1875, Attainment Dates for National Standards. These errors were inadvertently published in the **Federal Register** on October 31, 1981 (45 FR 72119) and June 18, 1981 (46 FR 31881). The footnotes to the table were not relevant to the rulemaking actions, but were only published in order to show the table in its entirety. Therefore, these corrections have no effect on the final rulemaking notices where the errors appeared.

FOR FURTHER INFORMATION CONTACT: Sharon Reinders, U.S. Environmental Protection Agency, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6034.

Dated: June 14, 1982.

Valdas V. Adamkus,

Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart KK—Ohio

1. In § 52.1875 footnote "f" to the table is revised by correcting clerical errors which appeared in f (1) and (2).

§ 52.1875 Attainment dates for national standards.

* * * * *

f. * * *

(1) Youngstown Sheet & Tube Co.; PPG Industries, Inc.; Wheeling-Pittsburgh Steel Corp.; Pittsburgh-Canfield Corporation; The Timken Company; The Sun Oil Company; Sheller-Globe Corp.; the B. F. Goodrich Company; Phillips Petroleum Co.; Shell Oil Co.; Federal Paper Board Co.; The Firestone Tire & Rubber Co.; Republic Steel Corp.; Chase Bag Co.; White-Westinghouse Corp.; U.S. Steel Corp.; Interlake, Inc.; Austin Powder Co.; Diamond Crystal Salt Co.; The Goodyear Tire & Rubber Co.; The Gulf Oil Co.; The Standard Oil Co.; Champion International Corp.; Koppers Co., Inc.; General Motors Corp.; E. I. du Pont de Nemours and Co.; Coulton Chemical Corp.; Allied Chemical Corp.; Specialty Chemicals Division; The Hoover Co.; Aluminum Co. of America; Ohio Greenhouse Assoc.; Armco Steel Corp.; Buckeye Power, Inc.; Cincinnati Gas and Electric; Cleveland Electric Illuminating Light Co.; Columbus and Southern Ohio Electric; Dayton Power and Light Co.; Duquesne Light Co.; Ohio Edison Co.; Ohio Electric Co.; Ohio Power Co.; Pennsylvania Power Co.; Toledo Edison Co.

(2) In Summit County: Diamond Crystal Salt; Firestone Tire & Rubber Co.; General Tire & Rubber; B. F. Goodrich Co.; Goodyear Aerospace Corp.; Goodyear Tire & Rubber Co.; Ohio Edison Co.; RCA Rubber Co.; Chrysler Corp.; PPG Industries, Inc.; Seiberling Tire & Rubber; Terex Division of General Motors Corp.; Midwest Rubber Reclaiming; Kittinger Supply Co.

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[FR Doc. 82-16989 Filed 6-22-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-6-FRL 2144-2]

Approval and Promulgation of Implementation Plans for Monsanto Chemical Intermediates Co., Texas City and Chocolate Bayou, Tex.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA is approving the Monsanto Chemical Intermediates Company Alternative Emission Reduction Plans ("Bubbles") at their two facilities in Texas City and Chocolate Bayou, Texas. At the Texas City Plant, Monsanto is proposing to trade the emission reductions resulting from the shutdown of Department 10 (ethylene unit), the incineration of Synthetic Organic Compounds (SOC) emissions from barge and ship loading facilities, and reducing the emissions from the operation of a Styrene Vacuum System in lieu of the control of emissions from ten storage tanks at this facility. The use of emission reduction credits from a source shutdown is consistent with EPA's newly expanded emissions trading policy statement. At the Chocolate Bayou Plant, Monsanto is

proposing to trade the emission reductions from the incineration of SOC emissions from a formalin unit in lieu of the control of emissions from eight storage tanks. This action will be effective on August 23, 1982, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

EFFECTIVE DATE: This rule is effective August 23, 1982.

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

The Office of the Federal Register, 1100 L Street, NW., Room 8501, Washington, D.C. 20460

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

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

FOR FURTHER INFORMATION CONTACT: John R. Hepola, Chief, State Implementation Plan Section, Air Branch, Air and Waste Management Division, EPA Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767-1518.

SUPPLEMENTARY INFORMATION: On January 6, 1982, the Governor requested a revision to the Texas SIP for Alternative Emission Reduction Plans ("Bubbles") for Monsanto Chemical Intermediates Company Facilities in Texas City and Chocolate Bayou, Texas. EPA concurrently reviewed the proposed bubbles with the State and developed an evaluation report which analyzes in detail the acceptability of these two Monsanto bubble proposals. This evaluation report was revised in May, 1982 in order to follow the interim guidance criteria established in the new proposed bubble policy published in the **Federal Register** on April 7, 1982. This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 Office and the other addresses listed above.

Background

In 1972 Monsanto obtained a Texas Air Control Board exemption from controls for certain Synthetic Organic Compounds (SOC's) on the basis of relatively low reactivity in the formation of photochemical oxidants; now listed as ozone. The 1979 revision to the Texas SIP cancelled the exemptions, thereby requiring Monsanto to control the release of these compounds to the atmosphere. These compounds are stored in eight tanks and ten tanks at Monsanto's Chocolate Bayou and Texas City, Texas Plants, respectively.

At the the Texas City Plant, Monsanto is proposing to trade the emission reductions resulting from the alternative controls (129.0 tons per year) in lieu of the control of emissions from the ten storage tanks (104.2 tons per year) that were exempted prior to the 1979 Texas SIP revision, but which now must be controlled. This action will result in an emissions trade benefit of 24.8 tons per year.

At the Chocolate Bayou Plant, Monsanto is proposing to implement alternative emission controls (200.0 tons per year) in lieu of the control of emissions on the eight storage tanks (163.6 tons per year) resulting in an emission trade benefit of 36.4 tons per year.

Review

The review of these two bubbles follows the criteria outlined in the April 7, 1982 **Federal Register** (47 FR 15076) that discusses procedural and technical requirements for using alternative approaches.

A. Procedural Requirements

For sources to be eligible to use the emissions trading policy statement for bubbles, the following criteria must be met.

1. Emission trades must involve the same pollutant. Both Monsanto Bubbles trade Synthetic Organic Compounds (SOC's) emissions in lieu of controls of SOC emissions at ten (10) storage tanks at the Texas City plant and eight (8) storage tanks at the Chocolate Bayou Plant. Thus, these Monsanto Bubbles meet the first requirement of trading the same pollutant.

2. All uses of Emission Reduction Credits must satisfy ambient tests. For SOC's, "pound for pound" trades may be treated as equal in ambient effect. At the Texas City Plant, the bubble will result in an emissions trade benefit of 25 tons per year; at the Chocolate Bayou Plant, the bubble will result in an emission trade benefit of 36 tons per year. Thus, the ambient test is satisfied because the "pound for pound" requirement has been exceeded.

3. Trades should not increase net baseline emissions in nonattainment areas. Monsanto's Texas City and Chocolate Bayou Plants are located in Galveston County, Texas and Brazoria County, Texas, respectively. Galveston and Brazoria Counties are listed as rural ozone nonattainment areas; the March 3, 1978 **Federal Register** (43 FR 8962) contains a discussion of this designation. EPA's policy toward rural ozone nonattainment areas is discussed in the General Preamble for "Approval of State Implementation Plan Revisions for Nonattainment Areas" of the April 4, 1979 **Federal Register** (44 FR 20372). Demonstrations of attainment and Reasonable Further Progress for rural ozone nonattainment areas are not required. This policy requires States to implement Reasonably Available Control Technology (RACT) for sources located in such areas. These requirements are based on the assumption that the nonattainment status for rural counties is caused by sources in nearby urban counties.

In the March 25, 1980 **Federal Register** (45 FR 19209) EPA determined that Texas had implemented the RACT requirements in the 1979 SIP. Thus, these two bubbles satisfy the third procedural requirements.

4. Emissions trades should not increase hazardous pollutants. The review of the two Monsanto Bubbles indicates that none of the emission points involved in these two proposals are covered under the requirements of Section 112, NESHAPS. Thus, this procedural requirement has been met by the two bubbles under consideration.

5. Emissions trades cannot be used to meet technology based requirements. Both of Monsanto's Texas City and Chocolate Bayou plants are existing sources and there are no emission increases at any emission points involved in this bubble. BACT, LAER and NSPS requirements are not applicable; thus, these two bubbles satisfy this criterion.

6. Provisions for trades involving Open Dust Emissions. The Monsanto proposals do not include provisions for trades involving open dust; therefore, these provisions are not applicable to these two bubbles.

B. Technical Requirements

To assure that emissions trades do not contravene relevant requirements of the Clean Air Act, only reductions which are surplus, enforceable, permanent, and quantifiable can qualify as emission reduction credits and be used in an emissions trade.

In determining whether the emissions involved in both bubbles are surplus, the first step is to locate the facilities. Monsanto's Texas City and Chocolate Bayou Plants are located in Galveston County and Brazoria County, Texas, respectively.

These counties are listed as rural ozone nonattainment areas for which demonstrations of attainment and Reasonable Further Progress are not required. Only RACT is required; EPA has determined that the 1979 Texas SIP

implemented RACT in these areas; therefore, the emissions in these two bubbles are surplus. These two bubbles provide for net decrease of SOC emissions at both the Texas City and Chocolate Bayou Plant.

The second criterion for approvability of a bubble revision is that the provisions of the bubbles must be enforceable. TACB, through Executive Order, attached documents to each of the Monsanto proposals which specified the enforceable emission limits for each of the emission points at which alternative controls are to be implemented. Since this document will be a part of the SIP revision, the alternative emission controls are enforceable.

The third criterion deals with the emissions being permanent. To limit the SOC's emissions from the storage tanks, Monsanto will be required to store only the SOC's in these tanks. Once this proposal is approved, the dedication of these tanks to specific SOC's at each plant will become a part of the SIP.

The fourth criterion for approvability is that all reductions must be quantifiable. EPA has determined that the emissions involved in each of the bubbles are quantifiable in the creation of emission reduction credits.

Summarizing, both Monsanto Bubbles meet the criteria set forth in the April 7, 1982 **Federal Register** that incorporates the Bubble Policy into a comprehensive Emissions Trading Policy. Therefore, EPA is fully approving the two Monsanto Bubbles, as discussed above for incorporation into the Texas SIP.

Since these revisions included in this approval notice are considered general revisions having little effect on air quality and generating minimal public interest, EPA is today approving these revisions without prior proposal.

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice (August 23, 1982). 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.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities since it imposes no new requirements.

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 requirement. (See 307(b)(2).)

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

Note.—Incorporation by reference of the SIP for Texas was approved by the Director of the Federal Register on July 1, 1981. This notice of final rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended, 42 U.S.C. 7410.

List of Subjects in 40 CFR Part 52

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

Dated: June 16, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart SS—Texas

In § 52.2270, (c) is amended by adding subparagraphs (34) and (35) as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(34) Revision to the Texas SIP for Monsanto Chemical Intermediates Company Bubble in Texas City, Texas were submitted by the Governor on January 6, 1982, (Board Order No. 81–13).

(35) Revisions to the Texas SIP for the Monsanto Chemical Intermediates Company Bubble in Chocolate Bayou, Texas were submitted by the Governor on January 6, 1982, (Board No. 81–14).

[FR Doc. 82–16922 Filed 6–22–82; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[AD–FRL 2153–4]

Requirements for Preparation, Adoption, and Submittal of State Implementation Plans; New SIP Processing Procedures To Save Time and Resources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Informational notice.

SUMMARY: The purpose of this notice is to inform the public of EPA efforts to shorten and streamline the State Implementation Plan (SIP) review process. Specific new SIP processing procedures, discussed in an earlier **Federal Register** notice (September 4, 1981, 46 FR 44476), are described, as are the results of an EPA study of their effectiveness.

FOR FURTHER INFORMATION CONTACT: John Calcagni, Chief, Plans Analysis Section, Control Programs Operations Branch, MD–15, Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, (919) 541–5665; FTS 629–5665.

SUPPLEMENTARY INFORMATION: Over the past several years, numerous concerns have been raised both within EPA and the air pollution control community in general regarding the time and complexities involved in processing SIP revisions. On July 22, 1981, as a result of these concerns, EPA initiated a national experimental SIP processing program designed to improve and enhance the SIP process. The program aimed at shortening the time necessary to complete rulemaking actions, avoiding unnecessary EPA review, providing the State with EPA's formal comments on a more timely basis, and reducing the uncertainty States and industry felt regarding EPA's position on specific issues.

At least 40 percent of all SIP revisions processed between July 22, 1981, and January 5, 1982, were processed using one of three processing techniques. To determine the effectiveness of the techniques, EPA conducted a study comparing the existing system of processing SIP's to these new procedures. The results of the study showed the new processes not only saved significant amounts of time, but generated an overwhelmingly positive response within EPA and without. As a result, EPA is instituting these procedures on a permanent basis.

The following are descriptions of these processing techniques and the results of EPA's study to determine their effectiveness.

Parallel Processing

In the past, SIP revisions were developed between the States and EPA through independent rulemaking processes. First, the State would develop and adopt a regulation following its administrative procedures. Then, it would be submitted to EPA for Federal approval/disapproval action. This sequential/independent rulemaking process often led to tension between the

State and EPA. The total review process was lengthy and there were many opportunities for false starts, miscommunication, and misunderstanding over the approval of a SIP revision, even though the State may have spent a considerable amount of time developing and adopting the regulation. In some cases, if significant changes were required by EPA, the State would have to repeat its rulemaking process.

Parallel processing was first implemented in April 1981 in EPA Region I. In July 1981, the program was expanded to include all EPA Regions. Using the parallel processing procedure, the EPA Regional Office works closely with the State as it develops a major regulation and proceeds through the State rulemaking process. Whenever possible, the State and EPA propose the regulation at the same time, announce concurrent comment periods, and jointly review the comments. The EPA Regional Office will consult with all other appropriate EPA offices as the regulation is being developed and during the State and Federal rulemaking process to ensure that all issues are identified before the State adopts the regulation.

If the State or EPA receives no comments that would necessitate significant changes to the regulation, it will be adopted by the State and submitted to EPA. The State-adopted regulation will then be processed by EPA as a final rulemaking. If significant changes must be made to the proposed regulation due to comments during the public comment period, EPA would have to repropose the regulation.

EPA rulemaking to incorporate a State regulation in a SIP may also be initiated when a rule has been proposed by the State but not yet adopted. This will allow the total Federal/State processing time to be reduced in cases where State rulemaking has progressed too far to allow the ideal parallel processing procedure.

To test the effectiveness of the parallel processing technique, EPA had to first find out the average time it took to process a SIP using previously established procedures. A random selection of 137 typical SIP revisions processed between 1978 and October 1981 were analyzed. Using existing procedures, it took an average of 425 calendar days from the time the SIP revision was submitted to EPA by the State until it was published as a final rulemaking in the **Federal Register.**

A SIP revision processed between April 1981 and January 1982, using the parallel processing technique, took an average of 128 calendar days from the time it was submitted to EPA until the final rulemaking was published in the **Federal Register.** Thus, the processing time was reduced by 297 days.

In conclusion, parallel processing is not appropriate for all SIP revisions. But when issues are clearly understood and the expected State action is well defined, employing such an approach can save in excess of 60 percent of the normal processing time.

Immediate Final Rulemaking

The immediate final rulemaking SIP processing approach was first used in June 1981 in EPA Region IV. In July 1981, the program was expanded to include all Regions.

Previously established procedures required that all SIP revisions be proposed for public comment before going to final rulemaking. The comment period could be 30 or 60 days depending on the anticipated public interest in the revision. Because of the straightforward nature of some actions, or the narrowness of their scope, many SIP revisions get few, if any, comments from the public during the comment period. Therefore, as part of EPA's new SIP processing program, a SIP revision that is judged by EPA to be noncontroversial and where no adverse public comments are anticipated, will be published as a final rulemaking without first going through a proposed rulemaking phase. The public will be advised that no comments are anticipated and that, unless notice is received within 30 days that someone wishes to submit adverse or critical comments, the rulemaking will be effective 60 days from the date the notice is published. If notice is received that someone wishes to submit adverse or critical comments, the final rulemaking notice will be withdrawn and a proposed rulemaking notice will be published. The proposed rulemaking notice will establish a comment period.

As of January 5, 1982, 90 SIP revisions had been processed using the immediate final rulemaking approach. Less than five percent of these were withdrawn because notice was received that someone wished to submit adverse or critical comments. To determine the effectiveness of this technique, the 90 SIP revisions that were processed using it were compared to 81 SIP revisions processed between 1978 and October 1981 using previously established procedures. The 81 SIP revisions used in the comparison did not receive comments during their proposed rulemaking and therefore it was assumed that most of them could have been processed using the immediate final rulemaking approach. The average processing time for the SIP revisions using existing processing procedures was 419 calendar days. Using the immediate final rulemaking approach, it took an average of 161 calendar days. Thus, there was an average savings of 258 days to process a SIP revision using this technique.

Other Agency Actions

EPA has also implemented a number of administrative measures to streamline internal Agency review. One of these measures, which was first implemented as an experimental processing technique in EPA Region V in April 1981 and expanded in July 1981 to include all Regions, eliminates duplicative reviews by EPA Headquarters offices of SIP revisions that do not change significantly during their proposed rulemaking. This technique saved an average of 149 calendar days in processing time.

Because use of these procedures has been found to save considerable time as well as resources, EPA intends, to use them whenever possible to more efficiently process SIP revisions. Parallel processing will be used for major SIP revisions that are likely to require coordination and cooperation between the State and EPA to identify and resolve issues and to make policy determinations in a more expedient manner. Immediate final rulemaking will be used to process SIP revisions that are noncontroversial and are not likely to elicit public comments. Finally, EPA Headquarters has eliminated its review of final rulemaking notices for SIP revisions that do not change significantly during their proposed rulemaking. EPA guideline documents for processing SIP revisions will be updated to reflect these changes.

List of Subjects in 40 CFR Part 52

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

Dated: June 11, 1982.

Kathleen M. Benett,

Assistant Administrator for Air, Noise & Radiation.

[FR Doc. 82-16997 Filed 6-22-82: 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 125

[WH-FRL 2150-3]

Modification of Secondary Treatment Requirements for Discharges Into Marine Waters; Public Meetings

Correction

In FR Doc. 82-16446, published on page 25963, on Wednesday, June 16, 1982, in the third column, in the first paragraph under **"SUPPLEMENTARY INFORMATION,"** in the sixteenth line "may not" should be corrected to read "may now".

1505-01-M

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40 CFR Part 710

[OPTS 80012; TSH-FRL 2153-3]

Inventory Reporting Regulations Intent To Release Aggregate Production Statistics

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule related notice.

SUMMARY: This notice describes an aggregation method by which the Environmental Protection Agency will publicly release total production statistics for chemical substances reported for the Toxic Substances Control Act (TSCA) initial and revised Inventory of Chemical Substances. This aggregation method applies to Inventory chemical substances which have one or more confidentiality claims for production ranges associated with them. The confidentiality of individual production ranges will be protected from disclosure in two ways: First, by using broad production ranges to express the total production for a substance, thereby masking individual confidential production ranges associated with a substance; second, by requiring as a condition of releasing the information that, for each confidential production claim, it would not be possible to identify the reported production claim to within three confidential production ranges from public data.

DATES: Public comments on the aggregation methodology will be accepted until August 23, 1982. Please indicate in your comments whether or not you think a public meeting to discuss the aggregation method would be helpful. If sufficient interest is shown, a future **Federal Register** notice will be published announcing the date and location of the meeting.

ADDRESS: All comments should bear the identifying notation OPTS-80012 and be addressed to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS-799), Environmental Protection Agency, Rm. E-509, 401 M St., SW., Washington, D.C. 20460, Toll Free: (800-424-9065), in Washington: (544-1404), outside the USA: (Operator-202-544-1404).

SUPPLEMENTARY INFORMATION:

Inventory Reporting Statistics

In the Final Inventory Reporting Regulations, published in the **Federal Register** of December 23, 1977 (42 FR 64592), and in the Notice of Availability of TSCA Initial Inventory, published in the **Federal Register** of May 15, 1979 (44 FR 28561), EPA stated that it would develop aggregation rules for releasing Inventory data and would propose these rules for public comment. Though a formal public comment provision would not normally be required, EPA believes that this added provision will provide the Agency valuable insight and will encourge the development of a useful aggregation method which provides adequate protection to the confidentiality of Inventory data. "Aggregation" means, in this context, creating totals which include elements of separate records. This Notice contains a proposed aggregation process. The aggregation method described in this Notice would permit the release of total production ranges for almost all chemical substances reported for the Inventory.

When chemical substances were reported for inclusion on the Inventory, submitters were required to report their 1977 production for each substance in one of the following eleven ranges:

Category and Range

N—None
0—0 to 1,000 lbs.
1—1,000 to 10,000 lbs.
2—10,000 to 100,000 lbs.
3—100,000 to 1 million lbs.
4—1 million to 10 million lbs.
5—10 million to 50 million lbs.
6—50 million to 100 million lbs.
7—100 million to 500 million lbs.
8—500 million to 1 billion lbs.
9—Over 1 billion lbs.

Inventory submitters had the option of claiming confidentiality for the production ranges they reported. Of the 54,369 chemical substances reported for the Inventory, approximately 21,400 substances, or about 40 percent, had one or more submitters who made claims of confidentiality for production ranges. The following is a breakdown of the number of confidential production claims per substance: 15,422 substances had only one confidential production claim, 3,000 substances had two confidential production claims; 3,010 substances had three or more confidential production claims.

All non-confidential production ranges for Inventory chemical substances have already been made public.

Rule of Three Rejected

A common method employed by Federal agencies to aggregate information without disclosing confidential information is referred to as the "Rule of Three." Under the Rule of Three, there must be at least three confidential statistics before any data are aggregated. Refer to the "Statistical Policy Working Paper 2—Report on Statistical Disclosure and Disclosure Avoidance Techniques," Appendix A, U.S. Department of Commerce, Office of Federal Statistical Policy and Standards (1978). Because the Rule of Three could be applied only to the 3,010 chemical substances which have three or more confidential production claims, another approach was sought which would allow the release of aggregate information about the remaining 18,422 chemical substances which have less than three confidential production claims.

The Rule of Three is based on the premise that given at least three confidential claims, no one—not even a claimant—can derive the value of another confidential claim from the information released in a public aggregate figure.

In an instance such as this one when the Rule of Three cannot be applied effectively, rolling up data is the technique used to prevent disclosure. In this technique data are combined or aggregated into larger intervals or groupings. Using this method, the amount of aggregation in the published data is set sufficiently high to prevent the use of that data to calculate the value of a confidential item.

Principal Characteristics of the Roll Up Method

The roll up method proposed here has characteristics necessary to ensure the protection of individual confidential production ranges. Broad production ranges were created within which the total reported production for a chemical substance is included. These broad ranges have the effect of masking the smaller confidential production ranges reported to the Inventory. The four aggregate production ranges are:

Range 1—0 to 1 million lbs.
Range 2—1 million to 100 million lbs.
Range 3—100 million to 1 billion lbs.
Range 4—1 billion lbs. and above.

To determine which of the above four ranges could be used to represent the total production for a chemical substance with a confidential production range(s), the upper and lower bounds of all Inventory production ranges reported for that substance were added together. (The value of the upper bound for Reporting Range 9 was presumed to be 4 billion lbs.) As a result of this calculation EPA was able to identify the intervals in which the total production level for each of the reported chemical substances lies. In almost all cases this interval lies within one of the four broader aggregate production ranges listed above. When this is the case, the Inventory chemical name will be associated directly with one of the four production ranges.

However, in a limited number of cases the true production interval calculated overlaps either the upper or lower bound of one of the four aggregate production ranges. In these cases the Inventory chemical name will be associated with one of the four aggregate ranges, but will also be marked with an asterisk. For these substances EPA will publish an expanded aggregate range value which is based on the calculated total production interval.

Requirements Established for the Aggregate Computer Program

A computer program was developed and employed to determine whether the release of aggregated production statistics would breach confidentiality claims made for any Inventory chemical substance and to determine the number of aggregates releasable under imposed constraints. The program tested each data set to determine if, by comparing nonconfidential data to aggregate information, data claimed confidential could be calculated to within three Inventory ranges. No aggregate values will be published for the limited number of substances which failed to pass the three Inventory ranges test.

Number of Aggregates Releasable

Aggregates for the vast majority of the chemical substances with one or more confidential production claims would qualify for release under the constraints imposed by this roll up method. The aggregates for only a small number of the substances with multiple claims failed to meet the requirement of not being identified to within the reported Inventory production intervals.

The requirement that confidential claim values not be identifiable to less than three Inventory ranges realistically balances considerations of confidentiality and data availability. If the requirement were raised from three or more possible Inventory ranges to four or more possible Inventory ranges for each confidential production claim, the number of aggregates releasable would drop dramatically while the confidentiality protection provided would not be significantly more effective.

Public Comment Solicited on Specific Issues

EPA recognizes that the release of aggregate statistics about any confidential data does reveal certain information about that data. In using this standard roll up method, confidentiality considerations were carefully balanced against the Agency's commitment to release aggregated data on Inventory chemicals. Such information about these substances has been requested frequently by State governments, private citizens, and other interested parties.

Public comment is solicited on whether this approach provides adequate protection for confidential production claims and on the value of the public disclosure and the possible uses of these aggregates given that they represent 1977 production statistics and are expressed in broad production ranges.

After considering relevant comments and holding any public meetings which are deemed necessary, EPA will decide whether to publish final procedures for aggregating Inventory production information.

(Sec. 8, Pub. L. 94-469; 90 Stat. 2027 (15 U.S.C. 2607))

List of Subjects in 40 CFR Part 710

Chemicals, Environmental protection, Premanufacture notification, Hazardous materials, Recordkeeping and reporting.

Dated: June 15, 1982.

Don R. Clay,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 82-16996 Filed 6-22-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 436

Medicaid Program; State Residency for Institutionalized Individuals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: These regulations extend the time period in which a State is required to furnish Medicaid to a beneficiary who is institutionalized in that State and who, under other provisions of the regulations, would be considered a resident of another State. As originally published, the regulations specified a time period of two years during which the requirements applied. That period ended on October 15, 1981. This document extends that period to June 23, 1983, in order to allow HCFA time to review all of the Medicaid policies on residency to determine if any changes are needed and to give States more time to transfer patients if desired.

EFFECTIVE DATES: October 15, 1981. These regulations are being published in final, for reasons described in the Supplementary Information, below. However, we will consider any written comments mailed by August 23, 1982.

ADDRESS: Address comments in writing to: Administrator, Department of Health and Human Services, Health Care Financing Administration, P.O. Box 17076, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or to Room 789, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BPP-199-FC. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309-G of the Department's office at 200 Independence Ave., SW., Washington, D.C., 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION, CONTACT: Marinos Svolos, (301) 594-9050.

SUPPLEMENTARY INFORMATION:

Background

When administering the Medicaid program, a State may restrict Medicaid eligibility to individuals who are residents of the State. Until October 15, 1979, our regulations did not specifically address various situations that arise in determining residence and were not uniformly interpreted by the States. The problem was particularly notable with respect to institutionalized individuals who formerly lived in another State.

On October 15, 1979, new regulations regarding residency became effective. One reason for changing the regulations was to achieve equity in terms of which State is responsible for a given individual. For example, the change protected States with good facilities against an influx of individuals from other States that provide less adequate institutional care. However, the regulations also created a classification of persons who could be adversely affected by the new regulations. That is, some beneficiaries, under the new regulations, could be declared residents of States that did not offer the services the individuals were currently receiving; for example, a person in an intermediate care facility for the mentally retarded might be declared a resident of a State that does not provide that service. To counter this effect, the regulations contained a "grandfather" clause that provides continued Medicaid coverage for these beneficiaries for two years. The purpose of the grandfather clause was to protect beneficiaries while allowing States reasonable time to negotiate new placements with another State on a case-by-case basis. During this grandfathering period, the State that was responsible before the regulations changed had to continue to provide Medicaid to any individual who was covered, unless it made arrangements under which the new State of residence would provide Medicaid at an earlier date.

Regulatory Provisions

In these regulations, we are extending the time limits of the grandfather clause to June 23, 1983 (unles the State arranges for the State of residency to provide Medicaid at an earlier date). This will allow time for HCFA to review the complete set of regulations on State residency, and for publication of any changes in the regulations that may result from the review. In the interim, it will also allow States more time to arrange for patients' placement in another State or for reimbursement by the appropriate State of residence as determined under the existing regulations.

Extending the grandfather provision until after HCFA has reviewed the regulations is more practical than requiring the States to implement a provision that may soon be revised.

As an interim measure, we have requested the States to continue the grandfather period until these regulations are published, instead of October 15, 1981, the date the two-year period was originally due to expire. Publication of these regulations will automatically extend the provision from October 15, 1981 to one year after publication.

In this document, we are also making a technical change to 42 CFR 435.403(i). This paragraph discusses requirements for written agreements between States setting forth rules and procedures for resolving cases of disputed residency. This paragraph incorrectly states that agreements between States may establish criteria for residency other than those specified in paragraphs (b) through (f) of § 435.403; the correct reference should be to paragraphs (b) through (g).

Impact Analyses

Executive Order 12291

The Secretary has determined that the proposed regulations do not meet the criteria for a "major rule", as defined by section 1(b) of Executive Order 12291. That is, the proposed regulations will not—

- Have an annual effect on the economy of $100 million or more;
- Result in a major increase in costs or prices for consumers, any industries, any government agencies or any geographic regions; or
- Have 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 import markets.

Since we are extending a provision currently in effect, there will be no change in the current Medicaid expenditures with respect to the affected individuals.

Regulatory Flexibility Act

Section 604 of Pub. L. 96–354 (the Regulatory Flexibility Act of 1980) requires that a Federal agency prepare, and make available to the public, a final regulatory flexibility analysis when a final rule is published that has an effect on small businesses and other small entities.

As defined by the Regulatory flexibility Act, the term "small entities" includes "small governmental jurisdictions". The latter term is defined as local governments (cities, counties, towns, townships, villages, school districts, or other special districts) with a population of less than fifty thousand persons.

As explained above, these regulations will extend the grandfathering provision until one year after publication unless the State arranges for the State of residency to provide Medicaid at an earlier date. It is possible the regulations will affect a number of small entities (mainly nursing homes) because some institutions will continue to serve patients who would have left otherwise, and other institutions that might have gained patients will not. Although we are uncertain of the number of institutions or beneficiaries that might be affected by these regulations, we do not believe that the number will be substantial nor the effect economically significant. Therefore, the Secretary certifies, under section 605(b) of the Regulatory Flexibility Act, that the regulations will not have a significant economic impact on a substantial number of small entities.

Waiver of Proposed Rulemaking

The purpose and rationale for these residency regulations were published, in proposed and final form, two years ago. The regulation changes published today merely extend a time period.

Because the content of the regulations has already gone through proposed and final rulemaking and because the extension protects both States and beneficiaries against hardships that would be caused by failure to continue the grandfather clause, we believe that publication of a notice of proposed rulemaking is unnecessary and would be contrary to the public interest.

Until these regulations are published in final, we believe there will be confusion, inconsistent application of the provision, and possible disagreements among States. We have informed States that HCFA will review the entire current residency regulations against the criteria of removing unnecessary requirements while protecting the health and safety of beneficiaries.

We have also notified the States that we intend to continue this provision until after HCFA's review and have requested them to do so on an interim basis, as explained above. However, if some States are uncertain about our publication of regulations, they may propose to transfer beneficiaries to other States, which can cause interstate conflicts, hardship to the receiving States in determining in a very short

time the eligibility of beneficiaries and (if necessary) the availability of a facility or other services, and hardship to both beneficiaries and States if regulations resulting from HCFA's review obviate the basis for the transfers or cause some beneficiaries to be transferred twice.

Because of the potential harm to beneficiaries and States alike, we therefore find good cause to waive notice of proposed rulemaking and our normal 30-day delay in effective date. We will, however, consider any comments on this rule that are mailed by the date specified above in the "Dates" section and make any further changes that may be necessary.

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, if as a result of comments, we believe that changes are needed in these regulations, we will publish the changes in the **Federal Register** and respond to the comments in the preamble of that document. In addition, we will incorporate those changes, as well as our response to comments, into any revisions to be made as a result of the review by the Task Force on Regulatory Reform.

List of Subjects

42 CFR Part 435

Aid to families with dependent children, Aliens, Categorically needy, Contracts (Agreements—State plan), Eligibility, Grant-in-Aid program—health, Health facilities, Medicaid, Medically needy, Reporting requirements, Spend-down, Supplemental security income (SSI).

42 CFR Part 436

Aid to families with dependent children, Aliens, Contracts (Agreements), Eligibility, Grant-in-Aid program—health, Guam, Health facilities, Medicaid, Puerto Rico, Supplemental security income (SSI), Virgin Islands.

42 CFR Parts 435 and 436 are amended as set forth below.

PART 435—ELIGIBILITY IN THE STATES AND DISTRICT OF COLUMBIA

The authority citation for Part 435 reads as follows:

Authority.—Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

1. In Part 435, Subpart E, § 435.403 is amended by revising paragraphs (i) and (j)(1) as follows:

§ 435.403 State residence.

* * * * *

(i) *Interstate agreements.* A State may have a written agreement with another State setting forth rules and procedures resolving cases of disputed residency. These agreements may establish criteria other than those specified in paragraphs (b) through (g) of this section, but must not include criteria that result in loss of residency in both States or that are prohibited by paragraph (h) of this section. The agreements must contain a procedure for providing Medicaid to individuals pending resolution of the case.

(j) *Continued Medicaid for institutionalized recipients.* If, on the effective date of this section, an agency is providing Medicaid to an institutionalized recipient who, as a result of this section, would be considered a resident of a different State—

(1) The agency must continue to provide Medicaid to that recipient until June 23, 1983 unless it makes arrangements with another State of residence to provide Medicaid at an earlier date; and

* * * * *

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

The authority citation for Part 436 reads as follows:

Authority.—Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

2. In Part 436, § 436.403 is amended by revising paragraph (i)(1) as follows:

§ 436.403 State residence.

* * * * *

(i) *Continued Medicaid for institutionalized recipients.* If, on the effective date of this section, an agency is providing Medicaid to an institutionalized recipient who, as a result of this section, would be considered a resident of a different State—

(1) The agency must continue to provide Medicaid to that recipient until June 23, 1983 unless it makes arrangements with another State of residence to provide Medicaid at an earlier date; and

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: May 20, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: June 7, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-16911 Filed 6-22-82; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6278

[M-40685]

Montana; Partial Revocation of Various Orders Designating Public Water Reserve No. 107

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order will partially revoke various Secretarial orders designating Public Water Reserve No. 107. This action will restore 783.13 acres of land to full operation of the public land laws, including nonmetalliferous mining. All lands affected by this order have been and will remain open to nonmetalliferous mining and mineral leasing.

EFFECTIVE DATE: July 21, 1982.

FOR FURTHER INFORMATION CONTACT: Roland F. Lee, Montana State Office, 406-657-6291.

By virtue of the authority vested in the Secretary of the Interior, by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Those portions of Public Water Reserve No. 107 granted to BLM by Executive Order of April 17, 1926, and further designated by Secretarial Orders of Interpretation Nos. 155 and 176 dated December 11, 1931, and February 10, 1935, are hereby revoked insofar as they affect the following described lands:

Interpretation No. 155 of Public Water Reserve No. 107

Principal Meridian

T. 20 N., R. 21 E.,
Sec. 10, S½NW¼, N½SW¼.
T. 9 S., R. 24 E.,
Sec. 21, S½NW¼, E½SW¼.

Interpretation No. 176 of Public Water Reserve No. 107

Principal Meridian

T. 26 N., R. 19 E.,
Sec. 24, SE¼SE¼;
Sec. 25, NE¼NE¼.

T. 26 N., R. 20 E.,
Sec. 19, lot 4 (formerly described as SW¼SW¼);
Sec. 30, lot 1 (formerly described as NW¼NW¼).
T. 26 S., R. 23 E.,
Sec. 18, lot 1 and NE¼NW¼ (formerly described as N½NW¼);
Sec. 19, NE¼SE¼;
Sec. 20, W½SW¼.
T. 9 S., R. 24 E.,
Sec. 7, S½SE¼;
Sec. 18, NE¼NE¼.

The area described aggregates 783.13 acres in Blaine, Carbon and Fergus Counties.

2. At 7:45 a.m. on July 21, 1982, the lands described in paragraph 1 of this order will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. All valid applications received at or prior to 7:45 a.m. on July 21, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The described lands in paragraph 1 will also be open to the location of nonmetalliferous minerals under the United States mining laws, at 7:45 a.m. on July 21, 1982. The lands have been and will remain open to the location of metalliferous minerals and applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Federal Building, Box 30157, Billings, Montana 59107.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

June 15, 1982.

[FR Doc. 82-16991 Filed 6-22-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6277

[I-16390]

Idaho; Partial Revocation of Reclamation Project Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order will partially revoke a Secretarial Order which withdrew lands lying within the Targhee National Forest for the Dubois Reclamation Project. The affected 160 acres will be open to such forms of disposition as may by law be made of national forest lands.

EFFECTIVE DATE: July 21, 1982.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, Idaho State Office, 208–334–1735.

By virtue of the authority vested in the Secretary of the Interior, by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Secretarial Order dated November 4, 1904, which withdrew lands for the Dubois Reclamation Project, is hereby revoked insofar as it affects the following described lands:

Boise Meridan

Targhee National Forest

T. 11 N., R. 43 E.,
Sec. 3, NW¼NE¼, NE¼NW¼, W½NW¼.

The area described contains 160 acres in Fremont County.

2. At 7:45 a.m. on July 21, 1982, this land shall be open to such forms of appropriation as may by law be made of national forest land, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. All valid applications received at or prior to 7:45 a.m. on July 21, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Federal Building, Box 042, Boise, Idaho 83724.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

June 15, 1982.

[FR Doc. 82-16992 Filed 6-22-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6279

[I-18300]

Idaho; Revocation of Forest Service Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes two withdrawals affecting 92.00 acres of national forest lands withdrawn for use by the Forest Service as an administrative site and a road right-of-way. This action will restore the lands to such forms of disposition as may by law be made of national forest lands.

EFFECTIVE DATE: July 21, 1982.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, 208–334–1597.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Orders of October 15, 1908 and December 16, 1908, which withdrew the following described lands for the Bonners Ferry Eastport Wagon Road and the Eastport Administrative Site, respectively, are hereby revoked in their entirety:

Boise Meridian

Eastport Administrative Site

T. 65 N., R. 2 E.
Sec. 10, N½N½SE¼.

Bonners Ferry Eastport Wagon Road

A road right-of-way approximately 30 feet in width through the following described sections, the subdivisions of which are undefined:
T. 63 N., R. 2 E.,
Secs. 3, and 10.
T. 64 N., R. 2 E.,
Secs. 2, 11, 14, 23, 26, 34 and 35.
T. 65 N., R. 2 E.,
Secs. 10, 14, 15, 23, 26, 34 and 35.

The areas described aggregate 92.00 acres in Boundary County.

2. At 7:45 a.m. on July 21, 1982, the above described lands will be open to such forms of disposal as may by law be made of national forest lands, subject to valid existing rights and the provisions of existing withdrawals. Portions of those lands in the Eastport Administrative Site are occupied by residential and commercial improvements authorized by the Forest Service under permit. Under revocation of this withdrawal, the lands occupied by such improvements will immediately become available for pending Forest Service exchange.

Inquiries concerning the land should be addressed to the Regional Forester, Forest Service, Federal Building, P.O. Box 7669, Missoula, Montana 59807.

June 15, 1982.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 82-16990 Filed 6-22-82; 8:45 am]

BILLING CODE 4310-84-M

Proposed Rules

Federal Register
Vol. 47, No. 121
Wednesday, June 23, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1001

Milk in the New England Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend certain order provisions affecting the pool status of dairy farmers whose milk is diverted to nonpool plants by handlers regulated under the New England Federal milk order. The action was requested by two cooperative associations which are handlers under the order. It would suspend for the months of July and August 1982 the provisions of the order which limit the amount of an individual dairy farmer's milk which may be diverted by a cooperative association if the dairy farmer is to retain producer status. Also to be suspended would be the provision which allows a handler to divert no more than 45 percent of its total receipts of producer milk to nonpool plants during the months of December through August.

DATE: Comments are due on or before June 30, 1982.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202–447–6273.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as a "non-major action."

It also has been determined that any need for suspending certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the **Federal Register**. However, this would not permit the completion of the required suspension procedures and the inclusion of July 1982 in the suspension period if this is found necessary.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

§ 1001.15 [Amended]

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the New England marketing area is being considered for July and August 1982:

In § 1001.15, paragraphs (b)(1) and (b)(2), and paragraph (c).

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, not later than June 30, 1982.

The period for filing comments is limited because a longer period would not provide the time needed to complete the required procedures and include July 1982 in the suspension period.

The comments that are sent will be made available for public inspection in the Hearing Clerk's office during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would make inoperative for July and August 1982 the provisions of the New England Federal milk order that limit the amount of milk that may be diverted from farms to nonpool plants and still retain producer milk status. Provisions which limit the amount of an individual dairy farmer's production which may be diverted to nonpool plants by cooperatives and the percentage of a handler's total receipts of producer milk which may be diverted to nonpool plants would be suspended. The suspension was requested by Eastern Milk Producers Cooperative Association, Inc., and Northern Farms Cooperative, Inc., two cooperative associations which are handlers under the order.

The suspension was requested because of the failure of a handler receiving milk from approximately 100 producers who are nonmembers and members of Eastern Milk Producers and Northern Farms to pay for milk received from those producers. Eastern Milk Producers has assumed the responsibility for marketing the milk of the dairy farmers involved, but has no basis under the order from which to divert their milk since in previous months the nonpaying handler has been the handler of record for the dairy farmers whose milk was received at his plant. As an additional complication, the supply of producer milk is at its seasonal peak, and outlets for surplus milk are limited predominately to nonpool plants. The cooperatives requesting the suspension assert that without suspension action uneconomic movements of milk to pool plants for transshipment to nonpool plants would be necessary solely for the purpose of retaining producer status for dairy farmers regularly and historically associated with the fluid market. According to Eastern Milk Producers and Northern Farms, such unnecessary marketing costs, or the loss of producer status for the dairy farmers involved, could seriously disrupt the orderly marketing of milk in the New England marketing area.

List of Subjects in 7 CFR Part 1001

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on June 18, 1982.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 82-16984 Filed 6-22-82: 8:45 am]
BILLING CODE 3410-02-M

CIVIL AERONAUTICS BOARD

14 CFR Part 323

[Procedural Regulations Docket 40757; PDR-78]

Terminations, Suspensions, and Reductions of Service

Dated: June 3, 1982.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB's rules now contain a provison that would require certificated airlines to file a notice with the Board 90 days before reducing total available capacity at a point by 33 percent or more. The CAB is proposing to revise this notice requirement so that it would apply only to communities for which the CAB has issued an essential air service determination under the small community air service provision of the Federal Aviation Act. This action is taken as a result of a recent court decision.

DATE: Comments by August 23, 1982.

Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

Requests to be put on the Service List: The Docket Section prepares the Service List and sends it to each person listed on it, who then serves comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 40757, Civil Aeronautics Board, 1826 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT: David Schaffer, Office of the General Counsel, Rules & Legislation Division, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; (202) 673-5442.

SUPPLEMENTARY INFORMATION: The Board's notice rule, 14 CFR Part 323, requires airlines to file a notice with the Board and the communities concerned before terminating, suspending, or reducing certain air services. Previously, certificated airlines had to file notices in the following situations:

(1) When terminating or suspending all passenger air transportation at a point regardless of how many other airlines were serving that community;

(2) When reducing air service below the level that the Board had determined to be essential for that community;

(3) When reducing service below the level established by section 419(f) of the Federal Aviation Act;

(4) When terminating or suspending all-cargo air transportation to a foreign country; and

(5) When terminating or suspending the last nonstop or single-plane service on a domestic or foreign route.

By PR-244, 47 FR 7393, February 19, 1982, the Board amended Part 323 to reflect a change in its statutory authority to require termination notices (Section 1601(a)(1)(D) of the Act). Notices (1) and (3) above were revised, notices (4) and (5) were eliminated, and a new notice was added. Part 323 now requires certificated airlines to file notices in the following situations:

(1) When terminating or suspending all passenger air transportation at a point where there is either one or no other certificated airline serving that community;

(2) When reducing air service below the level that the Board has determined to be essential for that community;

(3) When reducing service in Alaska below the level established by section 419(f) of the Act; and

(4) When terminating, suspending, or reducing air service so that the total available seats of all airlines linking that community to FAA-designated hubs would be reduced by 33 percent or more over a 90-day period.

A recent court decision, *Delta Air Lines* v. *CAB*, D.C. Cir. No. 80-2339 (decided February 26, 1982), has cast doubt on the Board's authority to require the fourth notice, the 33 percent notice. In that case, the court decided that the Board may guarantee essential service and require notices only at communities for which it was required to make an essential air service determination under section 419(a)(2) of the Act. Section 419(a)(2) requires the Board to establish essential air service levels for communities that were served by not more than one certificated air carrier on the date that the Airline Deregulation Act of 1978 was passed, and for other communities whose service later drops to not more than one such air carrier.

When the Board adopted the 33 percent notice, it was of the view that the Act's essential service provision, section 419 (49 U.S.C. 1389), empowered it to ensure that all eligible points receive essential air service, including those points for which no essential service determination was required by section 419(a)(2). In light of the court's more restrictive reading of the Board's authority in the *Delta* case, we are proposing to revise the 33 percent notice by applying it only to terminations or reductions of service at communities for which the Board has already made, or is required to make, an essential air service determination. This is the maximum extent of our jurisdiction. While this proceeding is pending, airlines will not have to comply with the 33 percent notice at communities for which the Board has not made an essential service determination, because the Board has waived that notice requirement to that extent by Order 82-4-87.

We continue to view the 33 percent notice as necessary for the implementation of the Act's essential service guarantees, and are therefore proposing to retain it where we have the authority to do so. The Board's essential service guidelines, 14 CFR Part 398, set forth a policy of generally guaranteeing a community no more than 160 seats per day (§ 398.6(a)). Yet many communities have sufficient travel demand to support more service, which is provided by airlines in response to these market forces. It is impossible that a carrier could terminate or significantly reduce its service at such a point although the demand for that service had not diminished. This would leave a significant portion of the community's passenger traffic totally unaccommodated even though the point was still receiving more than 160 seats. In such cases, section 419(a)(2)(C) and 14 CFR 398.6(b)(4) authorize the Board to increase a point's essential service guarantee (known as a transitional essential air service determination) and prohibit the termination or reduction until replacement service can be found. There have been six cases where the Board has found it necessary to protect a community's air service in this way. (See e.g. Orders 79-10-166, 79-12-22, 79-12-137.) Of course, the Board can protect communities from abrupt and significant reductions of service in this way only if it has advance notice that such a reduction will occur. The 33 percent notice fulfills this need. The Board recognizes that significant reductions in service may also occur at communities for which an essential service determination has not been made and is not required, but the Act, as interpreted by the court in the *Delta* case, does not permit it to require advance notice in those cases.

We also request comments on the legality of any other notice set forth above in light of the *Delta* decision.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354, the Board certifies that this rule will not, if adopted as

proposed, have a significant economic impact on a substantial number of small entities. Few air carriers are likely to reduce air service at a community by 33 percent or more over a 90-day period, so there would not be many instances where the 33 percent notice would come into play. If the community involved had had its essential air service level established by the Board, the carrier's obligation to file the 33 percent notice would not be affected by this rule. It is only the communities for which the Board has not established an essential service level that would be affected by this rule, if adopted as proposed. They, however, are likely to be middle-sized communities and the airline serving them is not likely to be a small air carrier.

List of Subjects in 14 CFR Part 323

Air carriers, Essential air service.

Accordingly, the Board proposes to revise § 323.3(a)(5) of 14 CFR Part 323, *Terminations, Suspensions, and Reductions of service,* to read as follows:

§ 323.3 Who shall file notices.

(a) *Terminations, suspensions, or reductions by certificated carriers.* The notice described in § 323.4(a) shall be filed by any certificated carrier that intends to:

* * * * *

(5) Terminate, suspend, or reduce passenger air transportation at an eligible point for which the Board has issued, or is required to issue, an essential air transportation determination under section 419(a)(2) or section 419(b)(4) of the Act so that the total available seats of all the carriers linking that point to FAA-designated hubs will be reduced by 33 percent or more during a 90-day period. Service to a hub shall be considered to be terminated or suspended whenever it is operated less than 5 days per week, with three or more intermediate stops, or in one direction only between two points.

* * * * *

(Secs. 204, 401, 407, 411, 419, and 1601, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 766, 769, 92 Stat. 1732, 1744; 49 U.S.C. 1324, 1371, 1377, 1381, 1389, 1551)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-17000 Filed 6-22-82; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-122 (Colorado-25)]

High-Cost Gas Produced From Tight Formations; Colorado

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of Colorado that the Codell Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on July 19, 1982.

PUBLIC HEARING: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on July 6, 1982.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8511, or Victor Zabel, (202) 357-8616.

SUPPLEMENTARY INFORMATION: Issued June 18, 1982.

I. Background

On June 4, 1982, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the Codell Formation located in Adams, Boulder, Jefferson, Larimer, and Weld Counties, Colorado, be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that the Codell Formation be designated a tight formation should be adopted. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The area recommended for tight formation designation covers approximately 1,700 square miles in the Wattenberg Field, in the western Denver Basin and includes parts of Adams, Boulder, Jefferson, Larimer, and Weld Counties. The formation varies in depth from 3,000 to 8,000 feet, but is generally located at a depth of 7,000 feet and averages about 15 feet in thickness.

III. Discussion of Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG-29, Order No. NG-29-1 convened by Colorado on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Colorado further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Colorado that the Codell Formation, as described and delineated in Colorado's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North

Capitol Street, NE., Washington, D.C. 20426, on or before July 19, 1982. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–122 (Colorado–25), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than July 6, 1982.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below, in the event Colorado's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—CEILING PRICES

Section 271.703 is amended by adding new paragraph (d)(121) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* * * *

(121) *Codell Formation in Colorado.* RM79–76–122 (Colorado–25).

(i) *Delination of formation.* The Codell Formation is located in the Wattenberg Field of the western Denver Basin in parts of Adams, Boulder, Jefferson, Larimer, and Weld Counties, Colorado. The Codell Formation is found in all of Township 1 North, Ranges 64 through 70 West; all of Townships 2 through 4 North, Ranges 64 through 69 West; Township 2 North, Range 70 West, Sections 1 through 5, 8 through 36; Township 3 North, Range 70 West, Sections 1, 12, 13, 21 through 28, 33 through 36; all of Townships 5 and 6 North, Ranges 64 through 68 West; Township 5 North, Range 69 West, Sections 1 through 4, 9 through 16, 20 through 29, 31 through 36; Township 6 North, Range 69 West, Sections 1 through 4, 9 through 16, 21 through 28, 33 through 36; all of Township 1 South, Ranges 64 through 70 West; and all of Township 2 South, Ranges 69 and 70 West; 6th P.M.

(ii) *Depth.* The Codell Formation ranges in depth from 3,000 to 8,000 feet, but is generally found at a depth of 7,000 feet and average 15 feet in thickness.

[FR Doc. 82–16994 Filed 6–22–82; 8:45 am]

BILLING CODE 6717–01–M

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18 CFR Part 271

[Docket No. RM79–76–121 (Colorado–1 Addition)]

High-Cost Gas Produced From Tight Formations; Colorado

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendations of the State of Colorado that an additional area of the J Sand Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on July 19, 1982.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on July 6, 1982.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Victor Zabel, (202) 357–8616.

SUPPLEMENTARY INFORMATION:

Issued June 18, 1982.

I. Background

On June 4, 1982, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that additional areas of the Wattenberg J Sand Formation called the J Sand Formation located in Weld, Jefferson, Boulder, and Larimer Counties, Colorado, be designated as a tight formation. The Commission previously adopted a recommendation that portions of the Wattenberg J Sand Formation in Larimer, Weld, Adams, and Boulder Counties, Colorado, be designated as a tight formation (Order No. 124 issued January 23, 1981, in Docket No. RM79–76 (Colorado–1)). Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that the additional areas of the J Sand Formation in Weld, Jefferson, Larimer, and Boulder Counties, Colorado, be designated a tight formation should be adopted. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Colorado recommends that additional areas of the J Sand Formation on the north and west sides of that acreage granted tight formation designation in Order No. 124 be designated as a tight formation. These areas are contiguous to the original acreage, and are not covered by Colorado's infill drilling order, Order No. 232–20 issued August 21, 1979. Colorado wishes to add portions of Townships 2 South through 4 North, Ranges 69 and 70 West to the west of the previously designated area and portions of Townships 5 and 6 North, Ranges 63 through 69 West to the north of the previously designated area of the Wattenberg J Sand Formation. The areas now being recommended do not include any of the areas which the Commission specifically excluded from its designation of the Wattenberg J Sand Formation in Order No. 124 (see appendix to Order No. 124 for a description of the excluded acreage). The top of the recommended formation appears at an average depth of 8,000 feet.

III. Discussion of Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG–3 convened by Colorado on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Colorado further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Colorado that additional areas of the J Sand Formation, as described and delineated in Colorado's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before July 19, 1982. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–121 (Colorado–1 Addition), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than July 6, 1982.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301—3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below, in the event Colorado's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—CEILING PRICES

Section 271.703 is amended by revising paragraph (d)(11) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(11) *Wattenberg J Sand Formation in Colorado.* RM79–76 (Colorado–1).

(i) *Wattenberg J Sand Formation.*—(A) *Delineation of formation.* The Wattenberg J Sand Formation is located north and east of Denver, Colorado, on the western flank of the Denver-Julesberg Basin, underlying approximately 702,000 acres of land in Boulder, Adams, Larimer, and Weld Counties, Colorado. This formation underlies portions of Township 1 South, Ranges 64 through 68 West; Township 2 South, Ranges 64 and 65 West; Townships 1 and 2 North, Ranges 63 through 69 West; Townships 3 and 4 North, Ranges 63 through 68 West; Township 5 North, Ranges 63 through 69 West, 6th P.M.

(B) *Depth.* The Wattenberg J Sand Formation ranges in depth from 7,600 feet to 8,400 feet. The average depth is 8,000 feet.

(ii) *The J Sand Formation.*—(A) *Delineation of formation.* This formation underlies all or portions of Townships 1 and 2 South, Ranges 69 and 70 West; Townships 1 and 2 North, Range 70 West; Townships 3 and 4 North, Ranges 69 and 70 West; Township 5 North, Range 63 West; Township 6 North, Ranges 63 through 69 West, 6th P.M.

(B) *Depth.* The J Sand Formation ranges from a depth of 7,600 feet to 8,400 feet. The average depth is approximately 8,000 feet.

[FR Doc. 82–16995 Filed 6–22–82; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Coverage of Optometrists' Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: These regulations would expand Medicare coverage of services furnished by optometrists to include examination services related to the condition of aphakia (absence of the natural lens of the eye). Under our current regulations, Medicare coverage of optometric services is limited to dispensing services in connection with the actual fitting and provision of prosthetic lenses.

The regulations are necessary to conform our existing Medicare regulations to a statutory change made by section 937 of the Omnibus Reconciliation Act of 1980.

DATE: In order to be considered, comments should be mailed by August 23, 1982.

ADDRESS: Address comments to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17073, Baltimore, Md. 21235.

If you prefer, you may deliver comments to Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C., of Room 789, East High Rise Building, 6325 Security Boulevard, Baltimore, Md.

In commenting, please refer to file code BPP–158–P. Comments will be available for public inspection beginning approximately 2 weeks from today, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, D.C., on Monday through Friday from 8:30 a.m. to 5:00 p.m., (202) 245–7890.

FOR FURTHER INFORMATION CONTACT: James Hannon, 301–594–9514.

SUPPLEMENTARY INFORMATION:

Background

Under section 1832 of the Social Security Act, payment may be made

under Medicare Part B (Supplementary Medical Insurance Program) for physicians' services, including certain services furnished by optometrists to Medicare beneficiaries. The law, in sections 1861(r)(4) and 1862(a)(7), limits the kinds of optometric services covered under Medicare.

Before July 1, 1981, section 1861(r)(4) defined a doctor of optometry as one who was legally authorized to practice optometry by the State in which he performed such functions, but only with respect to establishing the necessity for prosthetic lenses. Medicare coverage of services furnished by optometrists was limited to payment for the actual fitting and provision of lenses to replace the natural lens of the eye. Those lenses may be needed temporarily during convalescence from eye surgery or as a permanent replacement when the natural lens was lost through congenital disease or surgical removal. "Examination services" performed by optometrists for any purpose were excluded.

Under section 1862(a)(7) of the Act, payment is prohibited for eyeglasses, eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, and procedures to determine the refractive state of the eye, whether performed by an optometrist or other practitioner.

Statutory Change

Section 937 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499, enacted on December 5, 1980), effective on July 1, 1981, expands covereage of optometrists' services beyond dispensing services by deleting the limitation in section 1861(r)(4) to "establishing the necessity for prosthetic lenses" and authorizing "services related to the condition of aphakia." ("Aphakia" means the absence of the natural lens of the eye due to surgery or to natural causes.) Reports of the House Budget Committee and the Committee on Ways and Means which accompanied Pub. L. 96–499 explained the congressional intent for expanded coverage of other optometric "services" by specifying "payment under Medicare for examination services performed by optometrists in connection with the condition of aphakia." (See "Omnibus Reconciliation Act of 1980, Report of the Committee on the Budget, House of Representatives, to Accompany H.R. 7765," H.R. Rept. No. 96–1167, 96th Congress, 2d Session, July 21, 1980, pp. 375–376, and "Budget Reconciliation Recommendations of the Committee on Ways and Means, Report of the Committee on Ways and Means, U.S. House of Representatives on H.R. 7652," H.R. Rept. No. 96–1150, Part I, 96th Congress, 2d Session, July 2, 1980, pp. 29–30.) This expansion of coverage will allow optometrists to be reimbursed for examination services furnished to aphakic patients to the same extent that previous policy allowed doctors of medicine or osteopathy to be reimbursed for these services, if optometrists are licensed to perform them by the State in which they practice. Eyeglasses, eye examinations for the purpose of prescribing, fitting or changing of eyeglasses, and examinations to determine the refractive state of the eye continue to be excluded from coverage regardless of which practitioner furnishes these services.

Provisions of Proposed Rule

This notice of proposed rulemaking would amend the existing Medicare regulations to conform them to the statutory change by revising the definition of a doctor of optometry under 42 CFR 405.232a and adding a provision for coverage of examinations performed by optometrists if they relate to aphakia. On the basis of the congressional committees' use of "examination services" to explain "services", we propose to specify examples of those examination services within the scope of the optometrist's practice that would be covered. The services would include:

- Case history (the determination of changing visual performance as it relates to the condition of aphakia);
- External examination (the inspection with illumination and magnification of eyelids and surrounding areas of the eye);
- Ophthalmoscopy (the inspection with illumination and magnification of the internal structure of the eye);
- Biomicroscopy (the inspection of frontal tissues of the eye, using illumination and magnification);
- Tonometry (the measurement of the internal pressure of the eye, visual fields, and evaluation of the control and peripheral field of vision);
- Ocular mobility (the determination of the ability of the eyes to move efficiently);
- Binocular function (an evaluation of the ability of the eye to obtain single, clear, two-eyed vision); and
- Evaluation for contact lenses and the provision of ophthalmic prosthesis and services.

This list of optometric examination services is based on conclusions included in a 1976 report to the Congress by the Health Resources Administration, Public Health Service, in which the Department recommended to Congress that services related to aphakia be reimbursable under Medicare Part B when provided by optometrists.

Instructions containing this list of services have been released to our contractors and payments for optometric services are now being made on that basis. These operating instructions will be amended if the final regulations differ from these proposed rules.

Comments on Statutory Change

Since the enactment of Pub. L. 96–499, we have received comments from physicians, especially from ophthalmologists, regarding implementation of the statutory change. Their major comments concerned quality of care and the anticipated increase in costs resulting from Medicare coverage of eye care services furnished by optometrists. Ophthalmologists have requested that the regulations expressly prohibit optometrists from furnishing to Medicare patients such services as surgical removal of the crystalline lens, implantation of the intraocular lens, and the treatment of pseudophakia (failure of development of the crystalline lens, its place being occupied by abnormal tissue). Because these procedures are not examination services and are therefore not covered services, we have not addressed them in this proposed rule.

Ophthalmologists have expressed the concern also that services provided by optometrists to post-surgical patients will jeopardize the quality of eye care services that aphakic patients might receive. Because of this concern, they have also requested that optometrists be required to refer patients to ophthalmologists immediately if certain signs and symptoms occur, and that all claims by optometrists be approved and signed by ophthalmologists. We believe that the basic issue which this request raises is the professional relationship between ophthalmologists and optometrists. We believe this is not a matter to be regulated by us, and should remain the responsibility of the involved professions. We think it is clear that Congress intended to ensure quality care through the requirement that optometrists be reimbursed for services only if they are licensed to perform them by the State in which they practice. (See House Budget and Ways and Means Committee Reports cited earlier and the specific reference in section 1861(r)(4) limiting coverage of services which the optometrist is legally authorized to perform, clearly deferring to State law.) Consequently, these proposed regulations specify that payment will be

made for optometrists' services as described above, within the scope of optometric practice as authorized by the State; they do not contain any additional conditions or requirements.

In addition, ophthalmologists maintain that the new legislation will lead to the problem of payment duplication for services and reimbursement for similar diagnostic procedures when performed for patients by more than one practitioner. The rationale for this concern is that in many areas of the country Medicare includes in the covered allowance for cataract surgery a global fee for the immediate post-operative care of aphakic patients. In most cases, this fee covers up to 3 months of post-operative treatment. We believe that there are sufficient administrative safeguards under existing policy to preclude duplication of payment and payment for services that are not reasonable and medically necessary. As a consequence, we have not addressed this issue in the proposed rule.

We believe that Congress did not intend for us to impose the requirements recommended by the ophthalmologists as conditions for coverage of optometric services. However, we invite comments on the proposals suggested by ophthalmologists and any provisions related to this proposed rule.

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and will respond to them in the preamble to that rule.

Impact Analysis

Regulatory Impact Analysis

We have reviewed the cost impact of these regulations in accordance with Executive Order 12291, and have determined that they do not meet the criteria for major regulations—that is, they will not have an annual effect of $100 million or more on the economy; result in major increases of costs or prices for consumers in general, or for particular industries, governmental agencies, or geographic regions; or have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the United States enterprises to compete with foreign enterprises in domestic or import markets.

We estimate that the changes in the coverage of optometrists' services will result in an increase in Medicare costs of $2 million each year for fiscal years 1982 and 1983, and $3 million each year for fiscal years 1984 and 1985. We have no discretion in implementing the provisions of the law. In developing these regulations, we have followed the language of the statute and the congressional intent specified in the committee reports.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires a regulatory flexibility analysis for any regulations that will have a significant economic impact on a substantial number of small businesses, small organizations, and small governmental jurisdictions. This notice of proposed rulemaking would merely conform our Medicare regulations to requirements under the law that are already in effect. The regulations themselves, therefore, do not have a significant economic impact. For these reasons, we have determined that the requirements of Pub. L. 96–354 do not apply.

Paperwork Reduction Act

These regulations do not contain any additional reporting and recordkeeping requirements that are subject to the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

List of Subjects in 42 CFR Part 405

Administrative practice and procedures, Health care, Health professions, Health suppliers, Medicare.

42 CFR Part 405 is amended as follows:

1. Section 405.232a is amended by revising paragraph (a)(4) to read as follows:

§ 405.232a Physician defined.

(a) The term "physician," when used in connection with the performance of any function or action means:

* * * * *

(4) A doctor of optometry who is legally authorized to practice optometry by the State in which he performs such function, but only with respect to services related to the condition of aphakia (absence of the natural lens of the eye) as set forth in 42 CFR 405.232c; or

* * * * *

2. Section 405.232c is revised to read as follows:

§ 405.232c Optometrists.

The prescription or order of a doctor of optometry will be accepted as evidence of the medical need for prosthetic lenses.

Examination services, including the following if related to the condition of aphakia, are covered when furnished by optometrists:

(a) Case history (the determination of changing visual performance as it related to the condition of aphakia);

(b) External examination (the inspection with illumination and magnification of eyelids and surrounding areas of the eye);

(c) Ophthalmoscopy (the inspection with illumination and magnification of the internal structure of the eye);

(d) Biomicroscopy (the inspection of frontal tissues of the eye, using illumination and magnification);

(e) Tonometry (the measurement of the internal pressure of the eye, visual fields, and evaluation of the control and peripheral field of vision);

(f) Ocular mobility (the determination of the ability of the eye to move efficiently);

(g) Binocular function (an evaluation of the ability of the eye to obtain single, clear, two-eyed vision); and

(h) Evaluation for contact lenses and the provision of ophthalmic prosthesis and services.

(Secs. 1832(a), 1861(r)(4) and (s), and 1862(a)(7) of the Social Security Act, 42 U.S.C. 1395k(a) and 1395x(r)(4) and (s), and 1395y(a)(7))

(Catalog of Federal Domestic Assistance Program No. 13.764, Medicare—Supplementary Medical Insurance.)

Dated: March 26, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: June 7, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-16909 Filed 6-22-82; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Department Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Withdrawal of proposed rules.

SUMMARY: This Office had proposed revisions to certain of its procedural regulations governing administrative hearings and appeals within the Department of the Interior. Further consideration of the proposed changes has resulted in the conclusion that they are unnecessary and should be withdrawn.

EFFECTIVE DATE: June 23, 1982.

FOR FURTHER INFORMATION CONTACT: Kathryn Lynn, Attorney-Adviser, Office of Hearings and Appeals, (703) 235–3816.

SUPPLEMENTARY INFORMATION: This Office proposed on May 27, 1980 (45 FR 35351), to delete its regulations in 43 CFR Part 4, Subpart B. It has been determined that the proposed incorporation of the general rules in Subpart B into the specific rules in other Subparts of Part 4 should be abandoned. Consequently, the proposed deletion of Subpart B is being withdrawn.

Also on May 27, 1980 (45 FR 35351), this Office proposed revisions to 43 CFR Part 4, Subpart I. The minor changes proposed to these regulations have been determined to be unnecessary. The proposed revisions are being withdrawn.

On December 9, 1980 (45 FR 81074), revisions were proposed to 43 CFR Part 4, Subpart G. These revisions have been determined to be unnecessary and are being withdrawn.

On February 8, 1979 (44 FR 7983), revisions were proposed to 43 CFR Part 4, Subpart J. These revisions, which would have amended the procedural regulations of the Alaska Native Claims Appeal Board, are being withdrawn, because that Board was abolished by Secretarial order No. 3078 of April 29, 1982.

Dated: June 17, 1982.

James A. Limb,

Director, Office of Hearings and Appeals.

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

1. The removal of 43 CFR Part 4, Subpart B, proposed on May 27, 1980 (45 FR 35351), is withdrawn.

2. The revisions to 43 CFR Part 4, Subpart G, proposed on December 9, 1980 (45 FR 81074), are withdrawn.

3. The revisions to 43 CFR Part 4, Subpart I, proposed on May 27, 1980 (45 FR 35351), are withdrawn.

4. The revisions to 43 CFR Part 4, Subpart J, proposed on February 8, 1979 (44 FR 7983), are withdrawn.

[FR Doc. 82-17014 Filed 6-22-82: 8:45 am]

BILLING CODE 4310-10-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[Gen. Docket No. 81-706; FCC 82-254]

List of Commission's Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act During 1981–82

AGENCY: Federal Communications Commission.

ACTION: Order terminating docket.

SUMMARY: This action terminates General Docket No. 81–706, concerning Rules to be reviewed pursuant to the Regulatory Flexibility Act. Comments have been received, as requested, and are being reviewed in preparation for the initiation of rulemakings to eliminate or modify, as required, those "rules which have significant (adverse) economic impact on a substantial number of small entities." The purpose for the *Notice* having been satisfied, General Docket No. 81–706 is terminated.

FOR FURTHER INFORMATION CONTACT: Donald L. McClure, Office of General Counsel (202) 254–6530.

SUPPLEMENTARY INFORMATION: None.

Adopted: June 3, 1982.

Released: June 8, 1982.

In the matter of list of commission's rules to be reviewed pursuant to the Regulatory Flexibility Act during 1981–82; Gen. Docket No. 81–706; order.

1. The Commission published in the **Federal Register** its *Notice* in Gen. Docket. No. 81–706, Federal Communications Commission's list of rules to be reviewed pursuant to section 610(c) of the Regulatory Flexibility Act during 1981–82, FCC 81–487, 46 FR 56466 (Nov. 17, 1981). Parties were invited to provide comments within 30 days of the date this *Notice* was published in the **Federal Register.** Requests for extension of time were filed by the Radio Technical Commission for Marine Services (RTCM) on November 27, 1981, the Consumer Electronics Group of the Electronics Industries Association (EIA/CEG) on December 7, 1981, and the American Waterways Operators, Inc. on December 10, 1981. Good cause having been shown, the request for extension of time was granted pursuant to authority delegated to the General Counsel. See 47 C.F.R. § 0.251(b)(1980). The *Order* in Gen. Docket No. 81–706 granting an extension of time for filing comments in the above-captioned proceeding to March 1, 1982 was adopted and released on December 15, 1981, 46 FR 62871, Dec. 29, 1981.

2. Comments have been received and are being reviewed in preparation for the initiation of rulemakings to eliminate or modify, as required, those "rules which have a significant (adverse) economic impact on a substantial number of small entities". 5 U.S.C. 610(c). The purpose for the *Notice* having been satisfied, Gen. Docket No. 81–706 will be closed.

3. Accordingly, it is hereby ordered that Gen. Docket No. 81–706 is terminated.

4. Authority for the adoption of this order is contained in section 4(i) of the Communications Act of 1934, as amended.

5. The Secretary shall cause a copy of this order to be published in the **Federal Register.**

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82-16910 Filed 6-22-82: 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 47, No. 121
Wednesday, June 23, 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

Forms Under Review by Office of Management and Budget

June 18, 1982.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Comments and questions about the items in the listing should be directed to the agency person named at the end of each entry. If you anticipate commenting on a form but find that preparation time will prevent you from submitting comments promptly, you should advise the agency person of your intent as early as possible.

Copies of the proposed forms and supporting documents may be obtained from: Richard J. Schrimper, Statistical Clearance Officer, (202) 447–6201.

New

• Human Nutrition Information Service
An Exploratory Study of Longitudinal Measures of Individual Food Intakes
Monthly or Quarterly
Individuals or households: 9,300 responses; 3,100 hours; not applicable under 3504(h)
Robert Reese (301) 436–8485

• Rural Electrification Administration
Construction Work Plan and Cost Distribution—Telephone
REA Forms 157, 158, 159
On occasion
Businesses or other institutions: 2,800 responses; 2,100 hours, not applicable under 3504(h)
John Soma (202) 382–8529

Revised

• Food and Nutrition Service
Report of School Program Operations and Adjustment Report for School Program Operations
FNS–10 and FNS–10A
Monthly
State or local governments: 2,976 responses; 110,112 hours; not applicable under 3504(h)
Alan Rich (703) 756–3810

Extension

• Economic Research Service
Survey of Pesticides Situation, 1982 and Outlook 1983
Annually
Businesses or other insititutions: 20 responses; 20 hours; not applicable under 3504(h)
Theodore R. Eichers (202) 447–7340

Reinstatement

• Agricultural Stabilization and Conservation Service
Uniform Grain Storage Agreement
CCC–25 and CCC–25–2
Annually
Businesses or other institutions: 5,440 responses; 5,880 hours; not applicable under 3504(h)
Lynda Flament (202) 447–7912

Richard J. Schrimper,
Statistical Clearance Officer.

[FR Doc. 82–16890 Filed 6–22–82: 8:45 am]
BILLING CODE 3410–01–M

Packers and Stockyards Administration

Mountain Home Horse Auction; Posted Stockyards

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on the respective dates specified below.

Facility No., name, and location of stockyard	Date of posting
AR–159 Mountain Home Horse Auction; Mountain Home, Arkansas.	July 21, 1979.
IL–168 Doug Komes Horse Auction; Batavia, Illinois.	May 14, 1982.
WI–136 Barron Livestock Sales Barn; Barron, Wisconsin.	Mar. 20, 1981.

Done at Washington, D.C., this 17th day of June, 1982.

Jack W. Brinckmeyer,
Chief, Financial Protection Branch, Livestock Marketing Division.

[FR Doc. 82–16894 Filed 6–22–82: 8:45 am]
BILLING CODE 3410–02–M

North Georgia Farmers Livestock Market, Inc.; Depositing of Stockyards

It has been ascertained, and notice is hereby given, that the livestock markets named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under said Act and are, therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
GA–121 North Georgia Farmers Livestock Market, Inc., Cumming, Georgia.	Nov. 26, 1963.
GA–162 Sylvania Stockyard; Sylvania, Georgia.	May 14, 1959.
WI–137 Great Northern Investments, Fond Du Lac, Wisconsin.	Aug. 21, 1982.

Notice or other public procedure has not proceded promulgation of the foregoing rule. There is no legal justification for not promptly depositing a stockyard which is no longer within the definition of that term contained in the Act.

The foregoing is in the nature of a change relieving a restriction and may be made effective in less than 30 days after publication in the **Federal Register.** This notice shall become effective June 23, 1982.

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 *et seq.*).

Done at Washington, D.C. this 17th day of June, 1982.

Jack W. Brinckmeyer,

Chief, Financial Protection Branch, Livestock Marketing Division.

[FR Doc. 82-16893 Filed 6-22-82; 8:45 am]

BILLING CODE 3410-02-M

CIVIL AERONAUTICS BOARD

[Order 82-6-110]

Denial of Foreign Freight Forwarder Registration; China Interocean Transport Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause: order 82-6-110.

SUMMARY: The Board proposes to deny a foreign freight forwarder registration to China Interocean Transport Inc., because the Government of the People's Republic of China has not allowed U.S. citizens to obtain like authority in that country.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions as described in the order cited above, shall, no later than July 14, 1982, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, to the Ambassador of the People's Republic of China in Washington, D.C., and to the Departments of State and Transportation.

A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Board may enter an order which would make final the Board's tentative findings and conclusions and deny a foreign freight forwarder registration to the applicant.

ADDRESSES FOR OBJECTIONS:

Docket 40782, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

China Interocean Transport Inc., One World Trade Center, Suite 3127, New York, NY 10048.

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT:

Dean L. Johnson (202) 673-5371, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: June 17, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-16947 Filed 6-22-82; 8:45 am]

BILLING CODE 6320-01-M

[Order 82-6-111]

Denial of Foreign Freight Forwarder Registration; UT Freight Services (USA) Ltd.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: Order 82-6-111.

SUMMARY: The Board proposes to deny a foreign freight forwarder registration to UT Freight Services (USA) Ltd., because Taiwan has not allowed U.S. citizens to obtain like authority in that country.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions as described in the order cited above, shall, NO LATER THAN July 14, 1982, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, American Orient Forwarding Company, The Coordination Council for North American Affairs in Washington, D.C., and to the Departments of State and Transportation.

A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Board may enter an order which would make final the Board's tentative findings and conclusions and deny a foreign freight forwarder registration to the applicant.

ADDRESSES FOR OBJECTIONS:

Docket 40783, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

UT Freight Services (USA) Ltd., 161-15 Rockaway Boulevard, Room 217, Jamaica, New York 11434.

American Orient Forwarding 11209 South La Cienega Boulevard Los Angeles, California 90045

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT:

Dean L. Johnson (202) 673-5371, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: June 17, 1982.

Phyllis T. Kaylor,

Secretary,

[FR Doc. 82-16948 Filed 6-22-82; 8:45 am]

BILLING CODE 6320-01-M

Forms; Approval of Reporting by the Office of Management and Budget

On June 1, 1982, the Office of Management and Budget approved the extension of the following reporting forms:

CAB Form 297A, "Registration or Amendments under Part 297 of the Economic Regulations of the Civil Aeronautics Board"—extended to November 30, 1984 under OMB No. 3024-0039.

CAB Form 298-C, "Report of Scheduled Operations of Commuter Air Carriers"—extended to June 30, 1984 under OMB No. 3024-0009.

CAB Form 300, "Registration or Amendments under Part 380 of the Special Regulations of the Civil Aeronautics Board"—extended to October 31, 1983.

Dated: June 16, 1982.

Jack Calloway,

Chief, Data Requirements Section, Office of Comptroller.

[FR Doc. 82-16949 Filed 6-22-82; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

June 16, 1982.

The USAF Scientific Advisory Board Electronic Systems Division Advisory Group meeting set for July 14-15, 1982, as published in the **Federal Register**, Volume 47, No. 98, Thursday, May 20, 1982, is cancelled.

For further information contact the SAB Secretariat at (202) 697-8404.

Winnibel F. Holmes,

Air Force Federal Register, Liaison Officer.

[FR Doc. 82-16904 Filed 6-22-82; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Innovative Programs for Severely Handicapped Children

AGENCY: Education Department.

ACTION: Notice of Final Annual Funding Priorities.

SUMMARY: The Secretary establishes final funding priorities for grants for Innovative Programs for Severely Handicapped Children. To ensure wide and effective use of program funds, the Secretary has established the following priorities to direct funds to the areas of greatest need during Fiscal Year 1982.

EFFECTIVE DATE: Unless the Congress takes certain adjournments, these regulations will take effect 45 days after publication in the **Federal Register**. If you want to know the effective date of these regulations, call or write the Department of Education contact person. At a later date, the Secretary will publish a notice in the **Federal Register** stating the effective date of these regulations.

FOR FURTHER INFORMATION CONTACT: R. Paul Thompson, U.S. Department of Education, Special Education Programs, Room 3135, Donohoe Building, 400 Maryland Avenue, SW., Washington, D.C. 20202–4714; Telephone: (202) 472–2535.

SUPPLEMENTARY INFORMATION: Grants for Innovative Programs for Severely Handicapped Children are authorized under section 624 of Part C of the Education of the Handicapped Act (EHA).

Section 624 provides the authorization for research, development, demonstration, training, and dissemination activities concerning the education of handicapped children.

Parties eligible to receive funds under this program are public or nonprofit private agencies, organizations, or institutions which operate a center or provide a service which meets one or more of the purposes of Part C of EHA. Part C of EHA authorizes various activities relating to the education of handicapped children, including the operation of Regional Resource Centers, Centers and Services for Deaf-Blind Children, and programs for the Early Education of Handicapped Children.

SUMMARY OF COMMENTS AND RESPONSES: A "Notice of Proposed Annual Funding Priorities" was published in the **Federal Register** On March 17, 1982 (47 FR 11547–11548), listing the four proposed priority areas for the 1982 grant competition for Innovative Programs for Severely Handicapped Children. Because comments from the field indicated support for the priority areas chosen, no change has been made. A total of nine comments were received ocncerning the four priority areas. These comments are summarized below:

Comment. A few commenters recommended that the scope of the four proposed competitions be broadened to include other handicapped populations, such as the multi-handicapped blind and severely handicapped children and youth. These commenters stated that the four priority areas should focus on these groups of children as well as the deaf-blind population.

Response. No change has been made in the final annual funding priorities. Given the limited amount of funding available for this year's grant competition, proposed priorities are designed to only meet the needs of deaf-blind children. However, it is anticipated that grant competitions for succeeding years will address the needs of other subsets of the severely handicapped population.

Comment. Several commenters recommended additional priority areas for the FY 1982 grant competition. The priorities recommended were: (1) Independent living skills development for severely handicapped and deaf-blind children and youth; (2) development of alternative writing systems for severely physically handicapped children with normal or above normal intelligence; and (3) formulation of strategies for effectively serving visually impaired multihandicapped children in residential schools. These commenters were also supportive of the priority areas proposed by the Secretary.

Responses. No change has been made in the final annual funding priorities. These suggestions will be used in proposing funding priorities for future grant competitions.

Comment. Several commenters recommended using all of the four proposed priority areas for the 1982 grant competition. The commenters expressed particular support for (1) total life planning and prevocational and vocational training for deaf-blind children and youth; (2) the identification of at-risk deaf-blind children because of the increasing numbers of multi-handicapped infants; and (3) endorsement without reservation of all four priority areas.

Response. No change has been made in the final annual funding priorities.

Priorities

In accordance with § 75.105(c)(3)(i) of EDGAR, the Secretary establishes separate competitions for each of the following priority areas for Fiscal Year 1982 grants. Each priority area contains a discussion of the nature of the priority itself and a statement of the estimated amount of funds expected to be available for that priority area in Fiscal Year 1982. Grant awards will be issued for three-year projects with funding from $110,000 to $115,000 per project per year. Funding for years two and three of Fiscal Year 1982 grant awards will be contingent upon satisfactory completion of first year project activities and the availability of continued federal funding. The selection criteria contained in the program regulations (34 CFR 315.4) will govern the review of applications in the competition for each priority area.

(1) *Approaches to Total Life Planning for Deaf-Blind Children and Youth.* The Secretary establishes a separate competition for projects which implement procedures for the development of total life planning for deaf-blind children and youth. Such planning must include (a) the assessment of cognitive, affective, and pschomotor skills and capacities of project particpants; (b) an identification of services essential for the satisfaction of needs of the children and which provide for the maximization of their potential as they approach adulthood; (c) the development of strategies for life planning individualized for each project participant, with provision for modifying such planning on at least an annual basis; and (d) strategies for the application of the individualized planning designed for project participants, to non-project deaf-blind children and youth. Approximately $330,000 is expected to be available for this competition.

(2) *Pre-vocational and Vocational Training for Deaf-Blind Children and Youth.* The Secretary establishes a separate competition for projects which design, implement, and disseminate innovative practices in the prevocational and vocational education of deaf-blind children and youth. Such practices must extend beyond, expand upon, complement, and/or supplement existing best practices. Also considered innovative for the purpose of this priority are feasible applications of practices still in the developmental stage in research and other experimental programs. Approximately $120,000 is expected to be available for this competition.

(3) *Identification of At-Risk Deaf-Blind Children.* The Secretary establishes a separate competition for projects which design and implement strategies for the early identification of children with apparent visual and auditory impairments who are at-risk of being "categorized" as deaf-blind children. Such projects should devise strategies for providing relevant information to and gaining the cooperation of educational, medical, and social service providers. Projects must evidence procedures and planning for identification of handicapped children,

such as those procedures mandated under Pub. L. 94–142. Approximately $120,000 is expected to be available for this competition.

(4) *Adaptation-Utilization of Curricula for Deaf-Blind Children and Youth.* The Secretary establishes a separate competition for projects which implement strategies to develop and demonstrate the effectiveness of individualized educational programming for deaf-blind children and youth. Such curricula may include (a) innovative, new approaches unique in work with the deaf-blind; (b) best practices currently in use with such children and youth with potential for being modified to meet individual differences; or (c) best practices in educational programming for other types of handicapped or nonhandicapped age peers, adapted to meet the educational needs of the deaf-blind children and youth. Projects must provide verified assessments of the learning needs and capacities of participants and demonstrate the design of curricula and methodologies based upon such assessments. Approximately $120,000 is expected to be available for this competition.

(Catalog of Federal Domestic Assistance No. 84–086, Innovative Programs for Severely Handicapped Children)

Dated: June 18, 1982.

T. H. Bell,

Secretary of Education.

[FR Doc. 82–16898 Filed 6–22–82; 8:45 am]

BILLING CODE 4000–01–M

Office of Special Education and Rehabilitative Services

Innovative Programs for Severely Handicapped Children

AGENCY: Education Department.

ACTION: Closing Date Notice for Transmittal of Applications for FY 1982.

Applications are invited for new demonstration projects under Innovative Programs for Severely Handicapped Children.

Authorization for this program is contained in section 624 of Part C of the Education of the Handicapped Act. (20 U.S.C. 1424).

Applications may be submitted by public or nonprofit private agencies, organizations, or institutions which operate a center or provide a service which meets one or more of the purposes of Part C of the Education of the Handicapped Act.

The main intent of the program is to support model projects which establish, promote, and demonstrate exemplary practices for meeting the educational needs of severely handicapped and deaf-blind children. The program is authorized to carry out this directive by issuing either contracts or grants. Although contracts have been supported since the program's inception in 1974, this is the first year that a grant competition will be held.

Closing date for transmittal of applications: An application for a grant must be mailed or hand delivered by August 5, 1982.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention 84.086A, 400 Maryland Avenue, S.W., Washington, D.C. 20202–3561.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relyng on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, ROB 3, Room 5673, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between the hours of 8:00 a.m. and 4:30 p.m., (Washington, D.C. time) daily, except Saturdays, Sundays, or Federal holidays. An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Available funds: It is expected that approximately $690,000 will be available to fund new grants in FY 1982. The "Notice of Final Annual Funding Priorities," contained in the application packet, lists the four areas of priority for this year's competition. Separate competitions will be held for each priority area. The program anticipates funding three projects from the first priority area, and one from each of the last three priority areas. Awards would be approximately $115,000 to $120,000 per project.

However, these estimates do not bind the U.S. Department of Education to a specified number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations. Grant approval is for a three-year period subject to an annual review of progress and availability of funds.

Priorities for funding: The selection of priorities was based upon a comprehensive review of the program's history, including the number of responses to various RFP's, and an analysis of comments from professionals serving severely handicapped and deaf-blind children as to perceived needs in the field. The four priority areas are listed below. For further elaboration of the intent of each selected area, please consult the "Notice of Final Annual Funding Priorities," found in the application package.

1. Approaches to total life planning for deaf-blind children and youth;

2. Prevocational and vocational training for deaf-blind children and youth;

3. Identification of at-risk deaf-blind children; and

4. Adaptation/utilization of curricula for deaf-blind children and youth

Application forms: Application forms and program information packages are expected to be ready for mailing by June 21, 1982. These materials may be obtained by writing to: Special Needs Section, State Implementation Branch, Special Education Programs, Donohoe Building, Room 3135, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202–4714.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the application package. The Secretary strongly urges that the narrative portion of the application not exceed 50 pages in length. The Secretary further urges that the applicant submit only the information that is requested.

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing Auxiliary Activities under the EHA (34 CFR Part 315);

(b) The Notice of Final Annual Funding Priorities which is published in this issue of the Federal Register; and

(c) The Education Department General Administrative Regulations (34 CFR Parts 74, 75, 77, and 78).

FOR FURTHER INFORMATION CONTACT: Special Needs Section, State Implementation Branch, Special Education Programs, Donohoe Building, Room 3135, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202–4714. Telephone (202) 472–2535.

(Catalog of Federal Domestic Assistance No. 84.086, Innovative Programs for Severely Handicapped Children)

(20 U.S.C. 1424)

Dated: June 18, 1982.

Jean Tufts,

Assistant Secretary for Office of Special Education and Rehabilitative Services.

[FR Doc. 82–16899 Filed 6–22–82: 8:45 am]

BILLING CODE 4000–01–M

Vocational Education Act; Intent To Repay Funds Recovered as a Result of a Final Decision of the Assistant Secretary for Vocational and Adult Education to the North Dakota State Board for Vocational Education

AGENCY: Education Department.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act, the Secretary intends to repay to the North Dakota State Board for Vocational Education an amount equal to 75 percent of funds recovered by the Department of Education (ED). The repayment is a result of an October 22, 1980 final decision by the Assistant Secretary for Vocational and Adult Education. This notice describes the State Board's plans for the use of repaid funds and the terms and conditions under which the Secretary intends to make these funds available.

DATE: All written comments should be received on or before July 23, 1982.

ADDRESS: All written comments should be submitted to Dr. LeRoy Cornelsen, Director, Division of State Vocational Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 5640, ROB–3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. LeRoy Cornelsen, (202) 472–3440.

SUPPLEMENTARY INFORMATION: .

A. Background

The Office of State Auditor in North Dakota conducted an audit of North Dakota's Vocational Education Act (VEA) expenditures for the period from July 1, 1975 through June 30, 1977. The Office of State Auditor found that State funds in the amount of $61,300 for vocational education purposes were supplanted by Federal funds. Section 106(a)(6) of the VEA requires States to provide an assurance that Federal funds made available will not supplant State and local funds and will be used only to supplement State and local funds. The North Dakota State plan provided this assurance. In a final determination letter dated October 22, 1980, the Assistant Secretary for Vocational and Adult Education upheld the auditor's finding and requested a refund of $61,300. The Office of State Auditor also found that a salary overpayment in the amount of $6,954 had been made to an exemplary project. In the final determination letter, the Assistant Secretary upheld the auditor's recommendation to refund $6,954. Soon thereafter, the State Board refunded $68,254 (the amount of the two claims) to the Department of Education (ED).

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e, provides that whenever the Commissioner (now Secretary) has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the State agency affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this so-called "grantback" arrangement if the Secretary determines that—

(1) The practices and procedures of the State Board that resulted in the audit determination have been corrected, and that the State Board is, in all other respects, in compliance with the requirements of the applicable program;

(2) The State Board has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) The use of the funds to be awarded under the grantback arrangement in accordance with the State Board's plan would serve to achieve the purposes of the program under which funds were originally granted.

C. Request for Repayment of Funds Awarded Under a Grantback Arrangement

In a letter dated December 23, 1980, the State Board for Vocational Education formally requested that payment of $51,191, which is 75 percent of the $68,254 recovered as a result of the audit, be made under a grantback arrangement. This request was made after the Department of Education had recovered the outstanding claim against the State Board as a result of the Assistant Secretary's final determination. In accordance with section 456(a)(1) of GEPA, the State Board provided assurances in its request that the practices and procedures of the State Board that resulted in the audit determination have been corrected, and that the State Board will comply with all the requirements of the program.

D. Plan for Use of Funds Awarded Under a Grantback Agreement

In accordance with section 456(a)(2) of GEPA, the State Board submitted a plan to use the grantback funds to—

(1) Extend and improve vocational education programs at the postsecondary level;

(2) Purchase instructional equipment in programs relating to new and emerging occupations; and

(3) Support an exemplary program at a postsecondary institution.

E. The Secretary's Determination

Based upon a review of the State Board's request for the repayment of funds and the assurances provided therein, including the State Board's plan for expending the funds, the Secretary makes the following determinations:

(1) The State Board has corrected the practices and procedures that resulted in the audit exceptions;

(2) The plan submitted by the State Board meets the requirements of the Vocational Education Act and benefits the populations affected by the misexpenditures which resulted in the audit exceptions; and

(3) The use of the funds to be awarded under the grantback arrangement will serve to achieve the purposes of the Vocational Education Act.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

F. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement.

Section 456(d) of GEPA requires that, at least thirty days before entering into an arrangement to award funds under a grantback, the Secretary must give a notice of intent to do so, together with the terms and conditions of the

grantback arrangement, in the Federal Register.

In accordance with this requirement, notice is hereby given that the Secretary intends to make $51,191 available under a grantback arrangement with the North Dakota State Board for Vocational Education. This amount is 75 percent—the maximum percentage authorized by the statute—of the funds recovered by ED as a result of the Assistant Secretary's final audit determination. The Secretary's intention to award the maximum amount of grantback funds possible under Section 456 is based on the following factors:

(1) The Secretary's determination outlined in Section E of this notice; and

(2) The timely payment by the State Board of all funds owed to ED as a result of the final decision of the Assistant Secretary.

G. Terms and Conditions Under Which Payments Under a Grantback Arrangement Will Be Made

Section 456(b) of GEPA provides that any payment made under a grantback shall be subject to any terms and conditions which the Secretary deems necessary to accomplish the purposes of the affected programs, including the submission of periodic reports on the use of the repaid funds and evidence that the State Board has consulted with parents or representatives of the population that will benefit from the grantback award.

The State Board agrees to comply with the following terms and conditions under which payments under a grantback arrangement will be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements, and

(b) The plan that was submitted in conjunction with the December 23, 1980 request, and any amendments to that plan that have been approved by the Secretary.

(2) Under section 456(c) of GEPA, all funds received under a grantback arrangement must be obligated not later than September 30, 1984, which is three fiscal years following the fiscal year in which the Assistant Secretary's final decision was made.

(3) The State Borad must, not later that January 1, 1985, submit a report to the Secretary which—

(a) Indicates how the funds awarded under the grantback have been used;

(b) Shows that the funds awarded under the grantback have been liquidated;

(c) Describes the results and effectiveness of the project for which the funds were spent; and

(d) Describes the consultation with parents or representative of the population that will benefit from the grantback payments.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangment.

Invitation to Comment

The Secretary invites public comments on the notice of intent to award funds under a grantback arrangement to the North Dakota State Board for Vocational Education. Interested persons may send written comments to Dr. LeRoy Cornelsen at the address at the beginning this notice. All comments should be received on or before the (July 23, 1982.)

(Catalog of Federal Domestic Assistance Number 84.048, Vocational Education Program)

Dated: June 16, 1982.

T. H. Bell,

Secretary of Education.

[FR Doc. 82-16901 Filed 6-22-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-FC-82-015; FC Case No. 55080-0366-20-24]

Acceptance of Petition for Exemption and Availability of Certification From Crown Zellerbach Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition for exemption and availability of certification from Crown Zellerbach Corporation.

SUMMARY: On May 11, 1982, Crown Zellerbach Corporation (Crown) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for an electric powerplant from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) (FUA or the Act) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new powerplants, and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA were published in the Federal Register at 46 FR 59872 (December 7, 1981) (final rules).

Crown proposes to install a 36 megawatt natural gas fired combustion turbine, with the capability of burning No. 2 distillate oil, and heat recovery steam generator to produce electricity for sale to Pacific Gas and Electric Company (PG&E) and steam for the company's production processes.

ERA has determined that the exemption petition appears to be sufficient to support an ERA determination, and is therefore accepted in accordance with § 501.3 of the final rules. A review of the petition is provided in the SUPPLEMENTAL INFORMATION section below.

As provided for in Sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rules, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding are available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m.—4:00 p.m.

ERA will issue a final order granting or denying Crown's petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension, will be published in the Federal Register.

DATE: Written comments are due on or before August 9, 1982. A request for a public hearing must also be made within the same 45-day public comment period.

ADDRESSES: Ten copies of written comments or a request for a public hearing should be submitted to: Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-093, 1000 Independence Avenue, SW, Washington, D.C. 20585. FC Case No. 55080-0366-20-24 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Office of Fuels Programs, Economic Regulatory Adminstration, Forrestal Building, Room GA-073, 100 Independence

Avenue, SW., Washington, D.C. 20585, Telephone (202) 252–8162
Allan Stein, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6B–178, 1000 Independence Avenue, SW, Washington, D.C. 20585, Telephone (202) 252–2967
Jack Vandenberg, Office of Public Information, Economic Regulatory Administration, Department of Energy, Room 7120, Federal Building, 12th and Pennsylvania Avenue, NW, Washington, D.C. 20461, Telephone (202) 633–8755

SUPPLEMENTARY INFORMATION: Crown plans to install a 36 MW natural gas-fired (with capability of burning oil as a back-up fuel) cogeneration powerplant to produce electricity and steam at its Antioch, California, recycle linerboard mill. The cogeneration facility will consist of a 36 MW gas turbine generator coupled with a supplemental duct burner exhausting into a 260,000 pounds/hour heat recovery boiler. The combustion turbine has a design heat input rate of approximately 457.7 MMBTU's hour. The duct burner will receive 40 MMBTU's per hour supplemental firing from natural gas or No. 6 fuel oil. Up to 32 MW of the electricity produced by the gas turbine are expected to be sold to PG&E.

The balance of approximately 4MW of electricity, along with the steam produced from the turbine exhaust heat supplemented by the duct burner, will be utilized in the mill.

Section 212(c) of the Act provides for a permanent exemption for cogeneration. In accordance with 10 CFR 503.37(a)(1) of the final rules, Crown certified that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility; and

2. The use of a mixture of oil and gas and an alternate fuel in the cogeneration facility is not feasible.

In accordance with the evidentiary requirements of 10 CFR 503.37(c), Crown has also included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13 of the final rules, including a description of the facility and its proposed operations and fuel capability, a description of the existing environment, direct and indirect environmental impacts of the proposed action, and a description of Federal, State and local requirements for air, water, noise and solid waste disposal which much be met for the proposed facility.

Pursuant to 10 CFR 501.3, ERA hereby accepts Crown's petition for a permanent cogeneration exemption. ERA retains the right to request additional relevant information from Crown at any time during the pendency of these proceedings. As provided in 10 CFR 501.3(b)(4) of the final rules, the acceptance of the petition by ERA does not constitute a determination that Crown is entitled to the exemption requested. That determination will be based on the entire record of these proceedings, including any comments received during the public comments period provided for in this notice.

Issued in Washington, D.C. on June 17, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82–16876 Filed 6–22–82; 8:45 am]
BILLING CODE 6450–01–M

[ERA Docket No. 82–CERT–011]

Houston Lighting & Power Co.; Certification of Eligible Use of Natural Gas To Displace Fuel Oil

On June 2, 1982, Houston Lighting & Power Company (HL&P), filed an application with the Administrator of the Economic Regulatory Administration (ERA) pursuant to 10 CFR Part 595 for certification of an eligible use of approximately 12.65 billion cubic feet of natural gas until October 31, 1982, which is estimated to displace approximately 2 million barrels of residual fuel oil (0.7 percent sulfur), within the HL&P Gas Power Plant System from June 1982 through October 31, 1982. The eligible seller of the natural gas is East Tennessee Natural Gas Company, P.O. Box 10245, Knoxville, Tennessee 37919. The gas will be transported by Tennessee Gas Pipeling Company, P.O. Box 2511, Houston, Texas 77001, Channel Industries Gas Company, P.O. Box 2511, Houston, Texas 77001, and Energy Gathering, Inc., P.O. Box 165, Corpus Christi, Texas 78402.

HL&P has requested that the certification be issued expeditiously in order that HL&P may be in a position to purchase all of the natural gas and to displace the full volumes of fuel oil.

The ERA has carefully reviewed HL&P's application for certification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that HL&P's application satisfies the criteria enumerated in 10 CFR Part 595. We are, therefore, granting the certification and transmitting that certification to the Federal Energy Regulatory Commission. More detailed information, including a copy of the application, transmittal letter, and the actual certification, is available for public inspection at the ERA, Natural Gas Branch Docket Room, Room 6144, 12th & Pennsylvania Avenue, NW., Washington, D. C. 20461, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

The requested certification is being issued prior to the 10 day public comment period because it involves the displacement of large volumes of fuel oil, and it is in the public interest to maximize the displacement of fuel oil. The application also states that the use of this natural gas will be available to displace fuel oil only for a limited period ending October 31, 1982. Given the limited availability of the gas and the authority of the Administrator to terminate a certification for good cause (10 CFR 595.08), it is not in the public interest to permanently lose this opportunity to displace large volumes of fuel oil while public comments are being solicited. Based upon the applicant's representations as to the limited availability of the gas and because they form the basis for our granting expedited treatment, the certificate will expire on October 31, 1982.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Natural Gas Branch, Room 6144, RG–631, 12th & Pennsylvania Avenue, NW., Washington, D. C. 20461, Attention: Paula Daigneault, within ten (10) calendar days of the date of publication of this notice in the **Federal Register.**

An opportunity to make an oral presentation of data, views, and agruments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice

will be given to HL&P and any persons filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on June 16, 1982.

F. Scott Bush,

Director, Oil and Gas Imports Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82-16863 Filed 6-22-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER82-581-000]

Arizona Public Service Co.; Filing

June 18, 1982.

The filing Company submits the following:

Take notice that on June 7, 1982, Arizona Public Service Company (APS) tendered for filing as an initial rate schedule an Agreement for Sale of Energy Interchange between City of Farmington, New Mexico and Arizona Public Service Company (APS) dated March 15, 1982.

The City of Farmington has requested that this Agreement become effective July 1, 1982.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 1, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16950 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-582-000]

Cliffs Electric Service Co.; Filing

June 18, 1982.

The filing Company submits the following:

Take notice that on June 7, 1982, Cliffs Electric Service Company (Cliffs) tendered for filing an amendment to the contract for electric service between Cliffs and the City of Marquette Board of Light and Power (Marquette). Clifts states that the amendment provides for an additional service now being provided to Marquette, namely Maintenance Energy. The compensation to be paid for this service by Marquette will consist of the return of equivalent energy.

Cliffs requests an effective date of May 15, 1982.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 1, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16951 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC82-9-000]

Consumers Power Co.; Filing

June 21, 1982.

The filing Company submits the following:

Take notice that on June 8, 1982, Consumers Power Company (Consumers) submitted an application for Authority to Sell Facilities to the Michigan South Central Power Agency (the Agency).

Pursuant to the Hillsdale and Union City Facilities Agreements dated November 20, 1981 between Consumers and the Agency, Consumers proposes to sell to the Agency various subtransmission and substation facilities located at and in the vicinity of Consumers' Moore Road Substation near Hillsdale, Michigan, and various subtransmission and substation facilities located at and in the vicinity of Consumers' Union City Municipal Substation near Union City, Michigan. The consideration for the sale of the facilities is based upon Consumers' original cost thereof including additions and improvements. Sale of these facilities will facilitate the Agency's sale of electric capacity and energy to the City of Hillsdale and the Village of Union City. Consumers requests approval of its Application pursuant to Section 203(a) of the Federal Power Act.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure and should be filed on or before July 16, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16932 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-323-000]

El Paso Natural Gas Co.; Notice of Application

June 18, 1982.

Take notice that on May 13, 1982, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP82-323-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 15,000 Mcf of natural gas per day on a best efforts basis for the account of J. R. Simplot Company (Simplot), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport on a best efforts basis up to 15,000 Mcf of natural gas per day for Simplot and to deliver such natural gas to Northwest Pipeline Corporation (Northwest) for Simplot's account at an existing point of interconnection between the pipeline systems of Applicant and Northwest located in La Plata County, Colorado, pursuant to a gas transportation agreement dated April 30, 1982.

Applicant states that Simplot currently owns and operates an anhydrous amonia plant at its fertilizer complex near Pocatello, Idaho. It is stated that the anhydrous ammonia is an essential ingredient in the production of nitrogen and phosphate-based fertilizers and is classified as an essential agricultural use.

It is stated that Simplot has advised Applicant that as of October 1, 1981, the

cost of natural gas purchased from its supplier, Intermountain Gas Company (Intermountain), had increased to levels which made the anhydrous ammonia operations uneconomical, and that in order to provide an economical source of natural gas, Simplot and Southern Union Gathering Company (Gathering Company) entered into a contract for sale and purchase of natural gas dated March 17, 1982, as amended April 22, 1982. It is stated that Simplot entered into separate transportation agreements with El Paso, Northwest, and Intermountain which collectively provide for the transportation of such gas from its source in New Mexico to Simplot's Pocatello Plant.

It is stated that upon receipt of the volumes of natural gas from Gathering Company in San Juan County, New Mexico, Applicant would concurrently deliver equivalent volumes on a volumetric basis to Northwest for Simplot's account at an existing point of interconnection between the pipeline systems of Applicant and Northwest in La Plata County, Colorado.

Applicant proposes initially to charge Simplot a transportation rate of 3.98 cents per Mcf until such time that the Short Haul Charge set forth on Sheet No. 1–D.2 contained in Applicant's general rate increase filing in Docket No. RP82–33 becomes effective, but subsequent to the effectiveness of said general rate increase filing Applicant would charge Simplot the corresponding Short Haul Charge reflected from time to time on Sheet No. 1–D.2 of Applicant's FERC Gas Tariff, Third Revised Volume No. 2.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 13, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–16952 Filed 6–22–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER82–576–000]

Energy Conversions of America, Inc.; Filing

June 17, 1982.

The filing Company submits the following:

Take notice that on June 4, 1982, Energy Conversions of America, Inc., (ENCOA) tendered for filing pursuant to 18 CFR 35.1 and 35.12 proposed FERC Rate Schedule No. 1, applicable to sales of energy and capacity to Cincinnati Gas and Electric Company (CG&E) from a solid waste resource recovery facility to be constructed and operated by ENCOA in the City of Cincinnati, Ohio. ENCOA previously filed with this Commission a Notice of Qualification of its status as a qualifying small power production facility within the meaning of Sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 796 and 824a–3. ENCOA is subject to the Commission's ratemaking jurisdication because tis power production capacity is in excess of 30 megawatts. *See,* 18 CFR 292.601. (However, ENCOA is exempted from provisions of the public Utility Holding Company Act and of State law because it uses biomass as its primary fuel to produce electricity. *See,* 18 CFR 292.602.)

ENCOA proposes that the rates under its rate schedule "shall be the full avoided costs as determined by the formula attached to its rate schedule No. 1 as Exhibit No. 1 and Exhibit No. 2 for purchases from ENCOA as a qualifying facility in Ohio under Rules and Regulations of the FERC."

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 30, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–16953 Filed 6–22–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER82–580–000]

The Kansas Power & Light Co.; Notice of Filing

June 18, 1982.

The filing Company submits the following:

Take notice that on June 7, 1982, the Kansas Power and Light Company (KPL) tendered for filing a supplemental agreement to original contract dated September 21, 1973 with the Smoky Valley Electric Cooperative Association, Inc., Lindsborg, Kansas for wholesale service to that Cooperative Association with the proposed effective date of June 23, 1982. KPL states that this supplement permits the Smoky Valley Electric Cooperative Association, Inc. to receive service under Rate Schedule RCW–81 designated supplement 1 to supplement 8 to R.S. FERC No. 162. The proposed change will increase maximum capacity available to the West Lindsborg delivery point.

KPL requests an effective date of June 23, 1982, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been mailed to the Smoky Valley Electric Cooperative Association, Inc. and the State Corporation Commission of Kansas.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 1, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16954 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RI82-3-000 and RI78-78-000]

Liberty Oil & Gas Corp.; Offers for Settlement of Petitions for Special Relief

June 17, 1982.

Take notice that on May 28, 1982, Liberty Oil and Gas Corporation, 234 Loyola Building, Suite 412, New Orleans, Louisiana 70112 (Liberty) filed an offer for settlement of its petition for special relief filed May 24, 1982 in Docket No. RI82-3-000. The petition was noticed June 7, 1982. In its petition Liberty requested authorization to charge a base rate of $2.99 per Mcf plus severance tax for natural gas produced from its Netherlands No. 1 Well, Sabine Production Lease, Bayou Couba Field, St. Charles Parish, Louisiana. The buyer is Transcontinental Gas Pipe Line Corporation. Liberty now offers to settle its pending petition for a base rate of $2.86 per Mcf plus severance tax.

Take further notice that on May 24, 1982, Liberty filed an offer for settlement of its petition for special relief filed in Docket No. RI78-78 on July 11, 1978, as amended September 26, 1978. In its original petition, Liberty sought an increased base rate of $2.03 per Mcf for gas produced from the Simoneaux No. 9 Well, Bayou Des Allemands Field, St. Charles Parish, Louisiana and sold to United Gas Pipe Line Company. Liberty amended its petition to request a reduced based rate of $1.95 per Mcf. Liberty's petitions were filed pursuant to Section 2.76 of the Commission's Statements of General Policy and Interpretations.

In its offer for settlement, Liberty proposes that it be permitted to collect a base rate of $1.95 per Mcf at 15.025 psia ($1.746 per MMbtu at 14.73 psia) plus severance tax.

Any person desiring to comment on the offers for settlement in the above-referenced proceedings should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 on or before June 28, 1982. Reply comments should be filed within 10 days thereafter.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16955 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-591-000]

Florida Power & Light Co.; Filing

June 21, 1982.

The filing Company submits the following:

Take notice that Florida Power & Light Company (FPL), on June 10, 1982, tendered for filing documents entitled Amendment Number Ten to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and the City of Homestead.

FPL states that under Amendment Number Ten FPL will transmit power and energy for the City of Homestead (Homestead) as is required by Homestead in the implementation of its interchange agreement(s) with the City of Gainesville.

FPL requests that waiver of Section 35.3 of the Commission's Regulations be granted and that the proposed Amendment be made effective immediately. FPL states that copies of the filing were served on the Director of Utilities, City of Homestead.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 6, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16933 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-594-000]

Florida Power & Light Co.; Filing

June 21, 1982.

The filing Company submits the following:

Take notice that Florida Power & Light Company (FPL), on June 10, 1982, tendered for filing documents entitled Amendment Number Two, Amendment Number Three, and Amendment Number Four to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and City of Gainesville.

FPL states that under Amendment Number Two FPL will transmit power and energy for City of Gainesville (Gainesville) as is required by Gainesville in the implementation of its interchange agreement with Lake Worth Utilities Authority.

Amendment Number Three updates the rates for transmisson service provided by FPL, bringing them in accord with the increased rates filed by the Commission on July 1, 1981, in *Florida Power & Light Company*, Docket No. ER81-588-000.

FPL states that under Amendment Number Four, FPL will transmit power and energy for City of Gainesville in the implementation of its interchange agreement with the City of Homestead.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendments be made effective immediately. FPL states that copies of the filing were served on the Administrator—Strategic Utility Planning, Gainesville Regional Utilities.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 6, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16934 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-592-000]

Florida Power & Light Co.; Filing

June 21, 1982.

The filing Company submits the following:

Take notice that Florida Power & Light Company (FPL), on June 10, 1932, tendered for filing documents entitled Amendment Number Two to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Orlando Utilities Commission.

Amendment Number Two updates the rates for transmission service provided by FPL, bringing them in accord with the increased rates filed by the Commission on July 1, 1981, in *Florida Power & Light Company*, Docket No. ER81-588-000.

FPL requests that waiver of Section 35.3 of the Commission's Regulations be granted and that the proposed Amendment be made effective immediately. FPL states that copies of the filing were served on the Assistant General Manager, Orlando Utilities Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 6, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16935 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1824-002]

Jerrold L. Jacobs; Application

June 21, 1982.

The filing individual submits the following:

Take notice that on May 20, 1982, Jerrold L. Jacobs filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President: Atlantic City Electric Company

Director: Deepwater Operating Company

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 6, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16936 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-585-000]

Montana Power Co.; Filing

June 21, 1982.

The filing Company submits the following:

Take notice that the Montana Power Company (Montana) on June 8, 1982, tendered for filing in accordance with Section 35 of the Commission's Regulations a letter agreement between Cowlitz County PUD (Cowlitz) and Montana. Montana states that this letter agreement is for storage of energy in Montana's reservoirs with right of first refusal for Montana to acquire this energy if Cowlitz elects not to have the storage energy returned.

Montana indicates that it will not receive revenues from jurisdicational transactions under the proposed Letter Agreement.

The effective date of September 1, 1981, is proposed and waiver of the Commission's requirements is therefore requested.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 6, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16956 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-587-000]

Montana Power Co., Filing

June 21, 1982.

The filing Company submits the following:

Take notice that on June 8, 1982, Montana Power Company (Montana) tendered for filing in accordance with Section 35 of the Commission's regulations, Letter Agreement with City of Pasadena. Montana states that this Letter Agreement provides for the sale of firm energy between Montana and Pasadena.

Montana indicates that estimation of revenues from jurisdicational sales under the proposed Letter Agreement would be conjectural. Revenues based upon energy delivered from December 23, 1981 through February 28, 1982, increased by $443,732,000. Montana states that the rates for firm energy delivered by February 28, 1982, under this Letter Agreement were negotiated.

An effective date of December 23, 1981 is proposed and waiver of the Commission's requirements is therefore requested.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 6, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16957 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-588-000]

Montana Power Co.; Filing

June 21, 1982.

The filing Company submits the following:

Take notice that Montana Power Company (Montana) on June 8, 1982, tendered for filing in accordance with Section 35 of the Commission's Regulations, a Letter Agreement with the City of Burbank (Burbank). Montana states that this Letter Agreement provides for the sale of firm energy between Montana and Burbank.

Montana indicates that estimation of revenues from jurisdictional sales under the proposed Letter Agreement would be conjectural. Revenues based upon energy delivered from January 19, 1982 through February 28, 1982, increased by $703,209.000. Montana states that the rates for firm energy delivered by February 28, 1982, under this Letter Agreement were negotiated.

An effective date of January 19, 1982, is proposed and waiver of the Commission's requirements is therefore requested.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 6, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16958 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-586-000]

Montana Power Co.; Filing

June 21, 1982.

The filing Company submits the following:

Take notice that Montana Power Company (Montana) on June 8, 1982, tendered for filing in accordance with Section 35 of the Commission's regulations, Letter Agreements which amend previously filed Agreements, with Los Angeles Department of Water & Power (Los Angeles). Montana states that this amendment provides for the sale of firm energy between Montana and Los Angeles.

Montana indicates that estimation of revenues from jurisdictional sales under the proposed amendment would be conjectural. Revenues based upon energy delivered from December 23, 1981 through February 28, 1982, increased by $2,809,815.15. Montana states that the rates for firm energy delivered by February 28, 1982, under these Amendatory Agreements were negotiated.

An effective date of December 23, 1981, is proposed and waiver of the Commission's requirements is therefore requested.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 6, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16959 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-584-000]

Montana Power Co.; Filing

June 18, 1982.

The filing Company submits the following:

Take notice that Montana Power Company (Montana) on June 8, 1982, tendered for filing in accordance with Section 35 of the Commission's regulations, Letter Agreement with the Washington Water Power Company (Washington). Montana states that this Letter Agreement provides for the sale of firm energy between Montana and Washington.

Montana indicates that estimation of revenues from jurisdictional sales under the proposed Letter Agreement would be conjectural. Revenues based upon energy delivered from December 23, 1981 through February 28, 1982 increased by $3,579,312.42. Montana states that the rates for firm energy delivered January 31, 1982, under this Letter Agreement were negotiated.

An effective date of December 28, 1981 is proposed and waiver of the Commission's requirements is therefore requested.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 25 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 1, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16960 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-583-000]

Montana Power Co.; Filing

June 18, 1982.

The filing Company submits the following:

Take notice that on June 8, 1982, Montana Power Company (Montana) tendered for filing in accordance with Section 35 of the Commission's regulations, Letter Agreement with City of Glendale. Montana states that this Letter Agreement provides for the sale of firm energy between Montana and Glendale.

Montana indicates that estimation of revenues from jurisdictional sales under the proposed Letter Agreement would be conjectural. Revenues based upon energy delivered from December 23, 1981 through February 28, 1982 increased by $289,658.32. Montana states that the rates for firm energy delivered February 28, 1982, under this Letter Agreement were negotiated.

An effective date of December 23, 1981 is proposed and waiver of the Commission's requirements is therefore requeted.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8

and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 1, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16961 Filed 6-22-82: 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP81-361-001]

Northern Natural Gas Co., Division of InterNorth, Inc.; Amendment

June 18, 1982.

Take notice that on May 25, 1982, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP81-361-001 pursuant to Section 7(c) of the Natural Gas Act an amendment to its application filed June 8, 1981, in Docket No. CP81-361-000 so as to reflect the addition of a delivery point to accommodate the sale of natural gas, all as more fully set forth in the amendment which is on file with the Commission and open to the public inspection.

Applicant states that by its application in Docket No. CP81-361-000, it requested authority to sell up to 100,000 Mcf of natural gas per day to Energy Gathering, Inc. (Energy) and to deliver the sales volumes to Energy at a point of interconnection between Northern and Oasis Pipe Line Company in Pecos County, Texas.

Applicant herein amends the subject application to reflect an additional delivery point at the existing interconnection of the onshore terminus of Applicant's Matagorda Pipeline System and Channel Industries Gas Company's A-S pipeline near Tivoli, Refugio County, Texas.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before July 13, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determined the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16962 Filed 6-22-82: 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-349-000]

Northern Natural Gas Co., Division of InterNorth, Inc., Application

June 18, 1982.

Take notice that on May 27, 1982, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP82-349-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of additional pipeline facilities in Block 205, West Cameron area, offshore Louisiana (WC 205), all as more fully set forth in the application which is on file with the Commission and open to the public inspection.

Applicant proposes herein to construct and operate approximately 2.1 miles of 12-inch pipeline, associated metering and appurtenances in WC 205 necessary to transport natural gas from the "B" platform to its existing facilities on the "AP" platform in WC 205.

Applicant estimates that the proposed facilities would provide the capacity needed to transport 120,000 Mcf of natural gas per day. It is asserted that the cost of the facilities proposed herein would be approximately $3,005,900 which would be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 13, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16963 Filed 6-22-82: 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-71-001]

Northern Natural Gas Co., Division of InterNorth, Inc.; Notice of Amended Changes in FERC Gas Tariff

June 17, 1982.

Take Notice the Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), on June 11, 1982 tendered for filing amended changes in its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2. On April 26, 1982, Northern filed a general rate increase which the Commission designated Docket No. RP82-71-000. As instructed by the Commission in its May 26, 1982 Order that accepted this filing and suspended its effectiveness and pursuant to Section 154.66 of the Commission's Regulations, Northern is hereby amending this general rate increase by the filing of revisions to its FERC Gas Tariff in order to include in such rate filing all the costs and revenues, including purchased gas cost and transportation costs, associated with the deliveries of Canadian gas to Northern through the Northern Border Pipeline. Northern is also requesting that the Commission: (a) permit the amended increased rates to become effective on the date that deliveries of gas volumes from the Northern Border Pipeline commence (currently scheduled for September 1, 1982), and (b) accept for

inclusion in Northern's FERC Gas Tariff, proposed provisions, entitled "Semi-Annual Adjustment to Reflect the Cost of Procuring Canadian Gas Through the Alaskan Natural Gas Transportation System." The increase in rates reflected in this amended rate increase filing will increase revenues from jurisdictional sales and transportation services by an additional $178.085,020, for a total increase of $348,077,762.

The Company states that copies of the filing have been mailed to each of its Gas Utility customers, to interested State Commissions, and to all other parties who have filled petitions of intervention in this proceeding.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practive and Procedure before June 28, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16964 Filed 6-22-82: 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-578-000]

Pacific Power & Light Co.; Notice of Filing

June 21, 1982.

The filing Company submits the following:

Take Notice that Pacific Power & Light Company (Pacific) on June 7, 1982, tendered for filing, in accordance with Section 35.13a(d) Part IV of the Commission's Interim Rule (Docket No. RM81-41), Pacific's Revised Appendix 1 for the state of Montana dated January 18, 1982. The Revised Appendix 1 calculates an average system cost for the state of Montana applicable to the exchange of power between Bonneville Power Administration (Bonneville) and Pacific.

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective January 18, 1982, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Public Service Commission of the State of Montana and the Industrial Customers of Bonneville.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C., 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 6, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16937 Filed 6-22-82: 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-590-000]

Pacific Power & Light Co.; Filing

June 21, 1982.

The filing Company submits the following:

Take notice that Pacific Power & Light Company (Pacific) on June 8, 1982, tendered for filing, in accordance with Section 35.12 of the Commission's Regulations, a Letter Agreement between the State of California, Department of Water Resources (Purchaser) and Pacific dated January 18, 1982 and executed by the Purchaser on March 8, 1982. The Letter Agreement provides the Purchaser with the opportunity to purchase nonfirm thermal energy from Pacific as, if and when available.

Pacific requests the rate schedule to become effective sixty (60) days after the filing date.

Copies of the filing were supplied to the Purchaser.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before *July 6, 1982.* Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16938 Filed 6-22-82: 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-593-000]

Pennsylvania Electric Co.; Filing

June 21, 1982.

The filing Company submits the following:

Take notice that on June 10, 1982, Pennsylvania Electric Company (Penelec) filed tariff changes increasing its rates for wholesale all requirements, partial requirements and wheeling service. Penelec states that the changes reflect an annual increase in revenues of $9,282,585. Penelec requests an effective date of August 9, 1982.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 6, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16939 Filed 6-22-82: 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1580-000]

Robert W. Scherer; Application

June 18, 1982.

The filing individual submits the following:

Take notice that on June 1, 1982, Robert W. Scherer filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Director and President, Georgia Power Company
Director and Vice President, Southern Electric Generating Company

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Captiol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 1, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16940 Filed 6-22-82: 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1668-001]

Robert E. Schill; Application

June 21, 1982.

The filing individual submits the following:

Take notice that on June 10, 1982, Robert E. Schill filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Vice President—Strategic Corporate Planning—Central Vermont Public Service Corporation
Vice President—Connecticut Valley Electric Company, Inc.
Vice President and Director—Central Vermont Public Service Corporation—Bradford Hydroelectric, Inc.
Vice President and Director—Central Vermont Public Service Corporation—East Barnet Hydroelectric, Inc.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 8, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16941 Filed 6-22-82: 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP80-65-015]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Petition To Amend

June 18, 1982.

Take notice that on May 28, 1982, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP80-65-015 a petition to amend the order issued May 20, 1981, in Docket No. CP80-65 pursuant to Section 7(c) of the Natural Gas Act so as to authorize an increase in the maximum volume of storage gas Petitioner is currently authorized to transport for Fitchburg Gas and Electric Light Company (Fitchburg), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that by order issued May 20, 1981, in the instant docket, Petitioner was authorized to transport for Fitchburg a daily transportation volume of 455 Mcf of natural gas and a winter transportation volume of 50,000 Mcf of natural gas. Petitioner states that in Docket No. CP76-492 Penn-York Energy Corporation (Penn-York) was authorized to store a maximum annual volume of 50,000 Mcf of natural gas for Fitchburg under Penn-York's Rate Schedule SS-1. It is further stated that Penn-York has pending before the Commission at Docket No. CP76-492-021 an application for authorization to increase its maximum annual storage service to Fitchburg from the currently authorized volume of 50,000 Mcf to 137,257 Mcf. Petitioner explains that Fitchburg has requested that Petitioner transport for Fitchburg on a long-term best-efforts basis the additional volumes of storage gas which Penn-York proposes to store for Fitchburg upon grant of its certificate request in Docket No. CP76-492-021.

Accordingly, Petitioner requests authorization herein to transport for Fitchburg a revised daily transportation volume of 1,239 Mcf of natural gas and a revised winter transportation volume of 136,257 Mcf of natural gas.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before July 13, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16942 Filed 6-22-82: 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-345-000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Notice of Application

June 18, 1982.

Take notice that on May 25, 1982, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP82-345-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and exchange of natural gas for the account of Florida Gas Transmission Company (Florida), all as more fully set forth in the application which is on file with the commission and open to public inspection.

Pursuant to a transportation and exchange agreement dated April 7, 1981, Applicant proposes to transport up to 4,000 Mcf of natural gas per day for Florida from a point of receipt in West Cameron Block 65, offshore Louisiana, to Applicant's station 823 Jefferson Davis Parish, Louisiana. Applicant asserts that Natural gas could then be transported by Applicant to Natchitoches, Louisiana, for delivery by exchange to Florida in Starr County, Texas, delivered by exchange to Florida at the interconnection of project Sabine and Florida's facilities in Calcasieu Parish, Louisiana, or delivered by exchange for Florida's account to Applicant's MLV 523 near Cocodrie in Terrebonne Parish, Louisiana, for transportation and delivery to Florida at Carnes, in Stone County, Mississippi.

It is asserted that Florida would pay Applicant a monthly demand charge equal to $15.531 plus a volume charge dependent upon the point to which gas is delivered. Applicant estimates that for deliveries in Starr County, the monthly charge would be 10.50 cents per Mcf; at

the project Sabine delivery point, 5.02 cents per Mcf, and at the Carnes delivery point, 14.48 cents per Mcf. It is further asserted that there would be a minimum monthly bill and that Florida would provide Applicant certain volumes of natural gas to compensate Applicant for its fuel and use requirements.

It is asserted that the proposed service would provide Florida with a means of transporting an additional supply of natural gas without its having to construct and operate additional facilities duplicative to Applicant's existing pipeline facilities which are accessible.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 13, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regualtory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16993 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-360-000]

Transcontinental Gas Pipe Line Corp.; Notice of Application

June 18, 1982.

Take notice that on June 4, 1982, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP82-360-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for the account of Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a transportation agreement dated December 7, 1981, as amended on March 4, 1982, Applicant proposes to transport up to 15,000 dt equivalent of natural gas per day for Southern from a point of receipt at the interconnection between the facilities of Applicant and the facilities which would be jointly owned by Southern, United Gas Pipe Line Company and Applicant in the Ship Shoal area, Block 232, offshore Louisiana. It is stated that Applicant would redeliver thermally equivalent quantities to Southern at a proposed point of interconnection between Southern and Applicant in Livingston Parish, Louisiana, less a 1.2 percent retention for Compressor fuel use and line loss make-up.

It is asserted that Southern would pay Applicant an initial commodity charge of 8.5 cents per dt equivalent.

It is asserted that the proposed service would enable Southern to receive into its system natural gas which is has purchased from Ship Shoal 232 which gas would help Southern maintain adequate and reliable supplies for its customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 13, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16944 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA82-23-000]

Tuck Industries, Inc.; Application for Adjustment

June 18, 1982.

On May 19, 1982, Tuck Industries, Inc. (Tuck) filed with the Commission an application for an adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) 15 U.S.C. § 3301 *et seq.* (Supp. IV 1980). Specifically, Tuck requests an adjustment so that it can obtain a refund of amounts which it paid in incremental pricing surcharges under Title II of the NGPA for natural gas consumed for the time period from December 1980 to October 1981, which gas was allegedly used in exempt industrial processes.

Tuck states that it ordered a gas meter in June 1980, to enable it to calculate the amount of natural gas used by it solely as non-exempt boiler fuel. Due to late delivery and than mechanical problems, the meter was not installed and functional until October 9, 1981. For the period prior October 9, 1981, Tuck notified its supplier, Central Hudson Gas and Electric Corporation, that it would compute a ratio of non-exempt gas to total delivered gas for incremental pricing purposes. Central Hudson notified Tuck that it could not approve the use of a ratio, and Central Hudson did not give any exemption for

incremental pricing on its total gas billing to Tuck.

Tuck maintains that it acted in a timely manner to install a gas meter to determine its ratio of exempt to non-exempt gas usage, and that the failure of the meter and delay in delivery was the sole reason for the inability to apply a correct incremental pricing surcharge to Tuck. Due to factors thus beyond its control, Tuck has suffered a monetary loss equal to the amount of the estimated overcharge and interest thereon to date of repayment. Tuck maintains that it suffered an unfair burden in paying a surcharge for approximately one half of the gas it used, which was used for exempt uses.

Tuck therefore requests that it be refunded the amount of surcharge which it paid for gas used in allegedly exempt uses. Tuck has calculated a methodology to determine overpayment, and under this methodology Tuck maintains that the surcharge overpayment amounts to $40,295.92, to which Tuck would add 15% interest prorated monthly to date of repayment.

The procedures applicable to the conduct of this adjustment proceeding are found in § 1.41 of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this proceeding shall file a petition to intervene in accordance with the provisions of § 1.41. All petitions to intervene must be filed on or before July 12, 1982.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16945 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-352-000]

Western Gas Interstate Co.; Notice of Application

June 18, 1982.

Take notice that on May 28, 1982, Western Gas Interstate Company (Applicant), 1800 First International Building, Dallas, Texas 75270, filed in Docket No. CP82-352-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to Southern Union Gas Company for resale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to sell natural gas to Southern Union at an additional delivery point in Texas County, Oklahoma. It is stated that deliveries would be from a tap on one of Applicant's gathering lines which extends from the Bacon well located 4 miles south of Applicant's East Line in Texas County, Oklahoma, to a point on the East Line approximately 6.5 miles west of Applicant's Optima Border Station. It is stated that the proposed tap would consist of approximately 15 feet of wrapped steel pipe, one 1-inch plug valve and one 1-inch tapping tee.

Applicant states that the natural gas received by Southern Union would be redelivered and resold for residential use at an estimated peak day rate of 2 Mcf with annual usage of approximately 100 Mcf.

It is further stated that the natural gas for the proposed service would be provided from volumes purchased by Applicant from the Bacon well and that the proposed sale would not diminish service to customers presently served by Applicant.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 13, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16946 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5844-000]

Banister Hydro Associates; Application for Preliminary Permit

June 18, 1982.

Take notice that Banister Hydro Assosiates (Applicant) filed on January 4, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 5844 to be known as the Motleys Mill Hydropower Project located on the Banister River in Pittsylvania County, Virginia. The application is on file with the Commission and is available for public inspection.[1] Correspondence with the Applicant should be directed to: Mr. Wayne L. Rogers, Banister Hydro Associates, 1444 Foxwood Court, Annapolis, Maryland 21401.

Project Description—The proposed project would consist of: (1) An existing 275-foot long and 13-foot high, concrete capped, stone dam; (2) an existing reservoir of negligible size; (3) a proposed transmission line approximately one-half mile long; (4) an existing powerhouse with an estimated installed generating capacity of 200 kW; and (5) appurtenant facilities. The Applicant estimates the average annual energy output to be 800,000 kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 18 months. During this time the significant legal, institutional, engineering, environmental, marketing, economic and financial aspects of the project will be defined, investigated, and assessed to support an investment decision. The report of the proposed study will address whether or not a commitment to implementation is warranted, and, if the findings are positive, the Applicant intends to submit a license application. The Applicant's estimated total cost for performing these studies is $36,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 30, 1982, the competing application itself [see: 18 CFR 4.30 et seq. (1981)]. A notice

[1] Notice of this application for preliminary permit was pubished in the Star Tribune of Chatham, Virginia on March 10, 17, 24 and 31.

of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 30, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 30, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16965 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6354-000]

Big Rivers Electric Corp.; Application for Preliminary Permit

June 16, 1982.

Take notice that Big Rivers Electric Corporation (Applicant) filed on May 20, 1982, an application for preliminary permit [pursuant to the Federal Power Act 16 U.S.C. 791(a)-825(r)] for Project No. 6354 to be known as the Smithland Hydroelectric Project located on the Ohio River, near Smithland in Livingston County, Kentucky. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. W. H. Thorpe, General Manager, Big Rivers Electric Corporation, 201 Third Street, P.O. Box 24, Henderson, Kentucky 42420.

Project Description—The proposed project would consist of: (1) A propodrf powerhouse on the Kentucky side of the Corps of Egineers' Smithland Dam with generating units having an estimated installed capacity of 120,000 kW; (2) a proposed step-up transformer; (3) a proposed substation; (4) a proposed 2-mile transmission line to the Big Rivers Electric Corporation; (5) proposed recreational facilities as appropriate; and (6) appurtenant facilities. Energy produced at the project would be used by the Applicant's system load requirements. The estimated annual power developed at the site is 500,000 MWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months, during which time the studies would be made to determine the engineering, environmental, and economic feasibility of the project. In addition, historic and recreational aspects of the project would be determined, along with the consultation with Federal, State, and local agencies for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be $150,000.

Competing Applications—This application was filed as a competing application to Henderson City Utility Commission's application for Project No. 6110 filed on March 19, 1982. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an application for preliminary permit or license will be accepted for filing in response to this notice. Any application for license or exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et. seq. or 4.101 et seq. (1981), as appropriate).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 23, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the

Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16966 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6355-000]

Big Rivers Electric Corp.; Application for Preliminary Permit

June 16, 1982.

Take notice that Big Rivers Electric Corporation (Applicant) filed on May 20, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a) 825(r)] for Project No. 6355 to be known as the Uniontown Hydroelectric Project located on the Ohio River, near Uniontown in Union County, Kentucky. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. W. H. Thorpe, General Manager, Big Rivers Electric Corporation, 201 Third Street, P.O. Box 24, Henderson, Kentucky 42420.

Project Description—The proposed project would consist of: (1) A proposed powerhouse on the Kentucky side of the Corps of Engineers Uniontown Locks and Dam with generating units having an estimated installed capacity of 75,000 kW; (2) a proposed step-up transformer; (3) a proposed substation; (4) a proposed 6-mile transmission line to the Big Rivers Electric Corporation's Island Creek-Hamilton No. 2 mine substation; (5) proposed removal of approximately 900 feet of existing over-flow weir; (6) proposed recreational facilities as appropriate; and (7) appurtenant facilities. Energy produced at the project would be used by the Applicant's system load requirements. The estimated annual power developed at the site is 320,000 MWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months, during which time studies would be made to determine the engineering, environmental, and economic feasibility of the project. In addition, historic and recreational aspects of the project would be determined, along with the consultation with Federal, State, and local agencies for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be $150,000.

Competing Applications—This application was filed as a competing application to Henderson City Utility Commission's application for Project No. 6111 filed on March 19, 1982. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an application for preliminary permit or license will be accepted for filing in response to this notice. Any application for license or exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations [See: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 22, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16967 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6353-000]

Big Rivers Electric Corp; Application for Preliminary Permit

June 16, 1982.

Take notice that Big Rivers Electric Corporation (Applicant) filed on May 20, 1982, and application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a) 825(r)] for Project No. 6353 to be known as the Newburgh Hydroelectric Project located on the Ohio River, near Newburgh in Henderson County, Kentucky. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. W. H. Thorpe, General Manager, Big Rivers Electric Corporation, 201 Third Street, P.O. Box 24, Henderson, Kentucky 42420.

Project Description—The proposed project would consist of: (1) A proposed powerhouse on the Kentucky side of the Corps of Engineers Newburgh Locks and Dam with generating units having an estimated installed capacity of 60,000 kW; (2) a proposed step-up transformer; (3) a proposed substation; (4) a proposed 9-mile transmission line to the Henderson County substation; (5) proposed recreational facilities as appropriate; and (6) appurtenant facilities. Energy produced at the project would be used by the Applicant's system load requirements. The estimated annual power developed at the site is 250,000 MWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months, during which time studies would be made to determine the engineering, environmental, and economic feasibility of the project. In addition, historic and recreational aspects of the project would be determined, along with the consultation with Federal, State, and local agencies for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be $150,000.

Competing Applications—This application was filed as a competing application to Henderson City Utility Commission's application for Project No. 6109 filed on March 19, 1982. Public

notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an application for preliminary permit or license will be accepted for filing in response to this notice. Any application for license or exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations [See: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agenies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements or the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or petitions to intervene must be received on or before July 19, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all Capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16968 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL82-18-000]

Cities of Campbell and Thayer, Missouri; Filing

June 21, 1982.

The filing Cities submit the following:

Take notice that on May 18, 1982, the Cities of Campbell and Thayer, Missouri (Cities) filed a petition for a declaratory order that the Commission is without jurisdiction to accept Arkansas Power & Light Company's (AP&L) unilateral rate filing for Cities and that AP&L's filing and interim rate changes are thereby illegal.

On August 28, 1981, the Commission accepted for filing the proposed W-81 rate of AP&L for Cities in Docket No. ER81-577-000. The rate was suspended for five-months and became effective, on an interim basis, subject to refund, as of January 30, 1982. Cities state that, under the *Mobile-Sierra* doctrine, the Commission has no jurisdiction to accept AP&L's unilateral rate change and no jurisdiction to permit AP&L to collect the interim rate.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before July 21, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16969 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-348-000]

Granite State Gas Transmission, Inc.; Application

June 18, 1982.

Take notice that on May 27, 1982, Granite State Gas Transmission, Inc. (Applicant), 120 Royall Street, Canton, Massachusetts 02021, filed in Docket No. CP82-348-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a storage service and a storage-related transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has contracted with Penn-York Energy Corporation (Penn-York) for 2,400,000 Mcf of annual storage capacity. It is asserted that Bay State Gas Company (Bay State) has contracted for 1,850,000 Mcf and Northern Utilities, Inc. (Northern Utilities), for 550,000 Mcf of that space in the storage facility.

It is further asserted that pursuant to a precedent agreement between Applicant and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), dated May 18, 1982, Tennessee would transport up to 21,818 Mcf of natural gas per day and an annual quantity of 2,400,000 Mcf of natural gas for the account of Applicant to and from the Penn-York storage facility. Applicant states that Tennessee would deliver up to 16,818 Mcf a day of storage withdrawal volumes to Bay State and up to 5,000 Mcf a day into Applicant's facilities at Tennessee's station in Essex County, Massachusetts, where Applicant would receive Northern Utilities' storage volumes for further transportation and delivery to Northern Utilities in New Hampshire and Maine.

It is asserted that Applicant would render the storage service under a new Rate Schedule S-1 in its FERC Gas Tariff, First Revised Volume No. 1, and the interruptible transportation service under new Rate Schedules T-2 for Bay State and T-3 for Northern Utilities in its FERC Gas Tariff, Original Volume No. 2. Applicant states that its rates for storage service and the storage transportation service made available through its arrangements with Penn-York and Tennessee would be identical to the rates charged Applicant by Penn-York and Tennessee, respectively. Additionally, Applicant requests waiver of the provisions of §§ 154.38(d)(3) and 154.63 of the Commission's Regulations to the extent necessary to track the charges in Penn-York's and Tennessee's rates coincidental with changes in such rates from time to time.

Applicant states that the proposed storage arrangements would permit Bay State and Northern Utilities to attain some leveling in the overall cost of their gas supplies.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 6, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the

Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time reqired herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16971 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5845-000]

Keys Mill Hydro Associates; Application for Preliminary Permit

June 18, 1982.

Take notice that Keys Mill Hydro Associates (Applicant) filed on January 4, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for Project No. 5845 to be known as the Keys Mill Hydropower Project located on the Maury River in Rockbridge County, Virginia. The application is on file with the Commission and is available for public inspection.[1] Correspondence with the Applicant should be directed to: Wayne L. Rogers, Keys Mill Hydro Associates, 1444 Foxwood Court, Annapolis, Maryland 21401.

Project Description—The proposed project would consist of: (1) An existing, 340-foot long and 6-foot high concrete gravity dam which has been breached; (2) a reservoir of negligible size; (3) a proposed 200-foot long transmission line; (4) a proposed powerhouse with an estimated installed generating capacity of 400 kW; and (5) appurtenant facilities. The Applicant estimates the average annual energy generation to be 1.6 GWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 18 months. During this time the significant legal, institutional, engineering, environmental, marketing, economic and financial aspects of the project will be defined, investigated, and assessed to support an investment decision. The report of the proposed study will address whether or not a commitment to implementation is warranted, and, if the findings are positive, the Applicant intends to submit a license application. The Applicant's estimated total cost for performing these studies is $36,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 30, 1982, the competing application itself [see: 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 30, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 30, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-16972 Filed 6-22-82; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Proposed Decision and Order; Week of May 10 Through May 14, 1982

During the week of May 10 through May 14, 1982 the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person 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

[1] Notice of this application for preliminary permit was published in the News-Gazette of Lexington, Virginia on March 10, 17, 24 and 31.

proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, New Post Office Building, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

June 16, 1982.

Jordan Gas Company, Jordan Gas Service, Inc., Southern Butane, Inc., Centre, Alabama; BEE-1642

Jordan Gas Co., Jordan Gas Service, Inc. and Southern Butane, Inc. filed an Application for Exception from the provisions of 10 CFR Part 212. The exception request, if granted, would permit the firms to increase retroactively their maximum lawful selling prices for propane during the period November 1973 through March 1974, and would relieve them of the potential obligation of refunding overcharges alleged in a PRO issued to the firms. On May 14, 1982, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted in part.

[FR Doc. 82-16877 Filed 6-22-82; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order Filed; Period of March 1 Through March 12, 1982

During the period of March 1 through March 12, 1982, the notice of objection to the proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

June 16, 1982.

Texaco, Inc., White Plains, New York; HRO-0032

On March 10, 1982, Texaco, Inc., 2000 Westchester Avenue, White Plains, New York 10650 filed a Notice of Objection to a Proposed Remedial Order which the DOE Office of Special Counsel issued to the firm on January 8, 1982. In the PRO the OSC found that from September 1973 to December 1980, Texaco overstated the amount of its unrecovered increased costs available for pass-through by $30,930,438.

[FR Doc. 82-16878 Filed 6-22-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/15C; PH-2150-5]

Diallate; Determination Concluding the Rebuttable Presumption Against Registration; Notice of Availability of Position Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of determination; notice of availability.

SUMMARY: This Notice provides the final determination of the Environmental Protection Agency concluding its review of diallate under the Rebuttable Presumption Against Registration (RPAR) process. Diallate was identified for possible regulatory action because animal tests indicate that it is potentially carcinogenic. However, a thorough analysis of human exposure to diallate has led the agency to conclude that, with appropriate modifications to its registrations, diallate can be used without causing unreasonable adverse effects to man or the environment. The agency has, therefore, determined that diallate registrations will be cancelled and future applications for registration will be denied unless registrants and applicants amend the terms and conditions of registration as specified in this Notice.

DATE: Requests for a hearing must be received on or before July 23, 1982 or within thirty (30) days from receipt of this notice, whichever occurs later.

ADDRESSES: Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Copies of the Position Document 4 are available upon request from: William E. Ades, Special Pesticide Review Division (TS-791), Environmental Protection Agency, Rm. 711F, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: William E. Ades (703-557-7420).

SUPPLEMENTARY INFORMATION:

I. Introduction

In the Position Document 1, the Agency presumed against diallate on the basis of evidence that it was oncogenic in animal studies. In the Position Document 2/3, the agency found that, even in the worst (exposure) case, oncogenic risks to the general public associated with dietary exposure to diallate were negligible. It also found that risks to applicators associated with the mixing, loading, and application of the emulsifiable concentrate (EC) formulation of diallate outweighed the benefits resulting from its use; the granular formulation was found to present lower exposure and risks. The PD 2/3 therefore recommended the cancellation of the EC formulations of diallate, anticipating that they would be replaced by the granular formulation which. However, new exposure and oncogenicity data were submitted by a registrant in response to the PD 2/3 and the subsequent reevaluation of exposure and risk has convinced the agency that it is possible, with certain label modifications, to use the EC formulations of diallate without exposing applicators to unreasonable risk. To insure this reduced applicator exposure (and therefore risk), the agency will require (1) use of protective clothing by applicators, and (2) use of products containing diallate only by or under the direct supervision of trained and certified applicators.

The PD 2/3 also indicated the agency's concern about diallate's potential for mutagenic activity. While several additional studies reviewed by agency scientists since publication of the PD 2/3 have shown diallate to be mutagenic in laboratory tests, diallute's potential as a human mutagen is uncertain. However, the risk reduction measures taken to reduce potential oncogenic risks should also reduce any potential mutagenic risk accordingly. Therefore, further testing for mutagenic potential will not be required at this time.

The agency also indicated concern about diallate's potential for neurotoxic effects in both the PD 1 and PD 2/3. No new tests have been required to date

because the agency is awaiting final validations (from Health Protection branch, Canada) of tests that may resolve those concerns. In the meantime, the agency believes that whatever small neurotoxic risk may exist will be reduced to an acceptable level by the requirements that are already being imposed to reduce exposure to applicators.

II. Legal Background

In order to obtain a registration for a pesticide under the Federal Insecticide, fungicide, an Rodenticide Act, as amended ("FIFRA"), a manufacturer must demonstrate that the pesticide satisfies the statutory standard for registration. That standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment", FIFRA section 3(c)(5). "Unreasonable adverse effects on the environment" is defined to mean "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide", FIFRA, section 2(bb). In effect, this standard requires a finding that the benefits of each use of the pesticide exceed the risks of use, when the pesticide is used in accordance with commonly recognized practice and in compliance with the terms and conditions of registration. The burden of proving that a pesticide satisfies the registration standard is on the proponents of registration and continues as long as the registration remains in effect. Under section 6 of FIFRA, the Administrator may cancel the registration of a pesticide or modify the terms and conditions of registration whenever it determined that the pesticide caused unreasonable adverse effects on the environment. The agency created the RPAR process to facilitate the identification of pesticide uses which may not satisfy the statutory standard for registration and to provide an informal procedure to gather and evaluate information about the risks and benefits of these uses.

The regulations governing the RPAR process are set forth at 40 CFR 162.11. This section provides that a rebuttable presumption shall arise if a pesticide meets or exceeds any of the risk criteria set out in the regulations. The agency announces that an RPAR has arisen by publishing a notice of determination in the **Federal Register**. After an RPAR is issued, registrants and other interested persons are invited to review the data upon which the presumption is based and to submit data and information to rebut the presumption of risk by showing that the agency's initial determination of risk was in error, or by showing that use of the pesticide is not likely to result in any significant exposure to human beings or the environment with regard to the adverse affects in question. In addition to submitting evidence to rebut the risk presumption, respondents may submit evidence as to whether the economic, social and environmental benefits of the use of the pesticide outweigh the risk of use.

The regulations require the agency to conclude an RPAR by issuing a notice of determination. In that notice, the agency is required to state and explain its position on the question of whether the risk presumption has been rebutted. If the agency determines that the presumption is not rebutted, it will then consider information relating to the social, economic, and environmental costs and benefits which registrants and other interested persons submitted to the agency, and any other benefits information known to the agency. In determining whether the use of a pesticide poses risks which are greater than the benefits, the agency considers possible changes to the terms and conditions of registration which can reduce risks, and the impacts of such modifications on the benefits of the use. After weighing the risks and benefits of pesticide use, the Administrator may conclude the RPAR process by issuing a notice of intent to cancel, deny, or reclassify the registrations of the pesticide for the use in question, pursuant to FIFRA section 6(b)(1) and section 3(c)(6), or by issuing a notice of intent to hold a hearing pursuant to section 6(b)(2) of FIFRA to determine whether the registrations for the use should be cancelled, denied, or reclassified.

FIFRA section 6(b) requires the agency to submit proposed notices pursuant to section 6 to the Secretary of Agriculture for comment and to provide the Secretary of Agriculture with an analysis of the impact of the proposed action on the agricultural economy. The agency is required to publish any comments received from the Secretary and the Administrator's response to those comments with the notice of proposed action. FIFRA section 25(d) also requires the Administrator to submit section 6 notices to a Scientific Advisory Panel (SAP) for comment on the impact of the proposed action on health and the environment, at the same time and under the same procedures as those described above for review by the Secretary of Agriculture. After completing these external review procedures and making any changes in the proposed action which are deemed appropriate as a result of the comments received, the agency issues a notice containing its final determination of the regulatory actions (if any) which the agency proposes to implement. Registrants and other people affected by the agency's action can request a hearing to challenge the agency's determination.

III. Determinations and Initiation of Regulatory Action

A. Determinations of Risk

The agency has reviewed the recommendations and comments of the EPA Scientific Advisory Panel, the Secretary of Agriculture and other interested persons, additional published studies, and the comments and new data submitted by the Monsanto Company. The new exposure data submitted by the Monsanto Company have led to new estimates of mixer, loader, and applicator exposure judged to be more accurate than those used in the Diallate PD 2/3. The addition of the carcinogenic potency data from the Monsanto-sponsored hamster study confirm and support the data from the Innes study used in the PD 2/3. The results of these two studies have been used to provide new estimates of potential risk to users of diallate EC. Those estimates are not only more accurate than those in the PD 2/3, they are substantially lower. The agency concludes that the risks of the EC formulation are not sufficiently high to warrant its cancellation. Instead, the agency will require measures to insure that users are certified applicators and that users wear protective clothing in order to minimize exposure and therefore, risk.

B. Determinations on Benefits

The benefits associated with diallate use were assessed in the PD 2/3 in terms of the new costs that users would experience if diallate registrations were cancelled. Those estimates have not been changed since the PD 2/3 was published in 1980. The information that follows is derived from the analysis that supported the PD 2/3 estimates.

Diallate is used primarily to control wild oats in sugar beets, flax, lentils, and peas. It has minor use with alfalfa, barley, corn, potatoes, safflower and soybeans.

1. *Sugar beets.* The total annual market value of sugar beets is $500 million. Should diallate become unavailable, growers are expected to experience an annual loss of $4 million.

More than 60 percent of the diallate used in this country is applied to sugar beets. The emulsifiable concentrate formulation is applied to approximately 85 percent of the treated acreage while the granular formulation is applied to the remaining 15 percent. The degree of control of wild oats provided by each of these formulations appears to be the same for fall applications but slightly less for the granular formulation in spring applications.

2. *Flax.* Approximately 3 percent of the total flax acreage is treated with diallate. If diallate should become unavailable for use in the control of wild oats in flax, growers are expected to experience a $400,000 annual loss. The emulsifiable concentrate is the only formulation presently registered for this use. However, the granular is expected to be as effective.

3. *Lentils.* Thirty-eight percent of the total lentil acreage is treated with diallate. Lentil production is basically limited to two western states, Idaho and Washington. It is estimated that more than 43,000 pounds of diallate are applied to lentil acreage annually. The emulsifiable concentrate is the only diallate formulation presently registered for this use.

4. *Peas.* Dry peas, like lentils, are primarily grown in Idaho and Washington. Approximately 11 percent of the dry pea acreage is treated with diallate. Only the emulsifiable concentrate formulation of diallate is registered for use on peas for the control of wild oats.

5. *Minor uses including alfalfa, barley, corn, potatoes, safflower, and soybeans.* The total percent of minor crop acreage treated annually with diallate ranges from 0.1 percent to 0.5 percent. More specifically, it is estimated that 0.5 percent of the potato acreage is treated, whereas the percentage of treated acreage for all other crops is 0.1 percent or less. No economic impacts are expected if diallate is cancelled. Only the emulsifiable concentrate formulation is registered for the minor uses.

C. Determinations on Unreasonable Adverse Effects

A careful reevaluation of the findings and recommendations of the PD 2/3 leads the agency to the following determinations regarding the potential for adverse effects associated with the use of diallate:

1. There is evidence that diallate may be a potential human carcinogen. However, if the terms and conditions of registration are changed, the risk of cancer to applicators does not appear to be unreasonable, given the benefits associated with the continued use of all formulations of diallate.

2. There is multitest evidence that diallate is a mutagen, but further testing in mammalian species would be necessary to enable the agency to evaluate the likelihod of its mutagenic potential in humans. The agency will not, however, request additional testing at this time because the risk reduction measures taken to reduce potential oncogenic risks should also reduce any potential mutagenic risks, as well.

3. There is weak evidence that exposure to diallate may cause delayed neuropathy but no regulatory action based on this evidence is justified at this time.

In conclusion, then, the agency believes that the potential cancer risk to applicators is unacceptable at current levels of exposure. The agency has, therefore, determined that the terms and conditions of registrations for pesticide products that contain diallate must be amended, as described in this document, or their continued use will "cause unreasonable adverse effects on the environment."

D. Initiation of Regulatory Action

Based on the determinations summarized in this Notice, and developed in greater detail in the PD 4, the agency has decided that all currently held registrations of diallate products will be cancelled and future applications for registration will be denied unless registrants and applicants modify the terms and conditions of those registrations as specified below. Registrations for all products containing diallate will be continued and future applications for registration granted only if the registrants or applicants incorporate the following terms and conditions in the registrations and labeling of all diallate products:

1. *Restricted use pesticide.* For retail sale to and use only by certified applicators or persons under their direct supervision and only for those uses covered by the applicator's certification. See FIFRA section 3(d).

2. *Protective clothing required.* The following items of clothing must be worn when mixing, loading or applying Avadex®:

a. Long trousers and long-sleeved shirt or jacket of close-knit material.

b. Gloves made of rubber or other similar impermeable material.

c. Leather or rubber boots high enough to cover the ankle.

IV. Agency Analyses of Comments

A. Comments of the SAP

The comments of the SAP on the Notice of Determination Concluding the Rebuttable Presumption Against Registration of Pesticides Containing Diallate are presented here in their entirety.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Scientific Advisory Panel

Review of Preliminary Notice of Determination Concluding the Rebuttable Presumption Against Registration (RPAR) of Pesticide Products Containing Diallate

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel has completed review of plans by the Environmental Protection Agency (EPA) for initiation of regulatory action on pesticide products containing diallate under the provisions of section 6(b) of FIFRA as amended. The review was completed in open meetings held in Arlington, Virginia, during the period June 26–27, 1980.

Maximum public participation was encouraged for the review. Public notice of the meeting was published in the **Federal Register** on June 10, 1980. In addition telephonic calls and special mailings were sent to the general public who had previously expressed an interest in activities of the Panel.

Written and oral statements were received from the Monsanto Company, technical staff of the Environmental Protection Agency, and from representatives of the Red River Valley Sugarbeet Growers Association, Fargo, North Dakota.

The excellent briefing by Ms. Marcia Williams and Dr. Minnie Sochard of the Office of Pesticide Programs was of great value to the Panel. In addition, the Panel was most appreciative of the comments and suggestions received from Dr. Alan Dexter of North Dakota State University; and from Messrs. Green and Warner of the Red River Valley Sugarbeet Growers Association.

In consideration of all matters brought out during the meeting and careful review of all documents presented by the Agency and other parties, the Panel unanimously submits the following report.

Scientific Advisory Panel Report on Diallate

The Panel concurs with the Agency in recommending Option 3 (Position Document 2/3, April 1980): Cancel the emulsifiable concentrate registration effective two(2) years after decision

becomes final, with the following provisions:

1. That granular diallate formulations be substituted or;

2. That the Environmental Protection Agency (EPA) examine the data submitted by the Monsanto Agricultural Products Company relative to the degree of exposure of applicators to the emulsifiable concentrate formulations of diallate when applied using a closed system. If, in the opinion of the Agency, the exposure of diallate from the emulsifiable concentrate using the closed system method of application is equal to or less than that expected using granular formulations of diallate the Panel recommends the conditions of registration be amended to allow closed system applications of the emulsifiable concentrate of diallate.

Recommendations

The Scientific Advisory Panel submits the following special recommendations:

1. That protective clothing be used during the application of both the emulsifiable concentrate and granular formulations of diallate. The extent and type of protective clothing should be described by EPA.

2. That the Agency and Monsanto examine the feasibility and desirability of adding to the emulsifiable concentrates of diallate a malodorous substance or a dye which would encourage changes of clothing contaminated with the pesticide during the process of application.

3. That another neurotoxicity study be performed, perhaps with larger groups of animals than before, to more accurately determine the no observed effect level (NOEL) for this effect of diallate.

For the chairman:

Certified as an accurate Report of Findings: H. Wade Fowler, Jr., Ph.D., Executive Secretary, FIFRA Scientific Advisory Panel.

Dated: July 17, 1980

B. Comments of the Secretary of Agriculture

The comments of the Secretary of Agriculture on the PD 2/3 are presented here in their entirety.

Honorable Walter C. Barber, Jr., Acting Administrator, U.S. Environmental Protection Agency, Washingon, D.C. 20460, Dated: February 19, 1981,

Dear Mr. Barber: This is the United States Department of Agriculture's response to the U.S. Environmental Protection Agency's (EPA) Preliminary Notice of Determination, concluding the Rebuttable Presumption Against Registration (RPAR) of pesticide products containing diallate.

The Department believes that economic and social impacts on producers must be assessed at the local/regional level as well as the national level. Due to climatic and edaphic factors, certain crops are grown within a localized area or region. Regulatory decisions which force major shifts in production areas and/or practices must not be considered insignificant to those affected and efforts to avoid such actions need to receive detailed attention.

We believe that every effort should be made to develop and utilize weed management strategies that allow the use of pesticide when necessary, but with minimal risk to man and the environment.

Our comments on diallate are contained in the enclosure which is an integral part of this response. The additional time that your agency granted for our review of this document was very beneficial and is appreciated. We are hopeful EPA will give favorable consideration to these comments and suggestions.

Sincerely,
John R. Block
Secretary
Enclosure

Specific Comments

Secretary of Agriculture's Response to Diallate Notice of Determination, PD 2/3 Sugar Beets

1. Position Document (PD) 2/3 indicates that economic losses to sugar beet growers in the nonirrigated Red River Valley of North Dakota and Minnesota would be about $900,000. The USDA/State Assessment team in 1977 estimated the economic impact from the loss of diallate at $3.5 million. The Department is concerned about this wide discrepancy. Most of this difference is accounted for by the estimated cost associated with increased hand labor. The Assessment Team estimated that hand hoe labor costs would increase $10 per acre without diallate available. The figure used in PD 2/3 for increased hand labor was $1.17 for hand hoeing. Not only is the figure low, but the Department questions the procedure used to calculate it. EPA assumed that there was a direct relationship between the decreased effectiveness of the diallate substitutes and hand labor costs. Based on research at Fargo, North Dakota (1978), it was reported that diallate reduced hand labor 35 percent when used as the only control strategy. EPA took this figure times the effectiveness of the substitutes as reported by the Assessment Team in 1977. For example, eptam was reported as 90 percent effective as diallate so EPA estimated that hand labor was reduced 31 percent (35% × 90%). This was done for the other substitutes and then a weighted average calculated based on the estimated acres on which each substitute was used. This resulted in an estimated increase in hand labor costs of 7 percent. Based on hand weeding costs of $16.76 per acre, hand hoeing costs were estimated to increase $1.17 per acre.

This procedure does not take into account the difference in per acre charges for a lightly infested field compared to one with a heavy weed infestation. If one takes into account the number of wild oat plants remaining in the field when diallate substitutes are used, a different picture emerges. If the wild oat density is 100,000 (about 2 plants per sq. ft.) plants per acre and diallate gives 98 percent control, then 2,000 wild oat plants would remain. Assuming it takes 3 seconds to remove each plant with a hoe, it would take 1.7 hours per acre to remove the wild oat plants. If eptam, is 90 percent as effective as diallate, then 12,000 wild oat plants would remain after treatment. This would require 10 hours of hand labor, an increase of 8.3 hours per acre over diallate. Generally, it takes laborers 4 hours to hand hoe an acre. Based on the average of $16.76 per acre for hand labor, the hourly rate is $4.00. This would mean a $33 per acre increase in hand labor cost if eptam were used instead of diallate. It is recognized that contractors would not go through such an elaborate method to arrive at the charge for hand labor, but the fact is that they do take into account weed density when negotiating with a grower and charge a higher rate for heavily infested fields. Therefore, the Department concludes that the $10.00 increase in hand labor costs cited in the 1977 Assessment Report is more realistic than the $1.17 per acre used in PD 2/3.

2. We believe that the availability of the liquid formulation of diallate should be maintained. This is based upon our analysis of the following economics and exposure/hazards considerations.

A. Economics

The unavailability of the liquid will have a severe adverse economic impact on individual farmers due to reduced wild oats control when the granular is applied in the spring, and the higher cost of the granular compared to the liquid.

Sugar beet specialists and growers evaluating and/or using diallate do not concur that the granular formulation will give consistently equal performance to

the emulsifiable concentrate. The biological performance will be significantly influenced by climatic and soil factors and the normal performance of the granular is less than that of the emulsifiable concentrate. This is particularly true of broadcast applications on less than consistently uniform and finely pulverized seedbeds. The usual performance standard of granular formulations requires an increase in rate of active ingredient by up to 15 percent to give equal performance to liquid applications. This is true whether fall or spring applied and will be controlled by weather conditions which influence wild oats germination and also by the level of wild oat infestation.

The reduced wild oats control with spring applied granules compared to the liquid would be an important loss to farmers. Maximizing wild oats control is of utmost importance to professional agriculture as wild oat is a severe weed competitor. The importance of wild oats control is exemplified in that the present usage of diallate granules are more effective than the liquid in controlling wild oats. Granules are primarily used in the fall in the Red River Valley of North Dakota and Minnesota. Granulars require more moisture than the liquid formulation to released and distribute the diallate in the soil, which probably explains the reduced wild oats control with spring applied granules. The reduced wild oats control with spring granules compared to the liquid could in part be overcome by higher rates, but this would be another added cost. Diallate is used mainly in areas where rainfall is not adequate for consistent wild oats control with spring applied granules.

The economic importance of maximizing wild oats control in specific situations is exemplified from timed wild oats hoeing experiments which were recently conducted at North Dakota State University. Hoeing time was 73 hours per acre in 1979 and 218 hours per acre in 1978 to remove wild oats from cultivated untreated sugar beets. Hoeing time decreased with increased wild oats control. Hoeing time with diallate was 30 hours per acre in 1979 and 98 hours per acre in 1978. Thus, maximizing wild oats control has an important direct impact on economic returns. Hoe labor is not practiced for fields heavily infested with weeds.

Spring herbicide application options are essential for farming flexibility. Early snows and/or late harvests often prevent fall usage of diallate which must be applied late in order to reduce degradation losses. In 1979, very little diallate was fall-applied because of a sunflower harvest and an early snow in the Red River Valley.

Diallate granulars are presently only used for fall applications by some farmers who believe that the added cost for the granules is justified by the slightly better wild oats control and the lack of a problem with freezing of granular application equipment. Low temperatures cause spray equipment to freeze in late fall applications. The diallate granular formulation presently costs approximately $1 per acre more than the liquid at the 1.5 lb./acre rate.

The restrictions of diallate to only the granular formulation should not only increase losses from wild oats and chemical costs, but also increase application costs. Most farmers do not presently have granular application equipment. Granular applicators presently cost between $3,600 and $7,200 for 36 foot wide applicators. The more expensive type uses more precise metering devices which are essential to uniform herbicide applications and efficient herbicide usage and selectivity. Many farmers could not justify the pruchase of applicators and would need to have the diallate granulars applied commercially, which would be an added cost. Further, granulars may not permit timely application if farmers must depend on custom applicators.

Liquid diallate is generally applied in combination with EPTC (Eptam) or TCA to control other weeds in addition to wild oats in sugar beets. The loss of the liquid would require that a separate application be used for diallate which would add costs and a loss in energy efficiency. Premixing of diallate granulars with granulars of other herbicides would cause problems in obtaining uniform applications. Granulars could be developed with a combination of herbicides, but this would be difficult because the rates of each herbicide are often adjusted to the expected weed population and soil types.

B. Hazards Analysis

Exposure of workers would not be significantly different for the granular formulation than for the liquid, because nearly 90 percent of farmers apply liquid diallate using tractors with cabs and 84 percent incorporated immediately along with application in North Dakota. The use of tractors with enclosed cabs will minimize exposure during application regardless of the formulation.

The exposure during loading of the granular formulation would appear to be similar to that with a liquid as the dust would be more difficult to contain than the liquid. Rubber gloves and other protective clothing during loading will minimize exposure to the liquid formulation.

Exposure to diallate during granular application could be increased compared to the liquid. The liquid diallate is usually incorporated immediately into the soil because sprayers are mounted directly onto incorporating equipment pulled by large tractors with protective cabs. Most farmers do not mount granular applicators directly on incorporating equipment because the equipment will generally be used for liquid herbicide applications. The granular would probably not be applied along with the incorporation when custom applied. The application of the granulars without simultaneous incorporation would only require small tractors which usually do not have protective cabs. Most farmers would not mount granular applicators directly on incorporating equipment because the incorporating equipment will generally be used for liquid herbicide applications. Thus, the separate incorporation and application could increase exposure through less use of tractors with cabs and an extra field operation.

Because most growers do not have equipment for granular applications, the restriction of diallate to only the granular formulation would increase the amount applied by commercial applicators. Thus, exposure would be concentrated in a relatively small number of applicators rather than distributed over many users. Further, diallate granules would be used in the spring at higher rates than the liquid which could also increase exposure.

Recent data indicated that farmers using diallate treated 198 acres on the average in North Dakota. Thus, the average farmer applied diallate for 7.6 hours each year assuming a 36 foot with spray boom and six miles per hour when incorporating and applying diallate in one operation. Thus, exposure would be short and low, especially with protective cabs as presently used by nearly 90 percent of the farmers applying diallate in North Dakota.

Diallate is normally applied late in the fall or early in the spring when temperatures are low so farmers would be normally wearing clothes that would minimize dermal exposure. Thus, exposure would be less than with herbicides applied during warmer times of the year.

3. The Department does not concur with the assessment in the Position Document that "producers will substitute an integrated chemical and cultural strategy for wild oats control."

Such a strategy does not even presently exist. Because of the shortage and cost of hand labor, the potential objection of this work force to handle weedy fields, and the increasing costs of fuel and other inputs for cultivation, it is impossible to predict how the sugar beet farmers will control wild oat population in the absence of liquid diallate.

Flax

1. The Department concurs that the acreage of flax varies from year to year. However, the 1979 acreage was 23 percent higher than 1978. The Department also concurs that the acreage of flax treated with diallate is only about 3 percent. This is because the decision of producers to use a herbicide is based on levels of infestation, climatic conditions, and economics. Such decisionmaking criteria are predicated on the availability of effective weed control technology. At present, there are no alternatives as effective as diallate for wild oat control.

Minor/Specialty Uses

1. The Department concurs that the usage of diallate on soybeans, corn, barley, potatoes, safflower and alfalfa is basically limited to North Dakota, Minnesota, Montana and Idaho, as these are the principal areas of wild oat infestation. Since the use of other currently registered herbicides for these crops are less effective than diallate for wild oat control, the long-term effect will be an increase in the wild oat seed supply in the soil, which would increase the future wild oat infestation and result in increased quantities of herbicides being used, increased labor and cultivation costs, and losses in yield to producers.

2. Also, the Department does not concur that "the cancellation of diallate on these crops is not expected to have any economic impact upon the growers * * *"

3. The net income to producers is based on yield, quality, production costs and market price. Any practice which adversely impacts these factors of production will have an adverse economic impact. An infestation and the resulting competitive effect of wild oats will certainly adversely affect production costs, yields and quality.

Conclusions

Because of the need of diallate for wild oat control, the experience of growers in handling the compound, the availability of equipment to apply liquid formulations and the fact that must of the application is done by individual growers on their own acreage only, which limits the time of annual exposure to a short period, the Department suggests that other regulatory options be pursued that allow the continued availability of the liquid formulation. A thorough evaluation of the following options or combination of options should be made:

1. Kinds, effectiveness and acceptance of protective clothing.

2. Closed system spray units.

3. Application only with enclosed tractor cabs.

4. Restricted use.

5. An assessment of the level of exposure from the use of granular formulations compared to the emulsifiable concentrate.

C. Agency Response to Comments

1. *On risk analysis.* The Monsanto Company commented extensively on the Diallate PD 2/3. Its comments addressed a wide range of issues but concentrated on the agency's assessment of the cancer risk associated with diallate use. The SAP did not comment on the agency's risk assessment.

a. *Cancer risk assessment.* Monsanto took exception to both parts of the agency's assessment of risk: exposure estimates used by the agency to calculate the amounts of diallate to which applicators may be exposed over a lifetime of use; and the animal study results which were used to determine diallate's potency as an oncogen.

(1) *Exposure.* In the PD 2/3 cancer risk assessment, the agency estimated (using surrogate data from the open literature on triallate and paraquat) the equivalent lifetime dietary burden (LDB) to applicators to be 0.0334 part per million (ppm) without protective clothing and 0.008 ppm with protective clothing. Monsanto argued that those estimates were too high and submitted field exposure studies in support of their position.

Agency scientists have evaluted the Monsanto studies and, based on that analysis, has revised its exposure estimates using Monsanto's test data. These revised estimates (0.01 to 0.003 ppm) are used in the PD 4 to reassess diallate's potential cancer risk to applicators.

(2) *Potency.* Monsanto repeated its previously stated reservations about the value of the Innes mouse study in estimating cancer risks, and suggested that its 18-month hamster study should be used instead. The basis for their argument is that the dose-response relationship shown in the hamster study, where two of three doses show statistically significant increases in tumors, is better suited to low-dose extrapolation than is the single dose, high tumor incidence (81 percent) result of the Innes study.

Although the agency received this study before the PD 2/3 was published, it did not complete its review and validation in time to use the study in that assessment. The agency's Carcinogen Assessment Group (CAG) has since reviewed and validated the hamster study and has estimated oncogenic risks using tumor incidence data (44 percent and 57 percent at 600 and 2000 ppm, respectively) from it.

b. *Neurotoxicity.* The Agency indicated concern about the possibility of neurotoxic effects in both the PD 1 (based on a study by Keplinger, 1976) and the PD 2/3 (based on a study by Phillips, 1977 and the Keplinger, 1976 study). Both of these studies were performed by the Industrial Bio-Test Laboratories (IBT) for the Monsanto Company.

The Keplinger study, though suggesting neurotoxicity, established neither a dose/response relationship nor a "no observable effect level" (NOEL). Therefore, the agency did not presume on the basis of neurotoxicity in the PD 1. It did ask for additional data on this effect from the registrant.

The registrant submitted an additional study (Phillips, 1977) in response to the PD 1 request. As indicated in the Diallate PD 2/3, some test birds (at the medium dose level) had nerve lesions that were morphologically similar to those seen in the positive control birds. However, these diallate-treated birds did not show any clinical signs of delayed neurotoxicity. This study did not establish a dose/response relationship nor did it explain the absence of lesions in high-dose test birds. Monsanto contends that symptoms observed in the neurotoxicity tests conducted by IBT reflect acute rather than delayed chronic effects.

As indicated in the PD 2/3, the OPP Toxicology Data Audits Program (TDAP) audits of these studies considered the Keplinger study to be valid. However, the Phillips study could not be validated because raw data were not available. Because a NOEL was not established, the agency was still unable (in the PD 2/3) to calculate the potential neurotoxic risk associated with diallate use.

Subsequent to publication of the PD 2/3, the registrant submitted the raw data from the Phillips study. This study, as well as the Keplinger study, is now being validated by the Health Protection Branch, Canada, which is reviewing all diallate IBT studies under an agreement with the U.S. EPA (Morrison and Johnson, 1978). The agency has not yet

received the results of the Canadian validation of either study. Therefore, the agency cannot, at this time, make a final determination on diallate's neurotoxic potential and risk. The agency believes, however, that any measures taken to reduce potential cancer risk will also reduce any risks associated with possible neurotoxicity. The agency will not require data to resolve the neurotoxicity issue immediately. However, the need for such additional data will be considered prior to diallate's reregistration.

2. *Comments on benefits analysis.* The Secretary of Agriculture (USDA) commented extensively on the Diallate PD 2/3 benefits analysis. The Secretary disagreed sharply with the agency's estimate of the economic effects of cancelling the registrations for diallate emulsifiable concentrate (EC) formulations, based largely on disagreement over the costs associated with increased hand-hoeing. He also took issue with the agency's estimates of the relative efficacy (and, therefore, the relative costs) of using diallate granular formulations as substitutes for the EC formulation and the cost to farmers of changing application equipment and procedures to accomodate exclusive use of the granular formulations.

Several diallate users (or organizations representing users) wrote to the agency endorsing diallate's utility and expressing concern over the possible cost to users of converting application equipment to handle granular formulations if the EC formulations were cancelled. These latter comments have been considered during this review, but have not been addressed explicitly because they do not contribute, substantively, to the agency's analysis of risks and benefits.

The agency has carefully considered these comments. There is cause for legitimate concern over the regional economic impact of cancelling the EC formulation of diallate. Considering the revised estimates of exposure and risk, the agency has reevaluated its regulatory position and determined that risks to workers using diallate EC, assuming appropriate modifications of its use conditions no longer outweight its benefits, whichever estimate is used. Because the agency is no longer planning to cancel EC registrations, the Secretary's specific estimates of benefits (or costs) are no longer directly applicable to the risk/benefit assessment and need not be either accepted or rejected.

3. *Comments on regulatory options.* Among the three major sets of comments received on the Diallate PD 2/3 (USDA, SAP, Monsanto), only the SAP endorsed the regulatory option proposed by the agency: cancellation of all registrations for emulsifiable concentrate formulations of diallate. All three major commenters recommended either further examination of exposure or ways to reduce exposure, or both. Both the Secretary of Agriculture and Monsanto recommended the use of "closed systems" for mixing and loading of diallate emulsifiable concentrate (EC) as an alternative to cancellation. The SAP also suggested that the agency consider closed systems. All three organizations mentioned protective clothing as one means for reducing exposure. The Secretary of Agriculture also mentioned classifying diallate as a "restricted use" pesticide and requiring that application be allowed using only tractors with enclosed cabs. Finally, the SAP recommended that the agency and Monsanto consider the "feasibility and desirability" of adding a malodorous substance or dye to the EC formulation.

4. *Recommendations not accepted.* The agency has carefully considered all of these comments and recommendations, particularly in light of its reassessment of exposure to diallate applicators. Several of the recommendations have been adopted. Those recommendations that were not adopted are:

a. *Closed systems.* The agency has decided not to require closed systems for transfer of diallate EC because the new exposure data provided by Monsanto (see Unit II. A. of this document) show that protective clothing reduces exposure to mixers and loaders to a level at which they will not be exposed to unreasonable risks. The extra protection that would be provided by closed systems does not, in the agency's judgment, justify the extra costs to users that such a requirement would impose.

b. *Enclosed tractor cabs.* Both the Secretary of Agriculture and Monsanto have pointed out that the majority of diallate users already use tractors with enclosed cabs because of the climate in regions where diallate is typically used. The agency does not believe that the reduction in exposure that is achieved by this requirement justifies the costs imposed on those users who do not already have enclosed cabs.

c. *Addition of malodorous material or dyes.* While the potential for secondary exposure to diallate through contact with contaminated clothing is obvious, the agency has no evidence that this is a source of significant risk. Further, the manufacturer (Monsanto) has serious reservations about the effects, i.e., the inadvertent creation of new testing requirements, of the addition of new, inert ingredients to their currently registered formulations. Therefore, because neither the benefits nor the costs of such a requirement can be clearly identified, the agency will not impose it at this time.

IV. Procedural Matters

This Notice initiates actions to cancel registrations and deny applications for registration of diallate products for all uses unless the registrants or applicants modify the terms and conditions of registration as described in this Notice ("conditional" cancellation or denial).

As provided in FIFRA section 6(b), "the proposed action shall become final and effective at the end of 30 days from receipt by the registrant, or publication, of a notice issued under paragraph (1), whichever occurs later, unless within that time either (i) the registrant makes the necessary corrections, if possible, or (ii) a request for a hearing is made by a person adversely affected by the notice." Paragraph (1), FIFRA section 6(b)(1), provides that the Administrator may issue a notice of intent to cancel a registration or change its classification together with the reasons (including the factual basis) of his action.

FIFRA section 3(c)(6) provides that the Administrator may deny applications for registration ". . . unless the applicant corrects the conditions and notifies the Administrator thereof during the 30-day period beginning with the day after the date on which the applicant receives the notice. . . ." FIFRA section 3(c)(6) also provides that "Upon such notification, the applicant for registration or other interested person with the concurrence of the applicant shall have the same remedies as provided for in section 6."

This unit of the Notice explains how registrants and applicants for registration may modify the terms and conditions of registration and how registrants, applicants for registration, and certain other interested or affected parties may request a hearing on the cancellation and denial actions that this Notice initiates.

A. Procedures for Amending the Terms and Conditions of Registration

Registrants affected by the cancellation actions described above may avoid cancellation by amending the terms and conditions of registration. Within six months after the date of publication of this Notice, amended labeling must be filed with the agency. That amended labeling must require protective clothing as described in Unit III.D.2 of this Notice. That request must also reflect the change in diallate's

registration classification, to "Restricted Use", required in Unit III.D.1. of this Notice. The application for amended labeling must be submitted to: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7070).

B. Procedure for Requesting a Hearing

Registrants affected by the cancellation actions described above may request a hearing on such actions within thirty (30) days of receipt of this Notice, or on or before July 23, 1982, whichever occurs later. Any other person adversely affected by the cancellation actions described above may request a hearing on or before July 23, 1982.

Applicants for registration affected by the denial actions described above may request a hearing on such actions within thirty (30) days of receipt of this Notice. or on or before July 23, 1982, whichever occurs later. Other interested persons may, with the concurrence of the applicant, request a hearing during the time period available to the applicant.

All registrants, applicants, and other interested or affected parties who request a hearing must file the request in accordance with the procedures established by FIFRA and the Agency's Rules of Practice Governing Hearings (40 CFR Part 164). These procedures require among other things that: (1) all requests must identify the specific registration(s) or application(s) and the specific use(s) for which a hearing is requested, (2) all requests must be acompanied by objections that are specific for each use of the identified pesticide products for which a hearing is requested, and (3) all requests must be received by the hearing clerk within the applicable thirty (30)-day period. Failure to comply with these requirements will automatically result in denial of the request for a hearing.

Requests for hearings must be submitted to: Hearing Clerk (A–110), U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

C. Consequence of Filing or Failing To File a Hearing Request

1. *Consequence of filing a timely and effective hearing request.* If a hearing on any action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by the agency's rules of practice for hearings under FIFRA section 6 (40 CFR Part 164). In the event of a hearing, each cancellation and denial action subject to the hearing will not become effective except pursuant to an order of the Administrator at the conclusion of the hearing.

2. *Consequences of failure to file in a timely and effective manner.* If no hearing concerning the conditional cancellation or denial of registration of a specific use of a specific pesticide product containing diallate has been requested by the end of the applicable thirty-day period, registration of that use of that diallate product will be subject to cancellation or denial unless the registrant or applicant amends its application for registration to include the modifications in the terms and conditions of registration specified in this Notice.

Dated: May 30, 1982.

John A. Todhunter,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 82–16358 Filed 6–22–82; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180607; PH–FRL 2149–4]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests in the States listed below. Also listed below are three crisis exemptions, one initiated by Alabama, and two by California. Listed also are 34 quarantine exemptions granted by EPA to the U.S. Department of Agriculture.

DATES: See each specific and crisis exemption for its effective dates. The quarantine exemptions are all effective from April 23, 1982 to April 23, 1983.

FOR FURTHER INFORMATION CONTACT: See each specific and crisis exemption for the name and room number of the contact person. For the quarantine exemptions the contact people are Jack E. Housenger and Libby Welch, Rm. 716C, CM#2. The following information applies to all contact people: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1192)

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arizona Department of Agriculture and Horticulture for the use of propargite on sugar beets to control spider mites in Arizona, effective from April 29, 1982 to August 31, 1982. (Donald R. Stubbs, Rm. 716B, CM#2).

2. California Department of Food and Agriculture for the use of methamidophos on celery to control leaf miners in California, effective from April 8, 1982 to July 1, 1982. (Jack E. Housenger, Rm. 716C, CM#2).

3. Maryland Department of Agriculture for the use of anilazine on watercress to control leaf spot in Maryland, effective from April 29, 1982 to November 30, 1982. (Donald R. Stubbs, Rm 716B, CM#2).

4. Maryland Department of Agriculture for the use of fenamiphos on strawberry nursery stock plants to control nematodes in Maryland, effective from April 26, 1982 to July 15, 1982. (Jack E. Housenger, Rm 716C, CM#2).

5. Minnesota Department of Agriculture for the use of metalaxyl on sunflower seeds to control powdery mildew in Minnesota, effective from April 27, 1982 to June 30, 1982. (Jack E. Housenger, Rm. 716C, CM#2).

6. Montana Department of Agriculture for the use of Compound 1080 on small grains, hay, and improved pastureland to control the Columbian ground squirrel in Montana, effective from March 15, 1982, to August 13, 1982. EPA has not yet made its final determination concluding the rebuttable presumption against registration (RPAR) of pesticide products containing Compound 1080. (Donald R. Stubbs, Rm. 716B, CM#2).

7. Montana Department of Agriculture for the use of permethrin on small grains (barley, oats, and wheat), to control the army cutworm and pale western cutworm in Montana, effective from April 26, 1982 to June 30, 1982. (Jack E. Housenger, Rm 716C, CM#2).

8. New Jersey Department of Environmental Protection for the use of triadimefon on wheat to control powdery mildew in New Jersey, effective from April 14, 1982 to June 30, 1982. (Libby Welch, Rm. 716C, CM#2).

9. New York Department of Environmental Conservation for the use of fenamiphos on bearing apple orchards to control nematodes in New York, effective from April 26, 1982 to May 31, 1982. (Jack E. Housenger, Rm. 716C, CM#2).

10. North Dakota Department of Agriculture for the use of metalaxyl on sunflower seeds to control downy mildew in North Dakota, effective from April 27, 1982 to April 20, 1983. (Jack E Housenger, Rm. 716C, CM#2).

11. Ohio Department of Agriculture for the use of triadimefon on wheat to control powdery mildew in Ohio, effective from April 14, 1982 to August 31, 1982. (Libby Welch, Rm. 716C, CM#2).

12. Oregon Department of Agriculture for the use of methiocarb on barley,

clover, grass for seed, oats, and wheat to control slugs and snails in Oregon, effective from April 30, 1982 to May 1, 1982. Oregon Department of Agriculture had initiated a crisis exemption for this use. (L. Welch, Rm. 716C, CM#2).

13. Pennsylvania Department of Agriculture for the use of anilazine on watercress to control leaf spot in Pennsylvania, effective from April 29, 1982 to November 30, 1982. (Donald R. Stubbs, Rm. 716B, CM#2).

14. Pennsylvania Department of Agriculture for the use of triadimefon on wheat to control powdery mildew in Pennsylvania, effective from April 14, 1982 to June 30, 1982. (Libby Welch, Rm. 716C, CM#2).

15. West Virginia Department of Agriculture for the use of anilazine on watercress to control leaf spot in West Virginia, effective from April 29, 1982 to November 30, 1982. (Donald R. Stubbs, Rm. 716B, CM#2).

16. Wyoming Department of Agriculture for the use of permethrin on wheat to control army cutworms in Wyoming, effective from April 26, 1982 to June 1, 1982. (Jack E. Housenger, Rm. 716C, CM#2).

Crisis exemptions were initiated by the:

1. Alabama Department of Agriculture on April 20, 1982, for the use of propachlor on onions to control weeds. Since it was anticipated that this program would be needed for more than 15 days, Alabama requested a specific exemption to continue it. EPA has issued a specific exemption for this program effective from April 23, 1982 to December 31, 1982. (Libby Welch, Rm. 716C, CM#2).

2. California Department of Food and Agriculture on March 15, 1982, for the use of 1-[2-(2,4-diclorophenyl)-2-(2-propenyloxy)ethyl]-1H-imidazole on cotton seed to control *Thielaviopsis basicola*. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. The need for this program is expected to last until March 12, 1983. (Jack E. Housenger, Rm. 716C, CM#2).

3. California Department of Food and Agriculture on February 26, 1982, for the use of metalaxyl on onions for seed to control downy mildew. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. The need for this program is expected to last until February 26, 1983. (Jack E. Housenger, Rm. 716C, CM#2).

EPA has granted quarantine exemptions to the United States Department of Agriculture, Animal and Plant Health Inspection Service, for the use of:

1. 10 percent ethylene oxide and 90 percent carbon dioxide on miscellaneous cargo to control snails and slugs.

2. Hydrogen cyanide on cargo which is adversely affected when treated with methyl bromide, to control cotton insects, khapra beetles, or snails.

3. Methyl bromide on nonfood cargo to control khapra beetles and snails.

4. Methyl bromide on machinery and nonplant materials to control cotton insects, gypsy moths, golden nematodes, and witchweed.

5. Methyl bromide on logs to control oak wilt fungus.

6. Aluminum phosphide under tarpaulins or in temporary enclosures to fumigate stored nonfood products in ship holds.

7. Formaldehyde in small lots at ports of entry to fumigate rice straw and hulls.

8. Formaldehyde as a spot treatment for nematode cyst-infested material moving from an infested area or port of entry.

9. An aerosol containing G–1707–pyrethrum extract and synergist in aircraft and cargo containers.

10. An aerosol containing 2 percent d-phenothrin applied in aircraft and cargo containers in the presence of people for fruit flies and other soft-bodied insects, and an aerosol containing 2 or 10 percent d-phenothrin for other insects when animals and people are not present.

11. Malathion (56 percent formulations) on metal and wood-surfaced areas associated with the infestation of a quarantine insect on ship bulkheads, pier areas, or other storage facilities near the infestation.

12. Malathion (25 percent wettable powder formulation) on asphalt surfaces (asphalt base paint) on ship decks, bulkheads, pier areas or other storage facilities near the infestation.

13. Malathion-carbaryl-kelthane (dicofol) dip to treat orchids and other plants or plant parts for propagation infested with insects or mites.

14. Malathion-carbaryl dip to treat plants other than orchids found not tolerant to methyl bromide fumigation.

15. Formaldehyde at inspection stations around the country as a plant disease treatment, primarily on seeds.

16. Bordeaux mixture (4 lb. copper sulfate, 4 lb. lime and 50 gallons of water) at inspection stations and port areas around the country as a foliar spray on plants to help reduce surface disease.

17. Carbon disulfide-carbon tetrachloride mixture (1:5 by weight or 1:4 by volume) at inspection stations on seeds for propagation.

18. Sodium hypochlorite (up to a maximum of 12.5 percent) at inspection stations on propagative plant parts and plant materials.

19. Sulfuric acid at designated inspection stations as a cotton seed treatment during the delinting process.

20. Captan (22 percent wettable powder formulations) and zineb (21 percent wettable powder formulations) at designated inspection stations to treat seeds for plant diseases.

21. Copper sulfate at designated inspection stations only, for issuance of departmental permits to treat some seeds and dead plant material.

22. Copper carbonate at designated inspection stations only, for issuance of departmental permits to treat certain seeds, which can be completely coated.

23. Zineb at designated inspection stations only, for issuance of departmental permits to treat certain plants infested with diseases.

24. Propoxur in insect traps at approximately 1 gram per trap.

25. Dichlorvos in gypsy moth and khapra beetle traps at approximately 1 gram per trap.

26. Naled in fruit fly traps at approximately 1 gram per trap.

27. Ethyl acetate in black light traps at approximately 1 gram per trap.

28. Trifluralin on established lawns and turf to control witchweed.

29. Methly bromide on fallow fields and small plots of land to be released from quarantine, to kill witchweed seed in soil.

30. Sodium carbonate on surfaces potentially exposed to certain animal diseases, and semen containers.

31. Sodium carbonate plus sodium silicate on surfaces potentially exposed to certain animal diseases, in aircraft.

32. Sodium hypochlorite on surfaces potentially exposed to certain animal diseases.

33. Sodium hydroxide on exposed surfaces, animal product containers, hay, and straw.

34. Sodium ortho-phenylphenate on surfaces exposed to certain animal diseases.

(Sec. 18, as amended, 92 Stat. 819 (7 U.S.C. 136))

Dated: June 8, 1982.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

[FR Doc. 82-16353 Filed 6-22-82: 8:45 am]

BILLING CODE 6560-50-M

[PP 9G2151/T371; PH-FRL 2151—1]

Methamidophos; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the insecticide methamidophos in or on the raw agricultural commodities peanuts and peanut hulls. These temporary tolerances were requested by Mobay Chemical Corporation.

DATE: These temporary tolerances expire June 10, 1984.

FOR FURTHER INFORMATION CONTACT: William Miller, Product Manager (PM) 16, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 211 CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–2600).

SUPPLEMENTARY INFORMATION: Mobay Chemical Corporation, P.O. Box 4913, Kansas City, MO 64120, has requested, in pesticide petition PP 9G2151, the establishment of temporary tolerances for residues of the insecticide methamidophos (O,S-dimethyl phosphoramidothioate), in or on the raw agricultural commodities peanuts at 0.1 part per million (ppm) and peanut hulls at 0.4 ppm. A related document (FAP 9H5223/T89) establishing a food additive regulation for residues of the insecticide methamidophos in or on peanut meal appears elsewhere in this issue of the **Federal Register.**

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 3125–EUP–154 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Mobay Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire June 10, 1984. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: June 9, 1982.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-16498 Filed 6-22-82; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30000/36A; PH-FRL-2038-5]

Oxyfluorfen; Determination Concluding the Rebuttable Presumption Against Registration; Availability of Position Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Determination; Notice of Availability.

SUMMARY: Oxyfluorfen was referred for review under the Rebuttable Presumption Against Registration (RPAR) process in January 1980 because pesticide products containing oxyfluorfen as an active ingredient were shown to be contaminated with perchloroethylene (PCE), a liver carcinogen in B6C3F1 mice. This notice constitutes the final determination of the Agency concluding the RPAR proceedings for oxyfluorfen. The final determination implements the preliminary determination of the RPAR issues without change. The Agency has determined that oxyfluorfen registrations will be cancelled and applications for registration denied unless registrants and applicants amend the terms and conditions of registration as specified in this Notice.

DATE: Requests for a hearing must be received on or before July 23, 1982, or within thirty (30) days from receipt of this notice, whichever occurs later.

ADDRESSES: Requests for a hearing must be submitted to: Hearing Clerk (A–110), U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Copies Of The Position Document 1/2/3 and Position Document 4 Are Available Upon Request From: Tom Miller, Special Pesticide Review Division (TS–791), Environmental Protection Agency, Rm. 711–A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Tom Miller (703–557–7420).

SUPPLEMENTARY INFORMATION:

I. Introduction

The herbicide oxyfluorfen was registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) for use on certain nonbearing tree fruits and nuts in California in May 1979, and for use on conifer seedbeds, transplants and outplantings in March 1980. Conditional registration for use on certain bearing tree fruits and nuts was granted in December 1980, and in March 1981, the Agency granted conditional registrations for use on soybeans and field corn (in conjunction with the USDA Witchweed Eradication Program).

Oxyfluorfen was referred for review under the Rebuttable Presumption Against Registration (RPAR) process in January 1980 because pesticide products containing oxyfluorfen as an active ingredient were shown to be contaminated with perchloroethylene (PCE), a liver carcinogen in B6C3F1 mice. On the basis of the carcinogenic potential of perchloroethylene, the Agency determined that oxyfluorfen met or exceeded the RPAR criteria for oncogenicity. (Since the initial referral time, the sole registrant has reduced the level of perchloroethylene in its oxyfluorfen product, Goal® 2E, from 1680 ppm to 200 ppm). During the course of the RPAR review, the Agency also examined the available data on the potential mutagenicity and

teratogenicity of PCE, and the available data on the potential oncogenicity, mutagenicity, teratogenicity and chronic toxicity of oxyfluorfen. Information concerning possible adverse environmental effects of oxyfluorfen was also reviewed, including persistence and bioaccumulation, toxicity to molluscs, hazard to wetlands, and reproductive effects in birds.

The Agency's preliminary determination concluding the oxyfluorfen RPAR, along with the reasons and factual bases for its proposed regulatory action, were set forth in a Position Document 1/2/3 (PD 1/2/3) which integrated the presumption against registration and the risk/benefit analysis.

In the PD 1/2/3, the Agency determined that oxyfluorfen-containing pesticides, which are contaminated with PCE, met or exceeded the oncogenic risk criteria of 40 CFR 162.11(a)(3)(ii). The Agency evaluated risks and benefits in order to determine whether the risks of each oxyfluorfen use are warranted by the benefits of that use, considered what risk reductions could be achieved, and how these risk reduction measures would affect the benefits of the use.

As a result of the risk/benefit evaluation, summarized in the PD 1/2/3/, the Agency determined that the benefits of each oxyfluorfen use outweigh the risks when the level of PCE contamination does not exceed 200 ppm. Consequently, the proposed regulatory action required that the terms and conditions of registration for pesticides containing oxyfluorfen be amended to limit the PCE contamination level to 200 ppm. The Agency determined that the risk reduction associated with this proposed limit on PCE contamination can currently be achieved with no impact on the benefits of oxyfluorfen uses.

The Agency also proposed the requirement, effective six months from the publication of the final Notice concluding the oxyfluorfen RPAR, that a suitable respirator be worn during the mixing, loading, and application of all oxyfluorfen products, unless the registrant submits monitoring data to the Agency establishing that the inhalational exposure for the maximum application rate for each registered use is significantly lower than the inhalational exposure estimated by the Agency. These risk reduction measures can also be implemented without an adverse impact on the benefits of oxyfluorfen use. Additionally, the Agency determined that the registrant must submit additional data on oncogenicity, mutagenicity, teratogenicity, avian reproduction, and field monitoring of aquatic sites, and must modify the labeling of oxyfluorfen products to contain warnings of possible hazards to aquatic life and endangered mollusc species.

These preliminary determinations were submitted to the FIFRA Scientific Advisory Panel (SAP) and the U.S. Department of Agriculture (USDA) for review pursuant to sections 6(b) and 25(d) of FIFRA. The Agency presented its proposed decision to the SAP at a public meeting held on May 13–14, 1981. A Notice was published in the Federal Register of April 27, 1981 (46 FR 23490), announcing the meeting, indicating the availability of the PD 1/2/3 and describing the procedures for making oral and written comments. In addition, the SAP contacted by mail members of the general public who had previously expressed an interest in the Panel's activities. The SAP meeting was attended by the registrant and other interested parties.

After reviewing the comments received from the SAP, USDA and the registrant, the Agency has decided to implement its proposed decision without modification. This Notice announces the Agency's decision to continue registration for all uses of oxyfluorfen products, on the condition that the registrant modifies the terms and conditions of registration as set forth in Unit III of this notice. The notice also announces the availability of Position Document 4 (PD 4), which summarizes the PD 1/2/3/, details the revisions and amendments made to the PD 1/2/3, and analyzes comments from the SAP, USDA and others.

This Notice is organized into four units. Unit I is this introduction. Unit II, entitled "Legal Background", is a general discussion of the regulatory framework within which these actions are taken. Unit III, entitled "Determination and Initiation of Regulatory Actions", sets forth the regulatory actions which the Agency is implementing concerning oxyfluorfen, the bases for these determinations, the comments of the SAP and USDA in their entirety, and the Agency's analysis of these comments. Unit IV, entitled "Procedural Matters", briefly discusses the procedures which will be followed in implementing the regulatory actions which the Agency is announcing in this Notice.

II. Legal Background

In order to obtain a registration for a pesticide under the Federal Insecticide, Fungicide and Rodenticide Act, as amended (FIFRA), a potential registrant must demonstrate that the pesticide satifies the statutory standard for registration. That standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment," as set forth in section 3(c)(5). The term "unreasonable adverse effects on the environment" is defined to mean "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide" in FIFRA, section 2(bb). In effect, this standard requires a finding that the benefits of each use of the pesticide exceed the risks of use, when the pesticide is used in accordance with the terms and conditions of registration or in accordance with commonly recognized practices. The burden of proving that a pesticide satisfies the registration standard continues as long as the registration remains in effect. Under section 6 of FIFRA, the Administrator is required to cancel the registration of a pesticide or modify the terms and conditions of registration whenever he determines that the pesticide no longer satisfies the statutory standard for registration.

The Agency created the RPAR process to facilitate the identification of pesticide uses which may not satisfy the statutory standard for registration and to provide a structure for gathering and evaluating information about the risks and benefits of these uses. After an RPAR is issued, registrants and other interested persons are given the opportunity to review the data upon which the presumption is based and to submit data and information to rebut the presumption. Respondents may rebut the presumption of risk by showing that the Agency's initial determination of risk was in error, or by showing that use of the pesticide is not likely to result in any significant exposure to humans or to animals or plants of concern with regard to the adverse effects in question. See 40 CFR 162.11(a)(4). Further, in addition to submitting evidence to rebut the risk presumption, respondents may submit evidence as to whether the economic, social, and environmental benefits of uses of the pesticide subject to the presumption outweigh the risks of use. If the Agency determines that a presumption has not been rebutted, it will then consider information relating to the social, economic and environmental costs and benefits which registrants and other interested persons submitted to the Agency, and any other benefits information known to the Agency.

After weighing the risks and the benefits of a pesticide's use, the

Administrator may conclude the RPAR process by issuing a notice of intent to cancel or deny registration pursuant to FIFRA section 6(b)(1) and section 3(c)(6) of by issuing a notice of intent to hold a hearing pursuant to section 6(b)(2) of FIFRA to determine whether the registrations should be cancelled or applications for registration denied.

In determining whether the use of a pesticide poses risks which are greater than benefits, the Agency considers modifications to the terms and conditions of registration that can reduce risks and the impacts of such modifications on the benefits of use. Among the risk reduction measures short of cancellation that are available to the Agency are changes in the directions for use on the pesticide's labeling and classification of the pesticide for "restricted use" pursuant to FIFRA section 3(d). The Agency can require changes to the labeling of a pesticide in most circumstances either under section 3(c)(5) by finding that the pesticide is misbranded if the labeling is not changed, or under section 6(b) by finding that the pesticide would cause unreasonable adverse effects on the environment, unless labeling changes are made which accomplish risk reductions.

Section 3(c)(7)(B) of FIFRA allows the Administrator to conditionally amend the registration of a pesticide to permit additional uses even though data concerning the pesticide may not be sufficient to support an unconditional registration. To grant such a conditional registration, the Administrator must determine that the applicant has submitted sufficient data pertaining to the proposed additional use, and that amending the registration in the manner proposed by the applicant would not significantly increase the risk of any unreasonable adverse effect on the environment. This section also provides that a conditional registration cannot be granted for a pesticide (or any ingredient thereof) which meets or exceeds the risk criteria enumerated in 40 CFR 162.11 for dietary exposure in either of two situations: (1) where the pesticide is used on a major food or feed crop or where the use is on a minor food or feed crop; and (2) where an alternative which does not meet or exceed the risk criteria is available. In view of this statutory requirement, the Oxyfluorfen PD 1/2/3 contained a risk/benefit evaluation of certain uses of oxyfluorfen for which conditional registrations were pending at that time.

FIFRA section 6(b) requires the Agency to submit notices issued pursuant to section 6 to the Secretary of Agriculture for comment and to provide the Secretary of Agriculture with an analysis of the impact of the proposed action on the agricultural economy. The Agency is required to submit these documents to the Secretary at least 60 days before making the notice public. If the Secretary of Agriculture comments in writing within 30 days after receiving the notice, the Agency is required to publish the Secretary's comments and the Administrator's response with publication of the notice. FIFRA, under section 25(d) also requires the Administrator to submit section 6 notices to a Scientific Advisory Panel for comment on the impact of the proposed action on health and the environment, at the same time and under the same procedures as those described above for review by the Secretary of Agriculture.

After completing these external review procedures and accomplishing any changes in the contemplated action which are deemed appropriate as a result of any comments received, the Agency implements the desired regulatory action by preparing appropriate documents and releasing them in the manner prescribed by the statute and the Agency's rules.

III. Determination and Initiation of Regulatory Action

The Agency has considered information on the risks associated with the uses of oxyfluorfen including information submitted by the registrant. The Agency has also considered information on the social, economic, and environmental benefits of the oxyfluorfen uses. Information on benefits was obtained by the Agency from the registrant, the U.S. Department of Agriculture and various plant scientists in the United States.

The Agency's assessment of the risks and benefits of the uses of oxyfluorfen, its conclusions and determinations whether any uses of oxyfluorfen pose unreasonable adverse effects on the environment, and its determination whether modifications in the terms or conditions of registration reduce risks sufficiently to eliminate any unreasonable adverse effects, are set forth in detail in the PD 1/2/3 with the revisions and amendments contained in the PD 4. These Position Documents, which are available from the Agency are hereby adopted by the Agency as its statement of reasons for the determinations and actions announced in this Notice, and as its analysis of the impacts of the proposed regulatory actions on the agricultural economy. For the reasons summarized below and developed in detail in the Position Documents, the Determinations of the Agency with respect to oxyfluorfen are as follows:

A. Determination on Risk

The Agency has determined that oxyfluorfen is contaminated with perchloroethylene (PCE), a demonstrated carinogen in B6C3Fl mice of both sexes. Oxyfluorfen-containing pesticides therefore meet or exceed the oncogenic risk criterion under 40 CFR 162.11(a)(3)(ii).

The Agency has determined further that human exposure may result from oxyfluorfen uses, and that therefore the uses of oxyfluorfen pose a carcinogenic risk to man of sufficient magnitude to require the Agency to determine these uses offer offsetting social, economic, or environmental benefits. The Agency has identified the populations at risk with respect to oxyfluorfen use to include agricultural workers who mix, load and apply oxyfluorfen, and the U.S. population at large (via dietary exposure).

The maximum carcinogen risk for agricultural workers was calculated by the Agency in the PD 1/2/3 to be four in one hundred thousand. For the population at large, carcinogenic risk through dietary exposure was estimated to be one in one million.

Since publication of the PD 1/2/3, the PCE exposure estimates have been revised. Refinements in calculation have demonstrated that exposure to PCE from use of oxyfluorfen products had been underestimated by a factor of three in the initial review. As a result, it was also necessary to revise the risk figures, which are a function of the exposure. The maximum carcinogenic risk for agriculture workers is now estimated to be one in ten thousand. Risk for the population at large remains at one in one million, since the exposure to tree fruits and nuts, by far the greatest dietary source of PCE (from oxyfluorfen), is the same as the original estimate. Because the revised risk figures are not significantly different from those which appear in the PD 1/2/3, the Agency has determined that these minor revisions do not affect the proposed regulatory action. Means of reducing risk to applicators have already been proposed, and these measures adequately protect applicators from the slightly higher level of risk estimated from the revised exposure figures.

In the Oxyfluorfen PD 1/2/3, the Agency has also considered other potential adverse effects of both oxyfluorfen and PCE. The human health effects considered were the potential

oncogenicity and chronic toxicity of oxyfluorfen, and the potential mutagenicity and teratogenicity of both oxyfluorfen and PCE. Available data on these affects do not indicate the need for further regulatory action. The Agency is, however, meeting with the registrant to determine what types of additional data are needed, and how this data may be provided. The final decisions concerning the Agency's request for data will be implemented in an action independent of this RPAR, under authority of FIFRA section 3(c)(2)(B).

Several potential environmental hazards have also been identified by the Agency with regard to oxyfluorfen. The Agency is concerned about the potential toxicity to certain mollusc species, including a number of endangered species, whose aquatic habitats are subject to runoff and erosion from fields treated with oxyfluorfen. Computer modeling and preliminary field sampling studies indicate the possibility of persistence and bioaccumulation of oxyfluorfen in these aquatic habitats. In view of tests submitted by the registrant showing that oxyfluorfen is toxic to oyster larvae at extremely low concentrations, certain uses of oxyfluorfen could potentially pose a hazard to aquatic molluscs, including endangered species. It is also possible that aquatic plants in wetland areas may be adversely affected by oxyfluorfen use, since oxyfluorfen exhibits residual weed control action at low concentrations.

In conclusion, although questions of health and environmental safety were raised, neither the human health effects (other than the oncogenicity of PCE) nor the environmental effects considered by the Agency were sufficient to meet or exceed the risk criteria of the Agency's RPAR regulations set forth in 40 CFR 162.11.

B. Determination on Benefits

Oxyfluorfen is currently registered for uses on nonbearing and bearing tree fruits and nuts, on conifer seedbeds, transplants and outplantings, on soybeans, and field corn in conjuction with the USDA Witchweed Eradication Program in North and South Carolina.

In 1979, the U.S. harvest of soybeans from 70.5 million acres was 2.3 billion bushels, valued at $13.8 billion. One agricultural expert estimated that oxyfluorfen, as a specialty herbicide, could eventually claim up to 8% of the soybean herbicide market. Use of oxyfluorfen on field corn for witchweed control is limited to the 380,000 infested acres in the Carolinas, about 1,800 acres of which were treated in the USDA Witchweed Eradication Program in 1979. In California, tree fruits and nuts are grown on 1.4 million acres of commercial orchards and vineyards, and that state accounts for 50–100 percent of the U.S. production of peaches, plums, nectarines, grapes, apricots and almonds. For conifer seedbeds, transplants and outplantings, oxyfluorfen is registered for use throughout the United States.

Quantitative estimates of the total economic impact of restricting oxyfluorfen use cannot be made from the information presently available. However, estimates of the impact on herbicide users were made for the soybean and field corn uses by comparing the cost of weed control programs using oxyfluorfen with the cost of weed control using other major herbicides. Oxyfluorfen use was found to result in a comparable per acre herbicide cost to other soybean herbicides and oxyfluorfen was found to be less expensive than other herbicide programs for witchweed control in field corn. User costs for tree fruits and nuts may be less with oxyfluorfen than with other herbicides because of the reduced need for a second, post emergence herbicide application. For conifer use, one corporate user estimated a savings of $50–100,000 per year over the cost of nonherbicide alternatives in its speed and transplant beds. The market and consumer impacts that might result if oxyfluorfen were unavailable were estimated only for the field corn use. A short term yield reduction of at least 10 percent in witchweed infested areas could be expected, and long term economic impacts could be severe if the USDA program is not successful in containing witchweed.

Oxyfluorfen has both pre- and post emergence herbicidal activity, and residual activity that may provide season-long control of many weeds. Emergent weeds are killed by contact with the spray, and late-germinating weeds are killed as they emerge through the treated soil. Because of these attributes and the fact that oxyfluorfen is not deactivated by crop trash and stubble, oxyfluorfen is well suited to no till use in soybeans. When used for witchweed control in field corn, oxyfluorfen reduces crop damage by killing witchweed as it emerges, and prevents seed production in surviving witchweed plants. Oxyfluorfen's residual action reduces the need for repeated herbicide applications, which are expensive and may be impossible if the corn lodges or if fields are too wet. The fact that oxyfluorfen may be applied either pre- or post emergence and its residual weed control properties are also advantages when it is used on tree fruits and nuts and conifers.

Oxyfluorfen is less dependent upon soil and moisture conditions than some otherwise comparable herbicides. Unlike most soil-applied herbicides, oxyfluorfen can be used on soils of various textures from coarse to fine and on soils with organic matter from 0–8 percent, and can be applied at the same rate to these various soil types. The performance of oxyfluorfen is not significantly affected by soil pH. Oxyfluorfen is also less dependent on post-application rainfall or irrigation for activation than many pre-emergence herbicides, which is a particularly beneficial quality for use on soybeans and tree fruits and nuts. Because oxyfluorfen does not require soil incorporation by disking or other cultivation, injury to the root systems of fruit and nut trees, vines and young confiers is avoided.

Oxyfluorfen is less likely to cause crop injury than many other comparable herbicides. Because it is only slightly soluble in water and binds strongly to soil particles, oxyfluorfen does not leach and cause root damage. This is particularly useful in the conifer seedbeds and transplant beds, which have sandy soils and are irrigated. Although it has contact activity on many weeds, oxyfluorfen can be applied to most young tree fruits and nuts and to seedling conifers without causing injury. Oxyfluorfen may also be used on soybean varieties sensitive to metribuzin, a major soybean herbicide.

Oxyfluorfen appears to be uniquely effective against a number of problem weeds. In soybeans, oxyfluorfen may give improved control of black nightshade, cutleaf groundcherry and annual morning glory. Oxyfluorfen is also a superior herbicide for witchweed control in field corn. For use on tree fruits and nuts in California, oxyfluorfen improves control of the troublesome cheeseweed, as well as filare, nettle and several weeds of the Compositae family. For conifer use, neither of the herbicides for seedbed use can be used on all the conifer species claimed on the Goal® label, and none of the transplant bed herbicides controls all of the label-claimed weed species.

Oxyfluorfen also has advantages over nonherbicidal alternatives. Mowing and cultivation to control weeds can damage conifer seedlings. Organic mulch is used in conifer seedbeds and transplant beds, but does not control emerged weeds, and fresh sawdust mulch depletes supplies of nitrogen. Plastic mulch may raise soil temperature to a lethal level for seedling conifers.

C. Determination of Unreasonable Adverse Effects

For the reasons set forth in detail in the PD 1/2/3 and PD 4, the Agency has made the following determinations concerning the potential for unreasonable adverse effects from the use of oxyfluorfen.

The Agency has determined that the benefits of the use of pesticides containing oxyfluorfen exceed the risks when such pesticide products are contaminated with no more than 200 ppm PCE. Reducing the PCE contamination of oxyfluorfen products to 200 ppm has been determined by the Agency to be technically and economically feasible, in consultation with the sole registrant and producer, who is currently producing oxyfluorfen with PCE contamination not exceeding 200 ppm. A modification of the confidential statement of formula limiting the PCE contaminant to 200 ppm is not expected to have any measurable impact on the benefits of use.

The Agency has also determined to impose the requirement, effective six months from the publication of this final Notice concluding the oxyfluorfen RPAR, for the use of a suitable respirator during the mixing, loading, and application of all oxyfluorfen products, unless the registrant submits certain monitoring data to the Agency.

The Agency has determined that, unless these changes in the terms and conditions of registration are accomplished, the use of oxyfluorfen will generally cause unreasonable adverse effects on the environment, when used in accordance with widespread and commonly recognized practices and that the labeling of wxyfluorfen pesticide products will not comply with the provisions of FIFRA.

D. Initiation of Regulatory Action

Based upon the determinations summarized above and developed in detail in the Position Documents 1/2/3 and 4, the Agency has decided to continue registration of currently registered use of oxyfluorfen products on the condition that certain changes are made in the terms and conditions of registration.

The Agency implements this decision in the regulatory context of FIFRA and the RPAR regulations by publishing this Notice of intent to cancel all currently registered uses of oxyfluorfen unless the required modifications in the terms and conditions of registration are made.

If the registrant makes these changes within 30 days of publication of this Notice (or its receipt by the registrant, whichever comes later), this proposed cancellation does not become final and effective at the end of the 30-day period.

This document shall constitute the Agency's Notice of Intention to cancel registrations for all oxyfluorfen-containing pesticide products for use on nonbearing tree fruits and nuts, bearing tree fruits and nuts, conifer seedbeds, transplants and outplantings, soybeans, and field corn (in conjunction with the USDA Witchweed Eradication Program) unless registrants amend the terms and conditions of registration as follows:

1. The perchloroethylene (PCE) contamination of formulated oxyfluorfen products must not exceed 200 ppm. A statement to this effect must be added to the confidential statement of formula for each registered oxyfluorfen product.

2. A pesticide respirator jointly approved by the Mining Enforcement and Safety Administration (formerly the U.S. Bureau of Mines) and by the National Institute for Occupational Safety and Health under the provisions of 30 CFR Part 2 for perchloroethylene must be used during the mixing, loading and application of all oxyfluorfen products. Labelling of all oxyfluorfen products must be amended to include this statement. This requirement will take effect six months after the date of publication of the Notice announcing the final determination concluding the oxyfluorfen RPAR, unless by that time the registrant submits field monitoring data to the Agency establishing that the inhalational exposure for the maximum application rate for each registered use is significantly lower than the inhalational exposure estimated by the Agency.

E. Other Determinations

As a condition of the registrations of oxyfluorfen-containing products for use on soybeans, field corn (in conjunction with the USDA Witchweed Eradication Program) and bearing tree fruits and nuts, the Agency has determined that the registrant will be required to submit field monitoring studies of oxyfluorfen accumulation in sediments and aquatic organisms.

The Agency has also determined that it will request additional data, under the authority of FIFRA section 3(c)(2)(B), to maintain the registrations of oxyfluorfen products in effect. The request for these data will be independent of the Agency's RPAR determination, as set forth in this Notice, to modify the terms and conditions of registration. The additional data which the Agency will request may include studies on oncogenicity, teratogenicity, mutagenicity, and avian reproduction. The registrant is currently engaged in discussions with the Agency concerning these data requests.

In order to minimize the hazard to aquatic organisms pending the completion of field monitoring studies, the Agency will require the modification of the labeling of oxyfluorfen products for all uses, including experimental uses, to contain the following warning statement:

> This pesticide is highly toxic to aquatic invertebrates, aquatic plants, wildlife and fish. Use with care when applying in areas frequented by wildlife or adjacent to any body of water or wetland area. Do not apply when weather conditions favor drift or erosion from target area. Do not contaminate bodies of water by cleaning of equipment or disposal of wastes.

The Agency will also require the labels of oxyfluorfen products for use on soybeans to contain the following warning statement: This product is highly toxic to freshwater clams, oysters, aquatic invertebrates and aquatic plants. Do not apply Goal where visible erosion to aquatic habitats and wetlands occurs.

F. Agency Analysis of Comments by SAP, USDA and Other Interested Parties

A. Comments of the SAP

The comments of the Scientific Advisory Panel on the Preliminary Notice of Determination Concluding the Rebuttal Presumption Against Registration of Pesticides Containing Oxyfluorfen are presented below in their entirety.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel

Review of Preliminary Notice of Determination Concluding the Rebuttable Presumption Against Registration (RPAR) of Pesticide Products Containing Oxyfluorfen (GOAL 2E).

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel has completed review of plans by the Environmental Protection Agency (EPA) for initiation of regulatory action on pesticide products containing oxyfluorfen (GOAL 2E) under the provisions of Section 6(b)(2) of FIFRA, as amended. The review was completed in an open meeting held in Arlington, Virginia on March 13–14, 1981. The following Panel members were present for the review: Drs. Torgeson, Doull, Metcalf, and Davies.

Maximum public participation was encouraged for the review. Public notice of the meeting was published in the **Federal Register** on Wednesday, April

27, 1981. In addition, telephone calls were received from and mailings sent to the general public who had previously expressed an interest in activities of the Panel.

Written and oral statements were received from technical staff and representatives of the Environmental Protection Agency. A written statement was received from Rohm and Haas Company, the registrant for oxyfluorfen. Company representatives also participated extensively in the discussion.

In consideration of all matters brought out during the meeting and careful review of all documents presented by the Agency and other parties, the Panel unanimously submits the following report:

Scientific Advisory Panel Report on Oxyfluorfen (Goal 2E)

The Panel concurs with the Agency's proposed decision to conclude the Rebuttable Presumption Against Registration (RPAR) of Oxyfluorfen (GOAL 2E) on the grounds that the oncogenic hazard from perchloroethylene (PCE) contained in the compound is no longer sufficient to warrant the denial of a conditional registration for various uses.

However, the Panel has a number of serious concerns with oxyfluorfen *not* related to the oncogenic hazard of PCE and wishes to bring these to the attention of the Agency. These concerns are:

1. *The persistence of oxyfluorfen and its possible biomagnification in the food chain.* This concern is based on Japanese data on related compounds which indicate a bioaccumulation effect.

2. *The adequacy of testing of oxyfluorfen's potential teratological effects.* The Panel expresses the belief that it is necessary to make special efforts to determine that no teratological problems exist with all the diphenyl ether class of chemicals. The Panel thus recommends that additional teratological testing be conducted, with e.g. nitrofen being used for a positive control as a comparison.

3. *The identification of the various inert ingredients in oxyfluorfen and their potential adverse effects on the environment.* The Panel notes that there is an impurities level of 28 percent in oxyfluorfen technical material, and states its belief that considerably more information in needed on the potential effects of these impurities.

The Panel further notes that although oxyfluorfen is intended initially as a specialty herbicide with relatively low usage planned, nonetheless, the potential exists for much greater use, e.g. as a replacement for nitrofen, and therefore one must be concerned over potential health effects on a broader scale.

In conclusion, the Panel recommends that monitoring studies be designed and carried out in order toi clarify any adverse environmental effects of the use of oxyfluorfen.

For the Chairman:

Certified as an accurate Report of Findings: Philip H. Gray, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Date: June 19, 1981.

B. Response to Comments of the SAP Relating to Risk

The SAP concurred with the Agency's proposed decision and did not have any specific comments on the Agency's assessment of the carcinogenic risk from PCE associated with the uses of oxyfluorfen. However, the SAP stated that it has "a number of serious concerns with oxyfluorfen *not* related to the oncogenic hazard from PCE * * *" (Gray, 1981). These concerns relate to the following issues.

1. The persistence and possible bioaccumulation of oxyfluorfen in the food chain.

2. The adequacy of testing of oxyfluorfen's potential teratological effects given its structural resemblance to nitrofen.

3. The identification and potential adverse effects of the various inert ingredients in oxyfluorfen.

With regard to issue 1. above, the Agency shares the SAP's concern regarding the persistence of oxyfluorfen in the environment. This concern was discussed in the PD 1/2/3 and the Agency has recommended extensive field monitoring for oxyfluorfen residues in the major use pattern areas. The field monitoring outlined by the Agency in the PD 1/2/3 includes provisions for evaluating the potential of oxyfluorfen to bioaccumulate in aquatic organisms.

Issue number 2. pertains to oxyfluorfen's potential to cause teratogenic effects. This concern arises from the fact that oxyfluorfen is structurally similar to nitrofen, a known teratogen. Therefore, the SAP believes that an especially careful evaluation of oxyfluorfen is warranted.

The Agency agrees with the SAP that a special effort should be made to determine that no teratological problem exists with oxyfluorfen. The PD 1/2/3 discussed the information available at the time and highlighted the need for some further study. Along with the rat teratology study submitted by the registrant (negative for teratogenic effects at 1000 mg/kg/day), the registrant is currently conducting a second teratology study with rabbits which will be submitted this year. Additional teratogenic evaluation of oxyfluorfen is being conducted by EPA at its Research Triangle Park (RTP), N.C. facility. The Agency notes, however, that structurally similar chemicals do not necessarily possess the same toxicological characteristics. Evidence of this in the case of diphenyl ethers comes from the above-mentioned EPA studies performed at RTP. Data from these studies indicate that nitrofen is teratogenic but that acifluorfen, another structurally related diphenyl ether, is negative for teratogenic effects.

Following the evaluation of the rabbit study to be submitted this year by the registrant and the results of EPA testing of oxyfluorfen, the Agency will determine whether further testing is warranted, or whether information available at that time is sufficient to evaluate accurately the teratogenic potential of oxyfluorfen.

SAP's third concern relates to the level of impurities in technical oxyfluorfen and the possible adverse effects of these impurities on the environment.

Although not specifically discussed in the PD 1/2/3, toxicological information on the impurities identified in technical oxyfluorfen has been reviewed by the Agency. Unless an impurity or inert ingredient of a pesticide is judged to pose an unreasonable adverse effect on man or the environment, it is illegal to disclose such confidential product information in a public document. The Agency has concluded that the impurities in technical oxyfluorfen do not pose an unreasonable risk to humans or the environment and has provided the information supporting this determination to the SAP.

C. Comments of the USDA

The comments of the U.S. Department of Agriculture on the Preliminary Notice of Determination Concluding the RPAR of Pesticides Containing Oxyfluorfen are presented below in their entirety.

Mr. Edwin L. Johnson (TS–766C)
Acting Deputy Administrator for Pesticide Programs, U.S. Environmental Protection Agency, Washington, D.C., July 6, 1981.

Dear Ed: This is the U.S. Department of Agriculture's response to the U.S. Environmental Protection Agency (EPA) Preliminary Notice of Determination Concluding the Rebuttable Presumption Against Registration of the pesticide chemical oxyfluorfen (GOAL).

We concur with the Agency's conclusions that the benefits from the use of this chemical are biologically and economically meaningful to agricultural production. We have used Goal in our witchweed program over the past

three years. Where it has been used, control of witchweed has been excellent lasting from six weeks to full season without observable adverse effects on corn or other aspects of the environment. Goal is rated as the best of the new herbicides for use in forest nurseries. The indications are that it will become a very important tool because it can be applied over the top of five-week old seedlings without any noticeable phytotoxicity and because of the season-long control the material provides. We agree with the requirement to use a respirator during the mixing, loading and application of oxyfluorfen until the registrant can more accurately assess inhalation exposure; however, we are concerned that the requirement for respirators makes no differentiation between methods of applications. In many forest nurseries, pesticides are applied through automatic watering systems which would result in little or no applicator exposure. In less sophisticated nurseries the material is applied with a directed spray which should result in low inhalation exposure. We are hopeful that the additional toxicology studies that the agency has requested from the registrant will demonstrate that the use of respirators is not necessary. If it is determined that the use of respirators is necessary, we suggest that consideration be given to evaluating protective equipment that poses minimal discomfort in hot, humid climate. As we have pointed out in the past, the use of respirators in many areas of the U.S. poses problems of discomfort due to heat and humidity. In these climatic conditions applicators and other support personnel are often reluctant to use them, regardless of regulatory requirements. It has been suggested that in certain high temperature situations the hazards associated with the use of respirators may be more immediate and dangerous than the hazard due to chemical exposure which the use is intended to prevent.

We would recommend followup action that would substantiate that respirators significantly lower exposure during application and that they are mitigating the problem. Research is needed to devise protective measures suitable for hot weather.

If we can be of assistance in developing needed exposure data, please advise.

Sincerely,

Barry R. Flamm,

Director.

D. Response to Comments of USDA Relating to Benefits

The only comments relating to oxyfluorfen benefits were received from the USDA. Essentially, the USDA concurs with the Agency assessment of benefits and adds that oxyfluorfen is particularly beneficial for witchweed control and use in forest nurseries. The Ageny agrees and believes that the benefits of oxyfluorfen for use in corn and forest nurseries have been adequately discussed in the PD 1/2/3.

E. Response to Comments by the USDA and the Registrant Relating to Regulatory Actions—Respirator Requirement for Mixer/Loader/ Applicators

1. The USDA has agreed with the Agency's proposal to require respirators during the mixing, loading, and application of oxyfluorfen products. USDA commented, however, that this requirement does not take into account different methods of application. USDA states that in many forest nurseries, pesticides are applied through automatic watering systems which would result in little or no applicator exposure.

In assessing applicator exposure to PCE from use of oxyfluorfen products, the Agency assumed spray application as indicated on the Goal® 2E conifer label. The Goal® 2E label does not currently provide rates, metering instructions, limitations, precutions or other directions for use of Goal® 2E through automatic watering systems.

USDA also commented that use of respirators in many areas of the United States poses problems of discomfort due to heat and humidity, and that in certain high temperature situations, the hazards associated with the use of respirators may be more immediate and dangerous than the hazard due to pesticide exposure. USDA suggests that research is needed to devise protective measures suitable for hot weather.

In the case of oxyfluorfen, inhalational exposure accounts for 98 percent or more of total applicator exposure to the PCE contaminant, according to Agency esitmates. Reducing inhalational exposure is therefore the most effective method of reducing total exposure to applicators to PCE in oxyfluorfen. Respirator use dramatically decreases total exposure and resultant risk, as illustrated in revised Table 11.

The Agency recognizes the reluctance of applicators to wear respirators in hot and humid weather situations. The Agency is not aware, however, of any data which indicate that the use of respirators in high temperature situations result in "more immediate and dangerous hazards than exposure to the chemical."

With respect to oxyfluorfen specifically, the Agency believes (as stated in the PD 1/2/3) that its exposure estimates for applicators are, of necessity, "worst case" values and has invited the registrant to submit data demonstrating that actual exposure to PCE is significantly lower than Agency esitmates. These data are not anticipated to be costly to generate and could successfully rebut the respirator requirement. Until such time as these data are available or other protective methods are developed, the Agency will require the currently available means of reducing inhalational exposure (respirators) to be used during mixing, loading, and application of oxyfluorfen products.

2. The registrant has also submitted comments on implementation of the respirator requirement. Rohm and Haas believes that "the actual inhalation exposure to PCE from Goal * formulations is significantly less than that calculated by the agency and the company will obtain actual field monitoring data to substantiate its contention."

IV. Procedural Matters

This Notice initiates actions to cancel registrations and deny applications for registration of oxyfluorfen products for all uses unless the registrants or applicants modify the terms and conditions of registration as described in this Notice ("conditional" cancellation or denial).

As provided in FIFRA section 6(b), "the proposed action shall become final and effective at the end of 30 days from receipt by the registrant, or publication, of a notice issued under paragraph (1), whichever occurs later, unless within that time either (i) the registrant makes the necessary corrections, if possible, or (ii) a request for a hearing is made by a person adversely affected by the notice." Paragraph (1), FIFRA section 6(b)(1), provides that the Administrator may issue a notice of intent to cancel a registration or change its classification together with the reasons (including the factual basis) of his action.

FIFRA section 3(c)(6) provides that the Administrator may deny applications for registration "* * * unless the applicant corrects the conditions and notifies the Administrator thereof during the 30 day period beginning with the day after the date on which the applicant receives the notice * * *". FIFRA section 3(c)(6) also provides that "Upon such notification, the applicant for registration or other interested person with the concurrence of the applicant shall have the same remedies as provided for in section 6."

This unit of the Notice explains how registrants and applicants for registration may modify the terms and conditions of registration and how registrants, applicants for registration, and certain other interested or affected parties may request a hearing on the cancellation and denial actions that this Notice initiates.

A. Procedures for Amending the Terms and Conditions of Registration

Registrants affected by the cancellation actions described above may avoid cancellation by amending the terms and conditions of registration. Within the 30 day period, an application for an amended confidential statement of forumla must be filed with the Agency, containing wording in the inert ingedients statement to the effect that perchloroethylene (PCE) contamination does not exceed 200 ppm in formulated oxyfluorfen products.

Within six months after the date of publication of this Notice, amended labeling must also be filed with the Agency. The amended labeling must require that a pesticide respirator jointly approved by the Mining Enforcement and Safety Administration (formerly the U.S. Bureau of Mines) and by the National Institute for Occupational Safety and Health under the provisions of 30 CFR Part 2 for perchloroethylene must be used during mixing, loading, and application of all oxyfluorfen products. This requirement will take effect at the end of the 6-month deadline unless the registrant submits field monitoring data to the Agency establishing that the inhalational exposure for the maximum application rate for each registered use is significantly lower than the inhalational exposure estimated by the Agency.

The application for an amended confidential statement of formula and the amended labelling must be submitted to: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202 (703-557-7070).

B. Procedure for Requesting a Hearing

Registrants affected by the cancellation actions described above may request a hearing on such actions within thirty (30) days of receipt of this Notice, or on or before July 23, 1982, whichever occurs later. Any other person adversely affected by the cancellation actions described above may request a hearing or or before July 23, 1982.

Applicants for registration affected by the denial actions described above may request a hearing on such actions within thirty (30) days of receipt of this Notice, or on or before July 23, 1982, whichever occurs later. Other interested persons may, with the concurrence of the applicant, request a hearing during the time period available to the applicant.

All registrants, applicants, and other interested or affected parties who request a hearing must file the request in accordance with the procedures established by FIFRA and the Agency's Rules of Practice Governing Hearings (40 CFR Part 164). These procedures require among other things that: (1) all requests must identify the specific registration(s) or application(s) and the specific use(s) for which a hearing is requested, (2) all requests must be accompanied by objection that are specific for each use of the identified pesticide products for which a hearing is requested, and (3) all requests must be received by the hearing clerk within the applicable thirty (30) day period. Failure to comply with these requirements will automatically result in denial of the request for a hearing.

Request for hearings must be submitted to: Hearing Clerk (A-110), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

C. Consequence of Filing or Failing to File a Hearing Request

1. Consequence of filing a timely and effective hearing request. If a hearing on any action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by the Agency's Rules of Practice for hearings under FIFRA section 6 (40 CFR Part 164). In the event of a hearing, each cancellation and denial action subject to the hearing will not become effective except pursuant to an order of the Administrator at the conclusion of the hearing.

2. Consequences of failure to file in a timely and effective manner. If no hearing concerning the conditional cancellation or denial of registration of a specific use of a specific pesticide product containing oxyfluorfen has been requested by the end of the applicable thirty-day period, registration of that use of that oxyfluorfen product will be subject to cancellation or denial unless the registrant or applicant amends its application for registration to include the modifications in the terms and conditions of registration specified in this Notice.

Dated: June 18, 1982.

John A. Todhunter,

Ph. D., Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 82-16357 Filed 6-22-82: 8:45 am]

BILLING CODE 6560-50-M

[OPP 30059; PH-FRL-2061-2]

Twenty Chemicals; Availability of Pesticide Registration Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The notice announces that Registration Standard Documents for twenty chemicals are now available to the public.

ADDRESSES: A copy of each Standard is presently available for viewing from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays, from: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-107, 401 M St. SW., Washington, D.C. 20460.

Copies will be available by January 30, 1982 from: National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22153 (703-487-4600).

FOR FURTHER INFORMATION CONTACT: Ruby Whiters, Special Pesticide Review Division (TS-791), Office of Pesticide Programs, Environmental Protection Agency, Room 728, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-8193).

SUPPLEMENTARY INFORMATION: Registration Standards have been established at EPA for the purpose of registering and reregistering pesticide products. Under this system, EPA develops a document containing a comprehensive statement of the Agency's regulatory position on all pesticide products containing the same active ingredient(s). The document, or registration standard, describes the data (including limitations and deficiencies) upon which the regulatory position is based, the rationale for the position, and the conditions to be met to register a product under the standard. Registration Standards are now available for the following chemicals.

3-(alpha-acetonylbenzyl)-4-hydroxycoumarin [warfarin]
Aluminum phosphide
3-amino 2,5-dichlorobenzoic acid [chloramben]
Ammonium sulfamate
O,O-diethyl O-(3-chloro-4-methyl-2-oxo-2H-1-bensopyran-7-yl) phosphorothioate) [coumaphos]
O,O-diethyl S-[(6-chloro-2-oxobenzoxazolin-3-yl)methyl] phosphorodithioate [phosalone]
O,O-diethyl S-(2-chloro-1-phthalimidoethyl) phosphorodithioate [dialifor]

5, 6-dihydro-2-methyl-1, 4-oxathiin-3 carboxanilide [carboxin]
N-(2,6-dimethylphenyl)-N-(methoxyacetyl) alanine, methyl esther [metlaxyl]
2, 6-dinitro-N, N-dipropylcumidine [isopropalin]
6-ethoxyl-1,2-dihydro-2,2,4-trimethylquinoline [ethoxyquin]
2-ethyl-1,3-hexanediol [6-12]
O-ethyl O-[4-methylthio)phenyl] S-propyl phosphorodithioate [sulprofos]
Methyl 5-(2,4-dichlorophenoxy)-2-nitrobenzoate [bifenox]
S-methyl N-(methylcarbamoyl)oxy] thioacetimidate [methomyl]
3-(methylsulfonyl)-O-[(methylamino) carbonyl)] oxime-2-butanone [butoxicarboxime]
Naphthalene
Naphthaleneacetic acid, its sodium and potassium salts, and its ester and acetamide [NAA]
10, 10'-oxybisphenoxarsine [OBPA]
O,O' (thiodi-4,1-phenylene) bis (O,O dimethyl phosphorothioate [temephos]

Dated: February 8, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82-16355 Filed 6-22-82: 8:45 am]

BILLING CODE 6560-32-M

[PF-280; PH-FRL 2153-7]

Certain Companies; Pesticides, Food, and Feed Additive Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide, food, and feed additive petitions relating to establishment and amendment of tolerances for residues of certain pesticide chemicals in or on certain raw agricultural commodities, and food and feed items.

ADDRESS: Written comments to the product manager (PM) cited in each specific petition at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Written comments may be submitted while the petitions are pending before the agency. The comments are to be identified by the document control number "[PF-280]" and the specific petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager cited in each petition at the telephone number provided.

SUPPLEMENTARY INFORMATION: EPA gives notice that the following pesticide, food, and feed additive petitions relating to establishment and amendment of tolerances for residues of certain pesticide chemicals is or on certain raw agricultural commodities, food and feed items in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition

PP 2F2677. Mobay Chemical Co., PO Box 4913, Kansas City, MO 64120. Proposes amending 40 CFR 180.332 by increasing the tolerance for the combined residues of the herbicide 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4*H*)-one and its triazinone metabolites in or on soybeans at 0.2 part per million (ppm). The proposed analytical method for determining residues is gas chromatography using an electron capture detector. (PM-25, Robert J. Taylor, 703-557-1800).

FAP 2H5339. Monsanto Company, 1101 17th St., NW, Washington, DC 20036. Proposes amending 193.235 by establishing a regulation permitting residues of the herbicide glyphosate (*N*-(phosphonomethyl)glycine) and its metabolite aminomethylphosphonic acid in or on the following food items coconut oil and dessicated coconut at 0.1 ppm. (PM-25, Robert J. Taylor, 703-557-1800).

PP 2F2680. Monsanto Co. Proposes amending 40 CFR 180.364 by establishing a tolerance for the combined residues of glyphosate and its metabolite in or on the raw agricultural commodity copra at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography using a phosphorous-specific flame photometric detector. (PM-25, Robert J. Taylor, 703-557-1800).

FAP 2H5339. Monsanto Co. Proposes amending 21 CFR 561.253 by establishing a regulation permitting residues of the herbicide glyphosate and its metabolite in the feed item copra meal at 0.1 ppm. (PM 25, Robert J. Taylor, 703-557-1800).

PP 2E2685. The Bureau of Reclamation, PO Box 25007, Bldg. 67, Denver Federal Center, Denver, CO 80225. Proposes amending 40 CFR 180.1021 by establishing an exemption from the requirement of a tolerance for residues of the algaecide/herbicide copper resulting from application of cuprous oxide bearing antifouling coating in or on the following raw agricultural commodities: eggs, fish, irrigated crops, meat, milk, and shellfish. (PM 23, Richard F. Mountfort, 703-557-1830).

FAP 2H5350. The Bureau of Recalamation. Proposes amending 21 CFR 193.90 by establishing a regulation permitting residues of the algaecide/herbicide copper resulting from the application of antifouling coating containing cuprous oxide in potable water at 1 ppm. (PM 23, Richard F. Mountfort, 703-557-1830).

PP 2F2650. BASF Wyandotte Corp., Agricultural Chemical Division., 100 Cherry Hill Road, Parsippany, NJ 07054. Proposes amending 40 CFR 180.380 by establishing tolerances for the combined residues of the fungicide 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione and its 3,5-dichloroaniline containing metabolites, in or on the raw agricultural commodities peaches and cherries at 4.0 ppm and plums at 1.0 ppm. The proposed analytical method for determining residues is gas chromatography using an electron capture detector (Ni 63). (PM-21, Henry Jacoby, 703-557-1900).

PP 1E2457. BASF Wyandotte Corp. Proposes amending 40 CFR 180.380 by establishing tolerances for the combined residues of the fungicide 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione and its 3,5-dichloroaniline containing its metabolites, in or on the raw agricultural commodity grapes (table) at 6.0 ppm. The proposed analytical method for determining residues is gas chromatography using electron capture detector (Ni 63). (PM-21, Henry Jacoby, 703-557-1900).

PP 6F1770. Mobay Chemical Corp., PO Box 4913, Hawthorne Road, Kansas City, MO 64120. In the Federal Register of May 12, 1976 (41 FR 19373), EPA announced that Mobay Chemical Co. has submitted a pesticide petition (PP 6F1770) which proposed the establishment of tolerances for the combined residues of the nematocide ethyl 3-methyl-4-(methylthio) phenyl (1-methylethyl) phosphoroamidate and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity carrots at 0.1 ppm.

Mobay Chemical Co. has amended the petition by increasing the proposed tolerance on carrots from 0.1 ppm to 0.5 ppm. The proposed analytical method for determining residues is gas chromatography procedure using a flame ionization detector. (PM-21, Henry Jacoby, 703-557-1900).

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136); 409(b)(5), 72 Stat. 1786, (21 U.S.C. 348))

Dated: June 15, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-16907 Filed 6-22-82; 8:45 am]

BILLING CODE 6560-50-M

[FRL 2138-2; OLCE FRL 2138-2]

Findings of Administrator With Regard to Steel Industry Compliance Extension Act of 1981: Alabama By-Products Corp.

AGENCY: Environmental Protection Agency.

ACTION: Notice of final findings.

SUMMARY: The Administrator consents to the entry of an amended consent decree permitting extensions of compliance to Alabama By-Products Corporation under the Steel Industry Compliance Extension Act of 1981. The Administrator also modifies her preliminary findings of December 17, 1981, 46 FR 62537 (December 24, 1981).

DATES: Effective immediately.

FOR FURTHER INFORMATION CONTACT: Michael Alushin, Acting Deputy Associate Enforcement Counsel for Air, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202 382-2824).

SUPPLEMENTARY INFORMATION: On December 17, 1981 (46 FR 62537), the Administrator announced findings preliminary to the lodging of a consent decree under the Steel Industry Compliance Extension Act of 1981 to extend certain compliance deadlines for the Alabama By-Product Corporation's steel facilities in Tarrant, Alabama. In the announcement the Administrator gave preliminary consent to the entry of a decree requiring capital expenditures to be made on the schedule reflected in finding number (5). This notice amends findings number (5) and (6) by striking the first paragraphs thereof and substituting therefore the following respectively:

(5) I find that a "phased program of compliance" (as defined in Section 113(e)(2) of the Act) would require ABC to make pollution control capital expenditures on the following schedule, beginning with the entry of a decree:

At least $968,358 by June 30 1983
At least $2,227,859 by June 30, 1984
At least $3,227,859 by November 30, 1984
At least $6,859,200 by June 30, 1985

(6) I find that an integration of the "qualifying modernization investment" and the "phased program of compliance" schedule when allowing for the required investments under section 113(e)(1)(B) of the Act, results in the following required schedule of capital expenditures:

At least $6,859,200 for qualifying modernization investment by July 17, 1983
At least $986,358 for pollution control by June 30, 1983
At least $2,227,859 for pollution control by November 30, 1984
At least $6,859,200 for pollution control by June 30, 1985

Consent: I hereby give notice that the United States of America and the Alabama By-Products Corporation have successfully negotiated a proposed consent decree complying with the requirements of section 113(e). I have consented to the entry of that consent decree which supercedes the decree entered as an order in the United States District Court for the Northern District of Alabama on October 31, 1980, Civil Action No. 77-M-1455-S: *U.S. v Alabama By-Products Corporation.* The superceding decree is to be lodged with the court under 28 CFR 50.7 and an appropriate notification of lodging has been or will be published by the Department of Justice at that time, including an indication of how copies of the amendment may be obtained and where public comment, if any, may be addressed.

Dated: June 16, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-17008 Filed 6-22-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

[Docket No. 82-29]

Phillips-Parr, Inc. v. Empresa Lineas Maritimas Argentinas, S.A.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Phillips-Parr, Inc. against Empresa Lineas Maritimas Argentinas, S.A. was served June 15, 1982. Complainant alleges that respondent unlawfully performed ocean transportation under a cancelled tariff and seeks to recover charges under that tariff in violation of section 18(b) and sections 16, First and 17 of the Shipping Act, 1916.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 82-16859 Filed 6-22-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Riverton State Bank Holding Company,* Riverton, Wyoming; to acquiring 100 percent of the voting shares or assets of Dubois National Bank, Dubois, Wyoming. Comments on this application must be received not later than July 17, 1982.

B. **Secretary, Board of Governors of the Federal Reserve System,** Washington, D.C. 20551:

1. *Antioch Holding Company,* Antioch, Illinois; to acquire 100 percent of the voting shares or assets of New Lenox State Bank, New Lenox, Illinois, currently a subsidiary of New Lenox Holding Company, New Lenox, Illinois; West Chicago State Bank, West Chicago, Illinois, currently a subsidiary of Wesco Investment Corporation, La

Grange, Illinois; and First National Bank of La Grange, La Grange, Illinois, currently a subsidiary of F.N.B.C. of La Grange, La Grange, Illinois. This application may be inspected at the Federal Reserve Bank of Chicago. Comments on this application must be received not later than July 17, 1982.

Board of Governors of the Federal Reserve System, June 17, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-16900 Filed 6-22-82: 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration or resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and, unless noted, received by the appropriate Federal Reserve Bank not later than July 17, 1982.

A. Federal Reserve Bank of New York (A Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Ramapo Financial Corporation,* Wayne, New Jersey (management consulting activities; New York and New Jersey): To engage, through its subsidiary, RFC Services Corporation, in providing instruction and advice regarding the development of loan programs in order to enable unaffiliated client banks, savings and loan associations, and mutual savings banks to operate such loan programs independently. This service would include instruction and advice concerning operations; systems and procedures; accounting procedures; credit administration, documentation and evalution; product development and advertising programs; and personnel training. These activities would be conducted from an office of the subsidiary in Wayne, New Jersey, serving the New York City metropolitan area, primarily northern New Jersey. Comments on this application must be received not later than July 9, 1982.

B. Federal Reserve Bank of Cleveland (Harry W. Huning, Vice President) 1455 East Sixth Steet, Cleveland, Ohio 44101:

1. *Banc One Corporation,* Columbus, Ohio (leasing and financial activities): To engage, through a subsidiary, Banc One Financial Corporation, in the activities of leasing personal property and equipment, or acting as agent, broker, or advisor in leasing of such proprty, where such property is acquired by the lessor at the request of the lessee, for business purposes and where at the inception of the initial lease the expectation is that the effect of the transaction and reasonably anticipated future transactions with the same lessee as to the same property will be to compensate the lessor for not less than the lessor's full investment in the property; making, acquiring, and selling, for its own account and for the account of others, loans and other extensions of credit including loans to finance agricultural production, commercial and industrial loans, and loans to individuals for household, family, and other personal expenditures; and servicing such loans and other extensions of credit for itself and for non-affiliated banks and for institutional investors. These activities will be conducted from an additional office at 9023 Darrow Road, Twinsburg, Ohio and will serve northern Ohio.

Board of Governors of the Federal Reserve System, June 17, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-16892 Filed 6-22-82: 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Medicaid Program; Notice of Hearing; Reconsideration of Disapproval of Tennessee State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on August 10, 1982 in Atlanta, Georgia to reconsider our decision to disapprove portions of Tennessee State plan amendment 82-6.

CLOSING DATE: Request to participate in the hearing as a party must be received by July 8, 1982.

FOR FURTHER INFORMATION CONTACT: Sharyn Smith, Docket Clerk, Bureau of Program Policy, G-20 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to deny portions of a Tennessee State plan amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a denial of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with additional requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins, in accordance with additional requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter relates to Tennessee's proposals to provide physician and pharmacy services only to medically needy individuals who are institutionalized. The Health Care Financing Administration contends that these proposals violate statutory and

regulatory provisions which require that services available to a covered medically needy group must be equal in amount, duration and scope for each member of that group; that is, to both institutionalized and noninstitutionalized medically needy recipients.

The notice to Tennessee announcing an administrative hearing to reconsider our denial of its State plan amendment reads as follows:

June 17, 1982.

Eugene W. Fowinkle, M.D., *Commissioner, Department of Public Health, 344 Cordell Hull Building, Nashville, Tennessee 37219.*

Dear Dr. Fowinkle: This is to advise you that your request for reconsideration of the decision to disapprove portions of Tennessee State Plan Amendment 82-6 was received on May 24, 1982. The provisions of this amendment which were disaproved are those which limit physican and pharmacy services to medically needy individuals who are institutionalized. You have requested a reconsideration of whether these provisions of the subject plan amendment conform to the Social Security Act and pertinent regulations.

I am scheduling a hearing on your request to be held on August 10, 1982, at 10 a.m. in the 7th floor Conference Room, 101 Marietta Tower, Spring and Marietta Streeets, Atlanta, Georgia. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Stanley Krostar as the presiding official. If these arrangements present any problems, please contact Mrs. Sharyn Smith, Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify Mrs. Smith of the names and addresses of the individuals who will represent the State at the hearing. Mrs. Smith can be reached on (301) 594-8261.

Sincerely yours,

Carolyne K. Davis, Ph.D.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: June 17, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 82-17018 Filed 6-22-82: 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Environment and Energy

[Docket No. NI-96]

Intended Environmental Impact Statement

The Department of Housing and Urban Development gives notice that an Environmental Impact Statement (EIS) is intended to be prepared by the City of Detroit, Michigan, for the following projects under HUD programs as described in the appendix to this Notice: East Riverfront Development Project, Sites Nos. 1, 2, and 3. This notice is required by the Council on Environmental Quality under its rule (40 CFR 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."

This Notice shall be effective for one year. If one year after the publication of the 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., June 11, 1982.

Richard Brown,

Director, Office of Environment and Energy.

Appendix—EIS on the East Riverfront Development Project, Sites Nos. 1, 2, and 3

The City of Detroit, Michigan, intends to prepare three Environmental Impact Statements for the projects described below and solicits information and comments for consideration in the Environmental Impact Statements.

Description: The proposed East Riverfront Development Project Site No. 1 will consist of approximately 1500 dwelling units, together with associated land uses (recreation and commercial). The project will be situated on a largely vacant tract of land bounded on the north by East Jefferson Avenue and Guoin Street, on the south by the Detroit River, on the east by U.S. Naturalization/Immigration and U.S. Coast Guard facilities, and on the west by Adair Street and the Stroh's Brewery executive office complex. The estimated cost of the project is $205 million.

Site No. 2 will provide for adaptive reuse of a complex of buildings (formerly a major pharmaceutical manufacturing operation) as a mixed-use development project including office, residential and retail facilities. A new office building and a hotel and garage are also proposed. The project will be situated on a tract of land bounded by Atwater Street, Franklin Street and Wright Avenue to the north; by the Detroit River to the south; and by the Dundee Cement Company and Joseph Campau Avenue to the west; and by Adair and Walker Streets and a property line midway between Adair and Joseph Campau to the east. The estimated cost of the project is $113 million.

Site No. 3 is proposed to consist of approximately 300 dwelling units of mixed income and senior citizen housing. The project will be situated on a tract of land in the City of Detroit, Michigan, bounded by Franklin Street and East Jefferson Avenue to the north, by Atwater Street on the south, by Chene Street on the west and by Dubois on the east. The estimated cost of the project is $30 million.

Federal funding for the projects is expected to be from U.S. Department of Housing and Urban Development (HUD) UDAG and Community Development Block Grants. Other funding sources may include the U.S. Department of Transportation (FAUS and UMTA), the U.S. Department of Commerce (EDA), the Department of Interior (Land and Water Conservation Fund) and FHA.

Need: A decision to prepare an EIS has been based upon the large-scale nature of the projects in a dense urban setting and the possible impacts on river hydrology and biology and cultural and historical resources.

Alternatives: Alternatives being considered include for Site 1:

a. The preferred alternative (residential with some recreation and commercial use);

b. A smaller site alternative;

c. A different mixed-use alternative;

d. A re-use alternative; and

e. The "no-action" alternative.

Site 2:

a. The preferred alternative (commercial and residential adaptive reuse with some new development);

b. A different mixed-use alternative;

c. Site clearance and all new development; and

d. The "no-action" alternative.

Site 3:

a. The preferred alternative (residential use);

b. A larger site alternative;

c. A different use alternative;

d. A re-use alternative; and

e. The "no-action" alternative.

Scoping: Responses to this Notice will be used to:

1. Help determine significant environmental issues;

2. Identify data that will be used in the EIS;

3. Identify agencies, groups and individuals that will participate in the EIS process.

A public scoping meeting will be held as follows: 1:00 p.m., Tuesday, July 6, 1982, Veterans Memorial Building, 151 West Jefferson Avenue, Room 810, Detroit, Michigan 48226.

Comments: Submission of comments and information prior to the public meeting on July 6, 1982, either in writing or by telephone, should be directed to: City of Detroit, Planning Department, Attention: Mr. Thomas P. Andrews, 3400 Cadillac Tower, Detroit, Michigan 48226, (313) 224–3468.

[FR Doc. 82–16864 Filed 6–22–82: 8:45 am]
BILLING CODE 4210–01–M

[Docket No. NI–97]

Shenandoah New Community, Coweta County, Ga.; Finding of No Significant Impact and Intent Not To File a Supplement to the Environmental Impact Statement

The Department of Housing and Urban Development (HUD) gives notice that a Finding of No Significant Impact (FONSI) has been made subsequent to the completion of an Environmental Assessment (EA) for the following project under HUD programs as described in the appendix to this Notice: Shenandoah New Community, Coweta County, Georgia. This Notice is required by the Council on Environmental Quality (CEQ) under its rules (40 CFR Parts 1500–1508) and implementing HUD regulations.

The lead agency, the New Community Development Corporation (NCDC) of HUD, with the cooperation of the Regional Interdisciplinary Environmental Assessment Team (RIEAT) of the HUD Region IV Office in Atlanta, Georgia, published in the **Federal Register** last July 30, 1981 a Notice of Intent to Prepare a Supplement to the EIS for this Project. Subsequently, it has been determined that there would be no significant environmental impact from the proposed action. Therefore, HUD also gives notice that it does not intend to file a Supplement Environmental Impact Statement (SEIS) for the proposed action. Interested individuals, governmental agencies, and private organizations are invited to comment on the FONSI. Pursuant to 40 CFR 1501.4(e)(2) of the CEQ regulations, the FONSI will be available for public review and comment for a thirty (30) day period, commencing with the appearance of this Notice in the **Federal Register**, before NCDC makes its final determination whether to prepare a SEIS and before NCDC may begin the proposed action.

The proposed action is the disposition of the Shenandoah New Community's assets now owned by HUD as a result of the project developer's inability to service the interest debt on the HUD guaranteed loan. This action is expected to reduce the environmental impacts associated with the original development plan of the project.

Issued at Washington, D.C. June 11, 1982.

Richard Brown,

Director, Office of Environment and Energy.

Appendix

Finding of No Significant Impact for Shenandoah New Community, Coweta County, Georgia

The New Community Development Corporation (NCDC) of the Department of Housing and Urban Development (HUD) gives notice that it has prepared a Finding of No Significant Impact as a result of an Environmental Assessment (EA) completed in May, 1982. A Notice of Intent to prepare a Supplement to the EIS was published in the **Federal Register** on July 30, 1981. The EA will not be circulated as is normally the case for EIS's or SEIS's. It will remain available at NCDC, Room 7137, U.S. Department of HUD, Washington, D.C. 20410. Comments on the FONSI are invited for a 30 day period from interested agencies, organizations, and the public.

Description: Shenandoah is a new community project approved in 1974 by the Department of Housing and Urban Development (HUD) under Title VII of the Housing and Urban Development Act of 1970 (the "Act"). It is located in Coweta County, Georgia, approximately 35 miles southwest of downtown Atlanta and adjacent to Newnan, the county seat of Coweta County. As originally conceived in 1974, the project was to create a new town of approximately 70,000 people housed in 46,000 newly constructed dwelling units. Associated and integrated commercial, industrial, institutional, and recreational land use areas were also to be contained within the project. Build-out for this 7,200 acre development was to occur in the 1995–2000 period.

In March, 1980 HUD made a Decision to Acquire the project based on Shenandoah, Ltd.'s inability to meet mortgage payments to the original landowners. Current development at the site consists of a limited number of housing units constructed in price ranges to fit a variety of income levels, a large community center, swimming pool, a new sewage treatment plant, and an industrial park.

HUD, which has already sustained substantial losses from its involvement in the project, has evaluated several alternative actions for dealing with the Shenandoah new community project. The evaluations have resulted in the proposal presented here. The other most likely actions are also discussed as alternatives to the proposed action.

HUD proposed to terminate the New Community status of the project and dispose of the unsold property by sale to public or private interests to develop the undeveloped portions of the property to the highest and best use. HUD does intend to require limited land use controls to provide protection to the residential "core community" character of the existing development.

Need: The environmental clearance procedures for this proposed action were initiated with the publication in the **Federal Register** last July 30, 1981 of a Notice of Intent to Prepare a Supplement to the EIS. Since that time, it has been determined that a SEIS is not necessary because of the nature of the proposed action and the diminutive degree to which the environment is affected. Therefore, subsequent to the conclusion of the environmental assessment, a Finding of No Significant Impact has been prepared by the lead agency. This Notice will be sent to the appropriate A–95 clearinghouse in accordance with HUD's environmental regulations, there will be a thirty (30) day comment period before NCDC makes its final determination whether to prepare an SEIS and before it begins the proposed action.

Alternatives Discussed and Considered: Since NCDC has been charged with the responsibility to divest itself of involvement with the currently approved Title VII project, the alternatives considered in the assessment were limited. The alternatives, including the proposed action, are:

A. Sale to a private developer for continued construction as a planned community without further HUD financial assistance.

B. Sale to more than one private developer for continued construction as a planned community without further HUD financial assistance.

C. Sale to one or more private developers to develop the undeveloped portions of the property to the highest and best use with limited land use controls required by HUD to protect the core community. There would be no

further HUD financial assistance. (This is the proposed action)

D. Sale to more than one private developer to develop the undeveloped portions of the property to its highest and best use. There would be no further HUD financial assistance.

Comments: Comments should be sent to: Mr. Edwin Baker, Environmental Clearance Officer, New Community Development Corporation, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Commercial telephone number: (202) 755–6170. Comments should be received on or before July 23, 1982.

[FR Doc. 82–16865 Filed 6–22–82; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19155–3]

Alaska Native Claims Selection; Publication

On March 31, 1975, Doyon, Limited, filed selection application F–19155–3, as amended, under the provisions of sec. 12(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611(c) (1976)) (ANCSA), as amended, for the surface and subsurface estates of certain lands withdrawn pursuant to sec. 11(a)(1) in the vicinity of Stevens Village. The application excluded several water bodies as being navigable. As these are considered nonnavigable and as sec. 12(c)(3) and 43 CFR 2652.3(c) require the region to select all available lands within the township the beds of these water bodies are considered selected.

As to the lands described below, the application, as amended, is properly filed and meets the requirements of the Alaska Native Claims Settlement Act, as amended, and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface and subsurface estates of the following described lands, selected pursuant to sec. 12(c) of ANCSA, aggregating approximately 166,563 acres, are considered proper for acquisition by Doyon, Limited, and are hereby approved for conveyance pursuant to sec. 14(e) of ANCSA.

Fairbanks Meridian, Alaska (Unsurveyed)

T. 13 N., R. 5 W.,
Secs. 1 to 36, inclusive.
Containing approximately 23,002 acres.
T. 15 N., R. 5 W.,
Sec. 13;
Secs. 24 to 27, inclusive;
Secs. 33 to 36, inclusive.
Containing approximately 5,725 acres.
T. 12 N., R. 6 W.,
Secs. 1 to 36, inclusive.
Containing approximately 22,771 acres.
T. 14 N., R. 6 W.,
Secs. 19 to 20, and 21;
Secs. 25 to 36, inclusive.
Containing approximately 9,552 acres.
T. 16 N., R. 6 W.,
Secs. 1 to 5, inclusive;
Sec. 6, excluding Native allotments F–13832 Parcel B and F–13346 Parcel A;
Secs. 7 to 21, inclusive;
Sec. 22, excluding Native allotment F–026049 Parcel B;
Secs. 23 to 36, inclusive.
Containing approximately 22,502 acres.
T. 13 N., R. 7 W.,
Secs. 13 to 28, inclusive;
Sec. 29, excluding Native allotment F–13843 Parcel B;
Secs. 30 to 36, inclusive.
Containing approximately 15,304 acres.
T. 15 N., R. 7 W.,
Secs. 1 to 12, inclusive.
Containing approximately 7,606 acres.
T. 12 N., R. 8 W.,
Secs. 1 and 2;
Secs. 11 to 15, inclusive;
Secs. 21 to 36, inclusive.
Containing approximately 14,639 acres.
T. 16 N., R. 8 W.,
Sec. 1, excluding Native allotment F–13842;
Secs. 2 to 11, inclusive;
Sec. 12, excluding Native allotment F–13842;
Secs. 13 to 36, inclusive.
Containing approximately 22,617 acres.
T. 15 N., R. 9 W.,
Secs. 1 to 36, inclusive.
Containing approximately 22,845 acres.
Aggregating approximately 166,563 acres.

Excluded from the above-described lands herein conveyed are the submerged lands, up to the ordinary high water mark, beneath all water bodies determined by the Bureau of Land Management to be navigable because they have been or could be used in connection with travel, trade and commerce. Those water bodies are identified on the attached navigability maps, the original of which will be found in easement case file F–21779–3.

All other water bodies not depicted as navigable on the attached maps within the lands to be conveyed were reviewed. Based on existing evidence, they were determined to be nonnavigable.

The lands excluded in the above description are not being approved for conveyance at this time and have been excluded for the following reason: Lands are under applications pending further adjudication. These exclusions *do not* constitute a rejection of the selection application, unless specifically so stated.

The conveyance issued for the surface and subsurface estates of the lands described above shall contain the following reservation to the United States:

Pursuant to sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)), as amended, the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F–21779–3, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: Travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

a. (EIN 45 C5) An easement twenty-five (25) feet in width for a proposed access trail from public land in Sec. 1, T. 13 N., R. 6 W., Fairbanks Meridian, northeasterly to public land and resources. The uses allowed are those listed for a twenty-five (25) foot wide trail easement.

b. (EIN 46 C5) An easement twenty-five (25) feet in width for a proposed access trail from public land in Sec. 36, T. 13 N., R. 6 W., Fairbanks Meridian, southeasterly to public land and resources. The uses allowed are those listed for a twenty-five (25) foot wide trail easement.

c. (EIN 48 C5) An easement twenty-five (25) feet in width for a proposed access trail from public land in Sec. 6, T. 12 N., R. 7 W., Fairbanks Meridian, northwesterly to public land and resources. The uses allowed are those listed for a twenty-five (25) foot wide trail easement.

d. (EIN 52 C5) An easement twenty-five (25) feet in width for a proposed access trail from public land in Sec. 1, T. 15 N., R. 8 W., Fairbanks Meridian, northeasterly to public land and resources. The uses allowed are those listed for a twenty-five (25) foot wide trail easement.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official plat of survey confirming the boundary description and acreage of the lands hereinabove granted; and

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2, sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby

granted to him. Further, pursuant to sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), as amended, any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law.

To date, approximately 3,101,650 acres of land, selected pursuant to sec. 12(c) of ANCSA, as amended, have been approved for conveyance to Doyon, Limited.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Alaska Native Claims Appeals Board before June 30, 1982, or to the Interior Board of Land Appeals after June 30, 1982; provided, however, pursuant to Pub. L. 96–487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken *before June 30, 1982,* the notice of appeal must be filed with the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 100, Anchorage, Alaska 99501.

If an appeal is taken *after June 30, 1982,* the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), address given above. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, address given above.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until July 23, 1982, to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board or the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Doyon, Limited, Land Department, Doyon Building, 201 First Avenue, Fairbanks, Alaska 99701

State of Alaska, Department of Natural Resources, Division of Technical Services, Pouch 7–005, Anchorage, Alaska 99510

Ann Johnson,

Chief, Branch of ANCSA, Adjudication.

[FR Doc. 82–16917 Filed 6–22–82; 8:45 am]

BILLING CODE 4310–84–M

New Mexico; San Juan Management Framework Plan; Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Initial Decision on the Amendment of the San Juan Planning Unit Management Framework Plan.

SUMMARY: This notice is to advise the public that the District Manager, Albuquerque District, Bureau of Land Management, has issued an initial decision on the amendment of the San Juan Management Framework Plan (MFP). The amendment decision identifies 2,928.61 acres of public land as suitable for consideration for exchange out of Federal ownership in order to accommodate the proposed Elena Gallegos Exchange. The State Director of New Mexico has concurred with the initial decision.

SUPPLEMENTARY INFORMATION: The initial decision of the Albuquerque District Manager to amend the San Juan Management Framework Plan is in response to a land exchange proposal initiated by the United States Forest Service, known as the Elena Gallegos Exchange. The amendment identifies 2,928.61 acres of public land in the Farmington, New Mexico area as suitable for consideration for exchange out of Federal ownership, to be used, if necessary, in the exchange action. The amendment lands are located in San Juan County, New Mexico and include portions of the following described townships:

New Mexico Principal Meridian

T. 29 N., R. 12 W.
T. 30 N., R. 13 W.

Copies of the Initial Decision Document and Preliminary Final Environmental Assessment are available for public review in the New Mexico State Office, U.S. Post Office and Federal Building, Santa Fe, New Mexico; at the Albuquerque District Office, 3550 Pan American Freeway, NE, Albuquerque, New Mexico; or at the Farmington Resource Area Office, 900 La Plata Highway, Farmington, New Mexico, during regular office hours. Individual copies of the document are available from the Farmington Area Office, address above, telephone (505) 325–3581.

Comments and protests will be accepted concurrently for 30 days from the date of this notice. They should be filed with the State Director, Bureau of Land Management, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87501. Replies will be made by mail.

Any person who participated in the planning process and who has an interest which may be adversely affected by approval of the MFP amendment may file a protest. The protest shall contain the name, mailing address, telephone number and interest of the person filing the protest; a statement of the issue or issues being protested; a statement of the part of the amendment being protested; a copy of all documents addressing the issue or issues that were submitted during the amendment process by the protesting party or an indication of the date of the issue or issues were discussed for the record; and a short, concise statement explaining why the District Manager's decision was wrong.

The initial decision will become final upon resolution of any protest.

Dated: June 16, 1982.

L. Paul Applegate,

District Manager.

[FR Doc. 82–17004 Filed 6–22–82; 8:45 am]

BILLING CODE 4310–84–M

[M 53205–A(SD)]

South Dakota; Classification of Public Lands for State Indemnity Selection; Partial Termination of Segregation

June 14, 1982.

Notice of a proposal to classify certain public lands in Brule, Buffalo, Campbell, Charles Mix, Codington, Gregory,

Hughes, Jones, Lincoln, Marshall, Potter, Roberts and Sully Counties, South Dakota for State Indemnity Selection pursuant to an application filed by the State's Commissioner of School and Public Lands was published in the **Federal Register** as FR Doc. 82–6701 appearing on pages 10915 and 10916 in the issue of Friday, March 12, 1982.

The lands identified in the notice were examined and those found suitable for transfer to the state are being classified for that purpose. The segregative effect of the filing of the application is being lifted from the remaining lands which were not suitable for transfer due to location or outstanding rights and claims.

The proposal drew several comments and some objections. The objections have been resolved and the action on the proposal is as follows:

1. The following described lot is opened to selection under the provisions of Sections 2275 and 2276 of the Revised Statutes as amended, 43 U.S.C. 851 & 852 (1976):

Fifth Principal Meridian

T. 122 N., R. 46 W.,
Sec. 31, Lot 5.
Containing 0.59 acres.

A notice proposing to open this lot for state selection was published in the **Federal Register** as FR Doc. 82–13037 appearing on page 20677 in the issue of Thursday, May 13, 1982.

2. The lands listed below are hereby classified for disposal through State Indemnity Selection, R.S. 2275 and 2276, as amended, 43 U.S.C. 851 and 852, pursuant to Sec. 7 of the Act of June 28, 1934 as amended, 43 U.S.C. 315(f) (1976):

Black Hills Meridian

T. 2 N., R. 29 E.
Sec. 18, W½SE¼.
Total—80 acres.

Fifth Principal Meridian

T. 122 N., R. 46 W.,
Sec. 31, Lot 5.
T. 117 N., R. 54 W.,
Sec. 11, Lot 8.
T. 125 N., R. 56 W.,
Sec. 30, Lot 2.
T. 95 N., R. 65 W.,
Sec. 20, NE¼SW¼.
T. 95 N., R. 66 W.,
Sec. 11, SE¼SE¼.
T. 97 N., R. 66 W.,
Sec. 30, Lot 2.
T. 97 N., R. 67 W.,
Sec. 33, SE¼SE¼.
T. 96 N., R. 68 W.,
Sec. 7, SW¼SE¼.
T. 105 N., R. 68 W.,
Sec. 6, Lots 8 and 9;
Sec. 7, S½ of Lot 6.
T. 97 N., R. 69 W.,
Sec. 23, NW¼NE¼.
T. 100 N., R. 71 W.,
Sec. 26, NW¼NW¼.
T. 109 N., R. 75 W.,
Sec. 8, SE¼SE¼.
T. 120 N., R. 78 W.,
Sec. 2, SE¼SW¼.
T. 125 N., R. 79 W.,
Sec. 14, SW¼NE¼ and NE¼SE¼.
T. 128 N., R. 79 W.,
Sec. 24, W½NW¼.
T. 114 N., R. 81 W.,
Sec. 3, Lot 1;
Sec. 10, Lots 1 and 2;
Sec. 22, Lot 1.
Total—577.27 acres.
Total M 53205–A—657.27 acres.

(a) This classification meets the disposal criteria set forth in Title 43 of the Code of Federal Regulations, Part 2400. The lands are difficult and uneconomic to manage as part of the Public lands. They are not essential to any Bureau of Land Management project and are not required by any other Federal Agency except as to rights that will be reserved in the disposal. Transfer of these lands to the State will help fulfill the Federal Government's common school land grant to the State and constitute a public purpose use of the land.

(b) Right-of-way reservations will be made for the benefit of the Corps of Engineers and the Department of Energy or their successors when the NE¼SW¼ of Sec. 20, T. 95 N., R. 65 W., is certified to the State.

(c) A right-of-way for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945, will be reserved in the lands located in T. 120 N., R. 78 W.; T's. 125 and 128 N., R. 79 W; and T. 114 N., R. 81 W.

(d) The lands encumbered by grazing leases will not be certified to the State until 2 years has lapsed after the grazing lessee is notified that the lease will be canceled unless the lessee unconditionally waives the prior notification.

(e) The land in T. 122 N., R. 46 W., has no mineral value. The remaining lands are prospectively valuable for oil and gas and those mineral interests will be reserved to the United States in accordance with the provisions and limitations of the Act of July 17, 1914, 38 Stat. 509, as supplemented; 30 U.S.C. 121–124. Oil and gas leases in effect on the lands at the time of transfer will remain in full force and effect for the term of the leases. Lessees shall have the right to use so much of the surface of said lands as is required for operations under said leases without compensation to the State or its assignees for damages resulting from proper operations for the duration, and any authorized extension of the leases in accordance with Sec. 29 of the Act of February 25, 1920, 41 Stat. 347, 30 U.S.C. 186 and the Act of March 4, 1933, 47 Stat. 1570, 30 U.S.C. 124.

(f) The grant of lands which will be made to the State is subject to the following terms and limitations required by Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d–2000d–5.

1. The grantee or its successor in interest shall comply with the terms and provisions of Title VI and requirements of the rules of the Secretary of the Interior (43 CFR Part 17, as modified or amended), for the period that the lands conveyed are used for the purpose granted, or for another purpose involving the provisions of similar services or benefits.

2. In the event of a violation by the grantee or successor in interest, the United States has the right to seek enforcement of the requirements of Title VI and the terms of the rules of the Secretary pursuant to Title VI.

3. Upon request of the Secretary, the grantee agrees to post and maintain, on the property conveyed by this document, signs or posters bearing information concerning the applicability of Title VI to the area or facility granted. The posting on conveyed property is limited to areas of general visibility by the public.

4. The terms and limitations contained in paragraphs (1) through (3) shall constitute a convenant running with the land, binding on the grantee and its successor in interest, for the period for which the land described in this list is used for the purpose intended by the grant, or for another purpose involving the provision of similar services or benefits.

(g) The State of South Dakota shall inventory selected lands for archeological and historical sites prior to disposal or authorization of surface disturbing activities. Significant sites shall be protected or mitigated as determined by the South Dakota State Historic Preservation Officer.

3. The following described lands are not suitable for classification due to prior valid rights and other constraints as indicated by footnotes:

Fifth Principal Meridian

T. 100 N., R. 49 W.,
Sec. 26, Lots 2 and 3.[1]
T. 125 N., R. 52 W.,
Sec. 21, SE¼SW¼. (Lot 8)[2]
T. 106 N., R. 68 W.,
Sec. 31, Lot 6.[3]

[1] Lands do not exist as they were lost through erosion.
[2] The United States does not own these lands.
[3] Color-of-title claims encumber these lands but no validity determination has been made.

T. 110 N., R. 77 W.,
Sec. 11, Lot 7.[3]
T. 116 N., R. 79 W.,
Sec. 5, Lot 3.[2]
Total 175.46 acres.

4. The segregation caused by the State's application is terminated as to the lands described in paragraph 3 upon June 23, 1982

5. Information concerning this classification may be obtained from the State Director, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107, telephone 406–657–6291.

For a period of 30 days from the date of publication in the **Federal Register**, this classification shall be subject to exercise of administrative review and modification by the Secretary of the Interior as provided for in 43 CFR 2461.3 and 2462.3. Interested parties may submit comments to the Secretary of the Interior, LLM 320, Washington, D.C. 20240.

Michael J. Penfold,

State Director.

[FR Doc. 82–17003 Filed 6–22–82; 8:45 am]

BILLING CODE 4310–84–M

National Park Service

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 May 28, 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 July 12.

Sally G. Oldham,

Acting Keeper of the National Register.

SOUTH CAROLINA

Lexington County

Batesburg, *Hartley House (Batesburg-Leesville Multiple Resource Area)*, 305 E. Columbia Ave.

[FR Doc. 82–16919 Filed 6–22–82; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to OMB for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. William T. Adams, at 202–395–7340.

Title: 30 CFR 785 Permit Requirements for Special Categories of Mining.
Bureau Form Number: None
Frequency: 5 years
Description of Respondents: Coal Mine Operators
Annual Responses: 9,540
Annual Burden Hours: 97,960
Bureau Clearance Officer: Darlene Grose, (202) 343–5447

June 11, 1982.

John G. Prior, Jr.,

Staff Assistant, Management and Budget.

[FR Doc. 82–16913 Filed 6–22–82; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to OMB for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. William T. Adams, at 202–395–7340.

Title: 30 CFR 780, Surface Mining Permit Applications
Bureau Form Number: None
Frequency: 5 years
Description of Respondents: Surface Coal Mine Operators
Annual Responses: 52,197
Annual Burden Hours: 901,122
Bureau Clearance Officer: Darlene Grose, (202) 343–5447

John G. Prior, Jr.,

Staff Assistant, Management and Budget.

June 11, 1982.

[FR Doc. 82–16914 Filed 6–22–82; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: June 18, 1982.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Albert Farms Shippers' Association, Inc.
(2) P.O. Box 265, Worthington, MA 01098
(3) Albert Farms, Huntington Rd., Worthington, MA 01098
(4) Ronald A. Kievitt, P.O. Box 265, Worthington, MA 01098

(1) B.C. Transportation, Inc.
(2) P.O. Box 2041, Coeurd'Alene, ID 83814
(3) 1814 N. 4th Coeurd'Alene, ID 83814
(4) Robert Ashburn, 2104 N. 13th St., Coeurd'Alene, Idaho 83814

(1) Cornucopia Lines, Inc.
(2) P.O. Box 2217 Fullerton, CA 92633
(3) 4880 N. Cedar, Suite 102, Fresno, CA 93726
(4) Jose Zuniga, 4880 N. Cedar, Suite 102, Fresno, CA 93726

(1) Declaration Express, Inc.
(2) P.O. Box 2217, Fullerton, CA 92633
(3) 4880 N. Cedar, Suite 102, Fresno, CA 93726
(4) Jose Zuniga, 4880 N. Cedar, Suite 102, Fresno, CA 93726

(1) Independent Express, Ltd.
(2) P.O. Box 2217, Fullerton, CA 92633
(3) 4880 N. Cedar Suite 102, Fresno, CA 93726

(4) Jose Zuniga, 4880 N. Cedar, Suite 102, Fresno, CA 93726
(1) Lewiston Grain Growers, Inc.
(2) P.O. Box 467, Lewiston, Idaho 83501
(3) 1200 Snake River Ave., Lewiston, ID 83501
(4) Allan R. Peterson, P.O. Box 467, Lewiston, ID 83501
(1) Liberty Lines, Inc.
(2) 2736 W. Orangethorpe, Suite #16, P.O. Box 2217, Fullerton, CA 92633
(3) 2736 W. Orangethorpe, Suite #16, Fullerton, CA 92633
(4) Abelardo Salazar, 2736 W. Orangethorpe, Suite #16, Fullerton, CA 92633
(1) North Pacific Canners & Packers, Inc.
(2) P.O. Box 1800, Lake Oswego, OR 97034
(3) 18053 S.W. Lower Boones Ferry Rd., Durham Oregon 97062
(4) Bill Chaplin, P.O. 1800, Lake Oswego, OR 97034
(1) Pioneer Transportation Systems, Inc.
(2) Calle Jose Antonio Torres #1456, Colonia Independencia, Mexicali Baja, Calif. Mexico
(3) Calle Jose Antonio Torres #1456, Mexicali Baja, Calif. Mexico
(4) Oscar Reina Bustamante, Calle Jose Antonio Torres #1456, Colonia Independencia, Mexicali Baja Cal. Mexico
(1) Sawyer Fruit and Vegetable Cooperative Corporation
(2) P.O. Box 268, Bear Lake, MI 49614
(3) 502 Connie, Fremont, MI 49412
(4) Carl Gregg, P.O. Box 268, Bear Lake, MI 49614
(1) Sun Grain Farm Lines Inc.
(2) 4750 Sunrise Hwy., Sayville, NY 11782
(3) 4750 Sunrise Hwy., Sayville, NY 11782
(4) James Dooley, P.O. Box 63, Islip Terrace, NY 11730
(1) Western Growers Inc.
(2) P.O. Box 63, East Islip, NY 11730
(3) 4175 Vets Hwy., Ronkonkoma, NY 11779
(4) Michael Flou, P.O. Box 63, East Islip, NY 11730

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-16883 Filed 6-22-82; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-No. 234N)]

Rail Carriers; Conrail Abandonment Between Erie and Warren, Pa; Findings

Notice is hereby given pursuant to section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 1 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its rail line between (1) mileposts 3.9 and 24, and (2) mileposts 27 and 36 in the Counties of Erie and Warren, Pa, a total distance of 29.1 miles effective on March 15, 1982.

The net liquidation value of line (1) between mileposts 3.9 and 24 is $1,230,193 and (2) between mileposts 27 and 36 is $441,837. If, within 120 days from the date of this publication, Conrail receives bona fide offers for the sale, for 75 percent of the net liquidation value, of these lines it shall sell such lines and the Commission shall, unless the parties otherwise agree, establish an equitable decision of joint rates for through routes over such lines.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-16880 Filed 6-22-82; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Decision-Notice; Finance Applications

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed by Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the Federal Register. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: June 10, 1982.

By the Commission, Review Board Number 3, Members Krock, Joyce and Dowell.

Agatha L. Mergenovich,
Secretary.

MC-F-14860, filed May 24, 1982. TRANSYSTEMS INC. (Transystems) (1627 Third Street, NW, Great Falls, MT 59404)—Purchase—BOYCHUKS' TRANSPORT LTD. (Boychuk) (P.O. Box 6298, Postal Station C, Edmonton, Alberta, Canada T5B 4K6). Representative: Patrick W. Rice, 1627 Third Street, NW, Great Falls, MT 59404. Transystems seeks authority to purchase all of the interstate operating rights of Boychuk. J. Michael Rice, John S. Rice, M. Kathleen Rice, Patrick W.

Rice and Rosemary A. Waters, who own all of the issued and outstanding shares of Transystems, seek concurrent authority to acquire control of said rights through the transaction. Transystems is purchasing those rights contained in Boychuks' certificate in MC 146840 (Subs 1F, 3F, 5F, 6F, 7F & 8), which authorize the transportation, as a common carrier, over irregular routes, of (A) general commodities (with the usual exceptions) between points in Cascade and Toole Counties, MT on the one hand, and, on the other, ports of entry on the international boundary line between the U.S. and Canada in MT; (B) lime and limestone products, in containers, from ports of entry on the international boundary line between the U.S. and Canada in WA, ID, and MT, to points in ID, MT, OR, and WA, restricted to traffic moving in foreign commerce; (C) new furniture and materials, equipment and supplies used in the manufacture and distribution of new furniture (except commodities in bulk), from ports of entry on the international boundary line between the U.S. and Canada at points in IL, WI, MN, ND, MT, ID, and WA, to those points in the U.S. in and west of WI, IL, MO, AR, and LA (except AK and HI); (D) (1) rugs, carpets, and floor coverings, and (2) materials and supplies used in the installation and maintenance of the commodities in (1) above, (except commodities in bulk), from the ports of entry on the international boundary line between the U.S. and Canada to those points in the U.S. in and west of WI, IL, MO, AR, and LA (except AK and HI); (E) fiberboard, from points in Flathead County, MT to ports of entry on the international boundary line between the U.S. and Canada; (F) explosives, between the port of entry on the U.S. Canada Boundary line at Sweetgrass, MT, on the one hand, and, on the other, Sweetgrass, MT.

Notes.—(1) Transystems and Boychuk are now commonly controlled under Commission approval in MC–F–14391. (2) Applicant has not requested temporary authority. (3) No directly related application has been filed. (4) Transferor has an application pending before the Commission in No. MC–146840 (Sub-No. 9X) to remove restrictions in No. MC–146840 (Sub-Nos. 1F, 3F, 5F, 6F, and 7F). Since a certificate granted in such a proceeding will supercede the underlying certificate, it must be held by the carrier holding the underlying authority. Consequently, upon issuance of certificate No. MC–146840 (Sub-No. 9X) to transferor, transferee will be required to seek modification of this transaction to include to new Sub-No. 9X certificate.

MC–F–14861, filed May 25, 1982. John J. Hudson, 308 Greenwood Road, Linthicum, MD 210890. Continuance in Control of Protective Food Services, Inc., 8242B Sandy Court, Jessup, MD 20794. Representative: Walter T. Evans, 4304 East-West Highway, Bethesda, MD 20814, (301) 657–2636. John J. Hudson seeks authority to continue in control of Protective Food Services, Inc. upon institution by Protective of operations in interstate or foreign commerce as a motor common carrier. Mr. Hudson controls Protective and also is President and a member of the Board of Directors of Kane Transfer Company, a motor common and contract carrier operating under certificates issued in No. MC–9859 and subnumbers thereunder and permits issued in No. MC–67583 and subnumbers thereunder. Kane holds common carrier certificates to transport general commodities between points in Maryland east of the Frederick-Washington County Line, points in Delaware south of the Chesapeake & Delaware Canal, D.C. and points in the six northern counties of Virginia. Kane has been granted common carrier authority to transport general commodities (except Classes A and B explosives and commodities in bulk) between Baltimore, MD, points in Prince Georges County, MD, and the District of Columbia, on the one hand, and, on the other, points in DE, MD, NJ, OH, PA, VA, WV, and DC. Kane holds contract carrier authority to serve Proctor & Gamble Company in the transportation of commodities dealt in by food business houses between points in the United States. Kane also holds contract carrier permits to serve Grand Union Company between various point in VA, WV, and MD. Protective filed an application in No. MC–157652 to transport such commodities as are dealt in by grocery food business houses and drug houses between Jessup, MD, on the one hand, and, on the other, points in DE, MD, NJ, PA, VA, and DC. The application was published in the **Federal Register** of February 10, 1982, and was granted by decision served April 7, 1982, subject to the filing of an application under 49 U.S.C. 11343(a) or submitting an affidavit indicating why such approval is unnecessary.

MC–F–14863, filed May 26, 1982. TRIMAC TRANSPORTATION, INC. (Trimac) (306 South State Street, Dover, DE 19901)—CONTROL—QUALITY SERVICE TANK LINES, INC. (13550 Toepperwein Road, San Antonio, TX 78233). Representative: Leonard A. Jaskiewicz, 1730 M Street, NW, Washington, DC 20036; and C. Tom Clowe, 13550 Toepperwein Rd., San Antonio, TX 78233. Trimac seeks authority to acquire control of Quality through the purchase by Trimac of all the issued and outstanding stock of Davcel Inc., a non-carrier which controls Quality. Trimac Holding, Inc., and in turn, Trimac, Inc., and in turn, Trimac Limited, and in turn, John R. McCaig, McDevco Holdings Limited, Maurice W. McCaig, Mo-Mac Investment Ltd., and Estate of Rogert W. McCaig, seek authority to acquire control of Davcel of Quality through this transaction. The operating rights sought to be controlled by Trimac are contained in Quality's certificates under No. MC–145317, which authorize the transportation of (1) *cement*, between points in TX, LA, AR, OK, and NM; (2) *fly ash*, between points in TX, AR, LA, OK, NM, MS, TN, MO, KS, CO, KY, and AL; and (3) *commodities in bulk*, between points in the U.S. Trimac, a non-carrier is either in control of or an affiliate of the following carriers: Liquid Transporters, Inc. (MC–112617); Russ Transport, Inc. (MC–116459); Producers Transport Company (MC–124835); H.M. Trimble & Sons LTD (MC–123329); Oil & Industry Suppliers Ltd (MC–119555); Mercury Tanklines Limited (MC–125420 and MC–133383), Transport Soulanges, Inc. (MC–125380); Municipal Tank Lines Limited (MC–138762); and Tank Lines Limited (MC–144762). Condition: Trimac Transportation, Inc., shall continue to be considered a carrier under 49 U.S.C. 11348, subject to filing any special reports that may be required by the Commission under 49 U.S.C. 11145.

MC–F–14864, filed May 26, 1982. C & E TRANSPORT, INC. d/b/a C.E. ZUMSTEIN CO. (C & E) (P.O. Box 27, Lewisburg, OH 45338)—PURCHASE (PORTION)—TRANSHIELD TRUCKING, INC. (Transhield) (1000 N. Harvester Road, W. Chicago, IL 60185). Representative: E. Stephen Heisley, 1919 Pennsylvania Ave., NW, Suite 500, Washington, DC 20006. C & E seeks authority to purchase a portion of the interstate operating rights and property of Transhield. The rights to be purchased by C & E are contained in Certificate No. MC–145950 (Sub-Nos. 89 and paragrpah 4 of Sub-No. 97X), which rights were awarded to C & E in MC–F–14731, and which authorize the transportation of (1) *chemicals and related products*, between points in Harris, Brazoria, Galveston, Chambers, Liberty, Fort Bend and Montgomery Counties, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) *rubber and plastic products and chemicals*, between the facilities of BASF Wyandotte in the U.S., on the one hand, and, on the other, points in the U.S. (except AK and HI). C & E is a motor common and contract carrier operating under MC–146890 and MC–134183. Transhield is a motor

common and contract carrier operating under MC–148600 and MC–142830. Condition: Charles E. Zumstein must submit an affidavit stating that he is the sole stockholder of C & E and that he joins in this application as a party in control, prior to issuance of an Effective Notice. Condition: Approval and authorization of this transaction is conditioned upon the prior consummation of the decision in MC–F–14731, which authorized transhield to purchase Certificate No. MC–145950 (Sub-No. 97)X from Baywood Transport, Inc.

Note.—Since the transaction involves the sale and retention of duplicating rights, applicants elected to submit evidence showing a public need for the competitive services.

MF–F–14865, filed May 27, 1982. PERRY MOTOR FREIGHT, INC. (Perry) (304 State National Plaza, Odessa, TX 79763)—PURCHASE—PARIS MOTOR FREIGHT, INC. (Paris) (P.O. Box 1787, Fort Smith, AR 72902). Representative: G. William Fowler, 115 West Fifth Street, Odessa, TX 79761). Perry seeks to purchase all the operating rights of Paris in certificates No. MC–128709 (and Sub-Nos. thereunder) Paris operates as a regular route common carrier transporting *general commodities* (with the usual restrictions and certain route restrictions) generally in AR, OK, TX, LA, TN, and MS; it also operates as an irregular route carrier transporting generally *general commodities* throughout the U.S. for the government, and *household appliances, television sets and other items* from Little Rock, AR to OK, and *food and related products* from Memphis, TN to AR, OK and TX. Impediment: The application is signed, on behalf of Perry Motor Freight, Inc., by its president Travis L. Dyer; however, the party or parties who control Perry have not joined in the application. Charles R. Perry, Chairman of the Board of Directors and Nancy Jo Perry, Secretary and Vice-President of Perry and a director, jointly own 32 percent of the stock. Mr. Dyer, Kenneth R. Perry, and James R. Perry, each own 9 percent and are directors. Jimmie B. Todd, a director, and Michael F. George, a director and also Treasurer and Vice-president, each own 4.5 percent. The remaining 32 perent of Perry stock is owned by Perry Investment, Inc., whose composition, officers, and relationship to any of the above-named persons is not described. Although we could make assumptions as to the control of Perry and order joinder, in view of the nature of the record here, we do not believe it appropriate. Accordingly, the party or parties who control Perry Motor Freight, Inc., will be required to so advise us, through an affidavit, of that status and to file an appropriate request for joinder in the application.

MC–F–14868, filed May 28, 1982. DONCO CARRIERS, INC. (Donco) (1703 Embarcadero Road, Palo Alto, CA 94303)—PURCHASE—DONCO CARRIERS, INC. (Carriers) (4720 SW 20th St., Oklahoma City, OK 73147). Representatives: Joseph P. Ficurelli, P.O. Box 10280, Palo Alto, CA 94303 and Vern Hill, Suite 1301, 1600 Wilson Blvd., Arlington, VA). Donco seeks authority to purchase the interstate operating rights and property of Carriers. Embarcadero Investments, a non-carrier and sole stockholder of Donco, and David P. Roush, Trustee, and Diane G. Roush, Trustee, who are partners of Embarcadero, seek authority to acquire control of said rights and property through the transaction. Donco is purchasing those rights contained in Carriers Certificate No. MC–138469 and sub-numbers thereunder and Certificate No. 136375 (Sub-No. 11) which authorize the transportation as a motor common carrier of *general and specified commodities* in such as but not limited to: *bicycles, bicycle parts and motor vehicle parts, such commodities as are dealt in or used by confectioners, food and related products, chemicals, rubber and plastic products, metal products, furniture and fixtures, machinery, pulp and paper, such commodities as are dealt in or used by Distillers of Alcoholic Beverages, and building materials,* between various points in the United states. Donco holds no authority from the Commission. David P. Roush and Diane Roush control ROCOR International, a non carrier holding company, which in turns controls and Western Freightways, a motor carrier pursuant to certificates issued in MC–71459. Altruk Freight Systems, Inc. a motor carrier pursuant to certificates issued in MC–116544, who in turn controls Pacific Carriers, a motor carrier pursuant to certificates issued in MC–157284.

Notes.—(1) Applicants must file a petition for substitution of applicant for any pending applications. (2) An application for temporary authority has been filed.

[FR Doc. 82–16881 Filed 6–22–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Decision Notice; Finance Applications

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

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.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC–FC–79648. By decision of June 8, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to Jim L. Langenfeld, d.b.a. D&J Enterprises, of Dow City, IA of Permit No. MC–141597 Subs 1, 3, 12 issued to Riverside Truck Line, Inc., of Talent, OR, authorizing: printed religious matter, (1) from points in various States to Iowa Falls, IA and from Iowa Falls, IA to points in Florida, under continuing

contracts with Riverside Book and Bible House, and (2) between points in the United States, under contract with World Bible Publishers, Inc. Applicant's representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114. TA lease is not sought. Transferee is a carrier.

MC–FC–79767. By decision of June 1, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to WILLIAM B. ALTMAN, INC., of Fenelton, PA, of Permit No. MC–157881, issued to EVERFRESH TRANSPORT, INC., of Derby, NY, which authorizes the transportation of *food and related products,* between points in the United States, under continuing contract(s) with Castle and Cooke Foods, Inc., of Hauppauge, NY. Representative: Saul J. Bernstein, #2 Reiber Bldg., Butler, PA 16001.

Note.—Transferee is not a carrier.

MC–FC–79801 (Supplemental publication). By decision of 6–3–82, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to ALBERT FORTUNER of Certificate No. MC–95211 (Sub-No. 3)X issued to JOE FORTUNER authorizing the transportation of (1) *household goods and furniture and fixtures,* between points in Lackawanna, Susquehanna and Wayne Counties, PA, on the one hand, and, on the other, points in NJ and NY, and (2) *race and show horses,* between points in Lackawanna, Susquehanna and Wayne Counties, PA, on the one hand, and, on the other, points in NY. Representative: Joseph A. Keating, Jr., 121 South Main Street, Taylor, PA 18517.

Note: The purpose of this supplemental publication is to show the transfer of MC–95211 (Sub-No. 3)X. This certificate was issued after the application was filed. The original application transferred MC–95211. The (Sub-No. 3)X superseded MC–95211.

MC–FC–79808. By decision of June 3, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to EAGLE BUS, INC. of Certificate No. MC–84728 (Sub. No. 49), issued September 17, 1965, to Safeway Trails, Inc., d/b/a Trailways, Inc., authorizing transportation of passengers and their baggage, and express and newspapers in the same vehicles with passengers, between Elizabeth, NJ and New York, NY serving all intermediate points from Elizabeth over NJ Hwy 439 and Goethals Bridge, to New York and return over the same route, and that portion of MC–84728, Sub-No. 57, issued December 1, 1975, authorizing transportation over irregular routes of passengers and their baggage in special operations, in round-trip sightseeing or pleasure tours, beginning and ending at (1) all points on the presently authorized route of Safeway, Inc. in Docket No. MC–84728, Sub-No. 49 being purchased by the Transferee. Temporary authority lease is not sought. Transferee is not a carrier. Applicant's representative, Edward F. Bowes, Esq., Seven Becker Farm Rd., P.O. Box Y, Roseland, NJ 07068.

MC–FC–79842. By decision of June 1, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to GARDNER TRUCKING, INC., of Pittsville, WI, of Certificate Nos. MC–146982 (Sub-Nos. 3 and 4), issued to D. J. LEE CO., INC., of Vesper, WI, which authorize the transportation of such commodities as are dealt in or used by manufacturers, converters, and printers of paper and paper products (except commodities in bulk), (1) from the facilities of Consolidated Papers, Inc., at or near Wisconsin Rapids, Biron, and Stevens Point, WI, to points in FL, GA, and TN, and (2) from points in Portage and Wood Counties, WI, to points in AZ, CA, CO, ID, OR, MT, NV, NM, TX, UT, WA and WY. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703.

Note.—TA has been filed. Transferee is not a carrier.

MC–FC–79844. By the decision of June 1, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to S.M.S. EXPRESS CORP. of Certificate No. MC–56170 and (Sub-No. 3) issued to HENDERSON TRUCKING, INC. authorizing the transportation of (1) *toilet goods* and *cosmetics,* and *raw materials, supplies,* and *equipment* used in the manufacture and sale thereof, *machinery, office furniture, printed material,* and *premium* incidental to the sale of toilet goods and cosmetics, between Suffern, NY, on the one hand, and on the other, points in Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, and Union Counties, NJ, and those in Nassau, Rockland, Suffolk, and Westchester Counties, NY and (2) *toilet goods* and *cosmetics* and materials *supplies* and equipment used in the manufacture and sale of toilet goods and cosmetics, *printed materials* and *premiums* incidental to the sale of toilet goods and cosmetics (except commodities in bulk, in tank vehicles, from south Keerny and North Bergen, NJ, to the West Nyack and Rye, NY.

Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528.

Note(s).—Transferee is a non-carrier.

No. MC–FC–79845. By decision of June 3, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved a 1-year lease to THE GATEWAY DELIVERY, INC., of Elmsford, NY, of Permit Nos. MC–143499 and MC–143499 (Sub-Nos. 1, 3, 5, and 9), issued to DOUBLE NICKEL TRANSPORT LTD., also of Elmsford, NY, which authorize the transportation, as a contract carrier, of specified commodities, between various points in the United States, under continuing contracts with (1) Ampacet Corp., of Mount Vernon, NY; (2) Mini Grip, Inc., of Orangeburg, NY; (3) Becton-Dickinson Division of Becton, Dickinson and Company, of Rutherford, NJ; and (4) SCM Corporation, of Englewood, NJ. Representative: John L. Alfano, 550 Mamaroneck Avenue, Harrison, NY 10528.

Notes.—Transferee holds authority under MC–15456 and is affiliated with Eddy Messenger Service, Inc., a motor carrier under MC–94901. Transferor is affiliated with GTG Trucking Corp., dba Fehsal's Express, a motor carrier under MC–109035 and MC–106542.

MC–FC–79853. By decision of June 9, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to McGrath Transport Limited of Toronto, Ontario, Canada of Certificate No. MC–142045 (Sub-No. 1) issued to McNeil Transport Limited of Brockville, Ontario, Canada authorizing: General commodities (usual exceptions) between Ogdensburg, NY, on the one hand, and, on the other, the port of entry on the U.S.–Canada Boundary at or near Ogdensburg, NY. Applicant's representative: Robert D. Gunderman, Can-Am Bldg., 101 Niagara St., Buffalo, NY 14202. TA lease is not sought. Transferee is not a carrier.

MC–FC–79854. By decision of June 9, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to FRY'S HORSE TRANSPORTATION, INC., of Grove City, OH, of Certificate No. MC–14903 (Sub-No. 5), issued to FRY's HORSE TRANSPORTATION, INC., also of Grove City, OH, which authorizes the transportation of horses, other than ordinary horses, and in the same vehicle therewith, *mascots, personal effects of attendants, and supplies and equipment* used in the care and exhibition of horses, between points in the U.S. Representative: A. Charles Tell Suite 1800, 100 East Broad Street, Columbus, OH 43215.

Note.—In MC–FC–79223, the transfer or Transferor's authority in MC–14903 and MC–14902 (Sub-No. 3) to Transferee was approved. Approval of the transfer of the Sub-No. 5 authority is to complete a corporate reorganization.

MC–FC–79858. By decision of June 10, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to TRANSPORTATION MANAGEMENT, INC., of Milldale, CT, of certificate Nos. MC–149579 and MC–149579 (Sub-Nos. 2 and 3) and Permit Nos. MC–149579 (Sub-No. 1)X and MC–140379 (Sub-No. 13), issued to TRANSPORT SERVICE, INC., of Providence, RI, which authorize the following: To operate as a common carrier by motor vehicle, over irregular routes, transportating (a) *general commodities*, with exceptions, for the United States Government, between points in the U.S., (b) *lumber and wood products*, between Charles City and New Kent Counties, VA, on the one hand, and, on the other, points in CT, ME, MA, NH, NJ, NY, PA, RI, and VT, and (c) *metal products, machinery, building materials, and building supplies*, between points in CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, and VT, on the one hand, and, on the other, points in the U.S. (except AK and HI). To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting (a) *brass articles, copper articles, and aluminum articles*, between points in the U.S., under continuing contract(s) with United Wire & Supply Corp., of Cranston, RI, and (b) *metal products*, between points in the U.S., under continuing contract(s) with Washburn Wire Company, of Phillipsdale, RI, Newman-Crosby Steel, Inc., of Pawtucket, RI, Syro Steel Company, of Girard, OH, Bridgeport Brass Company, of Indianpolis, IN, and Penn-Dixie Steel Corporation, of Kokomo, IN. CONDITION: Prior to issuance of an Effective Notice in this proceeding, tranferor must request in writing cancellation of Permit Nos. MC–140379 (Sub-Nos. 10, 11, and 12), which duplicate authority being transferred. Representative: Jeffrey A. Vogelman, 123 South Royal Street, Alexandria, VA 22314.

Notes.—TA has been concurrently filed. Transferee is a non-carrier.

MC–FC–79862. By decision of June 10, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Nebraska Bulk transports, Inc., of Bennet, NE, of Certificate No. MC–93078 (Sub–2)X issued to Fitch Trucking, Inc., of Bennet, NE, authorizing the transportation over regular routes, *general commodities* (except household goods and classes A and B explosives), between Ponca, NE and Sioux City, IA, serving all intermediate points and serving the off-route points in Cedar, Dixon and Dakota Counties, NE, from Ponca over NE Hwy 12 to Willis, NE, then over U.S. Hwy 20 to Sioux City, and return over the same route; livestock and farm products between Ponca, NE and Yankton, SD, serving all intermediate points and serving off-route points in Cedar, Dixon and Dakota Counties, NE, from Ponca over NE Hwy 12 to junction NE Hwy 15, then over NE Hwy 15 to junction U.S. Hwy 81, then over U.S. Hwy 81 to Yankton, and return over the same route; and, over irregular routes, of *general commodities*, from Sioux City, IA, on the one hand, and, on the other, points in Dixon County, NE; and *household goods*, as defined by the Commission, between points in Dixon County, NE, on the one hand, and, on the other, points in IA. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501.

Notes.—Transferee is a carrier. Transferee does not seek temporary authority to lease the right involved.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–16882 Filed 6–22–82: 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 statutues 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. OP2–123

Decided: June 15, 1982.

By the Commission, Review Board No. 1. Members Parker, Chandler, and Fortier.

MC 162012, filed May 17, 1982. Applicant: THOMAS GRIFFITH, 904 North Luett, Indianapolis, IN 46222. Representative: James T. Darby, 1021

Irving Ave., Colonial Beach, VA 22443, (804) 224–0773. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 162022, filed May 17, 1982. Applicant: ALLIED LEASING CORPORATION, 393 Turnpike Rd., South River, NJ 08882. Representative: Alan Kahn, Barry D. Kleban, 1430 Land Title Bldg., Philadelphia, PA 19110, (215) 561–1030. As a broker of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 162173, filed May 25, 1982. Applicant: ROBERT R. LANPHIER, Rte. 2, Box 2697, Prosser, WA 99350. Representative: Robert R. Lanphier (same address as applicant), 509–973–2462. 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 162233, filed May 27, 1982. Applicant: AMERICAN TRUCK BROKERAGE, INC., 8090–B N.W. 13th St., P.O. Box 4337, Margate, FL 33063. Representative: Robert W. Gerson, 127 Peachtree St. NE, Atlanta, GA 30043, 404–658–8000. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP4–220

Decided: June 14, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 144757 (Sub-21), filed May 21, 1982. Applicant: DAKOTA PACIFIC TRANSPORT, INC., 3104 E. St. Patrick, Rapid City, SD 57701. Representative: J. Maurice Andren, 1734 Sheridan Lake Rd., Rapid City, SD 57701, (605) 343–4036. Transporting *general commodities* (except used household goods), between (a) Arnaudville, Bryant, Bushville, Cecelia, Coteau Holmes, Gondron, Grand Point, Isle Labbe, Jefferson Island, Loreauville, New Iberia Connection, Oubre, Parks, Patin, Pecaniere, Summerall, Ulysse, Vida, and Walet, LA; (b) Fairfax and Tarkio, MO; (c) Buckley and Enumclaw, WA; (d) Huntley and Ragan, NE; (e) Bender, Breckenridge, Eddy, Erie, Grainville, Hunter, Lamont, Middleton, Peckham, Salt Fork and Steen, OK; (f) Simpson, OK; (g) Weir City, KS; (h) Bartlett, Cartago, Coso, Inyokern, Linnie, Little Lake, Olancha, and Sykes, CA; (i) Corrall and Hill City, ID; (j) Cipsco Park, Carbon Lake, Leo Rock and Sand Ridge, IL; (k) Viola, KS; (l) Edgar, Johnson, Keuka, Newby and Oak Crest, FL; (m) Pactolus, Stokes and Whitchard, NC; (n) Ehrhardt, SC; (o) Dundee, Lake Hamilton and Waverly, FL, (p) Greenwood, Loyal and Spokeville, WI; (q) Oakdale, MN; (r) Pencilwood, CA; (s) Berwick, OH; (t) Mt. Hope, NJ; (u) Buchanan, Carlton, Cochranton and Utica, PA; (v) Dimeling and Madera, PA; (w) Dimeling, PA; (x) Lilly, PA; (y) Lansdown, NJ; (z) Aqueduct, NY; (aa) Alexandria, PA; (b) Atlasburg, PA; (ac) St. Clair, PA; (ad) Kentmore, DE, (ae) La Otto and Huntertown, IN; (af) Picatinny Arsenal, NJ; (ag) Hudson, NJ; (ah) Whitehall, OH; (ai) Levans Mill, PA; (aj) Hepburnville, PA; (ak) Randolph, MA; (al) Hughesville and Warren Glen, NJ; (am) Gadsden, IN; (an) Newton Highlands, MA; (ao) Toms River, NJ; (ap) East View and Elmsford, NY; (aq) Wodbine, NY; (ar) Cadiz, OH; (as) Grants, McVittys and Patterson, OH; (at) Bowersville, PA; (au) Little Virginia, PA; (av) New Providence, PA, (aw) Milton, DE; (ax) Olivers, San Pierre, Rupel, Tefft, Toto and Wheatfield, IN; (ay) Colon, Concord, Haires, Homer, Spring Arbor, Union City and Tekonsha, MI; (az) Merchantville and Pavonia, NJ; (ba) Branchport, East Longbranch and Ft. Monmouth, NJ; (bb) Frankfort, Harbor and Ilion, NY; and (bc) McConnellsville, NJ: (bd) Pittsford, NY; (be) Cheming Junction, Elmira Heights and Horseheads, NY; (bf) Coleman, Columbiana Mine and Lisbon, OH; (bg) De Cliff, Hepburn, Swan Creek and W. Marion, OH; (bh) N. Cherokee, OH; (bi) Ironsides, PA; (bj) Glasgow and Irvona, PA; (bk) Ludlow, MA; (bl) Heilwood, PA; (bm) Honeoye Falls and Lima, NY; (bn) Ft. George G. Meade, MD; (bo) Charlottesville, Cumberland, Gem and Greenfield, IN; and (bp) Garettsville, Hiram, Leavittsburg and Phalanx, OH; (bq) Amsterdam, Ann Mine, Bergholz, Hopedale, Industrial Mine, K & R 1 Mine, Mechanicstown, Piney Fork and Route 43 Washer, OH; (br) Durbin, IN; (bs) Aylesworth, Hebron, Kouts, Le Roy, North Judson and Winamac, IN; (bt) Bayard and Fairhope, OH; (bu) Betzwood and Port Indian, PA; (bv) Spring Mill, PA; (bw) Harding and Ontario, OH; (bx) Harrods, OH; (by) Malden, NJ; (bz) Greason, Lees Cross Roads, Longsdorf and Newville, PA: (ca) Eclipse, PA: (cb) Arlington Siding, Fishkill Plains and Manchester Bridge, NY; (cc) Centerville and Germantown, IN; and Eldorado, New Paris and Stillwater, OH; (cd) Clintondale, East Walden and Modena, NY; (ce) Amo, Clayton, Coatesville and Plainfield, IN; (cf) Cornwall, PA; (cg) Highstown, NJ; (ch) Covington, Hillsboro, Range Road and Waynetown, IN; (ci) Mt. Carnel, PA; (cj) Birmingham, Ft. Dix and Pemberton, NJ; (ck) Cunningham, Milton, Semora, NC and Baskerville, Boydton, Buffalo Jct., Finchley, Mayo, Nelson, Union Level and Virgilina, VA; (cl) Carthage and Key West, MN; and (cm) Lake Kapowsin, WA, on the one hand, and, on the other, points in the U.S. (except AK and HI). CONDITION: Issuance of a certificate in this proceeding is conditioned upon applicant certifying to the Commission, prior to commencing operations, that all rail service has actually terminated at specified points. The certification should be sent to the Deputy Director, Section of Operating Rights, Interstate Commerce Commission, Washington, DC 20423.

MC 162326, filed June 3, 1982. Applicant: MACHECA TRANSPORT CO., 4400 Geraldine, St. Louis, MO 63115. Representative: B.W. LaTourette, Jr., 11 S. Meramac, Suite 1400, St. Louis, MO 63105, (314) 727–0777. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI.

MC 162366, filed June 7, 1982. Applicant: R. L. SWEARER CO., INC., 717 Liberty Ave., 2301 Clark Bldg., Pittsburgh, PA 15222. Representative: Charles M. Watson (same address as applicant), (412) 261–0131. As a *broker* of *general commodities* (except household goods), between points in the U.S. (including AK and HI).

MC 162386, filed June 8, 1982. Applicant: ANGELL AND SON TRANSPORTATION, 6920 Willis Lane, Beaumont, TX 77708. Representative: Thomas R. Angell, Jr. (same address as applicant), (713) 899–1965. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in Jefferson and Orange Counties, TX, and Calcasieu Parish, LA.

Volume No. OP5–133

Decided: June 14, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 142059 (Sub-187), filed April 22, 1982. Initially published in the **Federal Register** on May 13, 1982. Applicant: CARDINAL TRANSPORT, INC., 1230 Northern Illinois Drive, Channahon, IL 60410. Representative: Jack Riley (same address as applicant), (815) 729–3808. Transporting *general commodities* (except household goods and commodities in bulk), between Blanche and Blue Pond, Al, Bartlett, Cartago, Coso, Inyokern, Little Lake, Lone Pine, Olancha, Pencilwood, and Swanston, CA, Dundee, Lake Hamilton, and Waverly, FL, Chelsea and Menlo, GA,

Corral and Hill City, ID, Addison, Grand Tower, Mooseheart, and Sand Ridge, IL, LaOtta, IN, Orange City, IA, Viola and Wier, KS, Benton and Hardin, KY, Amesbury and Salisbury, MA, Alden, Bellaire, Bendon, Central Lake, Chief Lake, Ellisworth, Interlochen, Kaleva, Norwalk, and Rapid City, MI, Key West, MN, Fairfax and Tarkio, MO, Huntley and Ragan, NE, Pactolus, Stokes, and Whichard, NC, Dunseith, ND, Ehrhardt and Lodge, SC, and Ralston and Terrell, TN, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier service for completely abandoned rail service. This application is republished to include Bartlett, CA.

MC 162138, filed May 21, 1982. Applicant: AMOS D. WILLIAMS, d.b.a. WILLIAMS PICK-UP AND DELIVERY SERVICE, 3517 Iroquois, Detroit, MI 48214. Representative: Robert E. McFarland, 2855 Coolidge Rd., Suite 201A, Troy, MI 48084, (313) 649–6650. Transporting (1) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), (2) *shipments weighing 100 pounds* or less if transported in a motor vehicle in which no one package exceeds 100 pounds, (3) *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, and (4) *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S. (except AK and HI).

MC 162328, filed June 3, 1982. Applicant: DELIVERY EXCHANGE SERVICE, INC., 922 North Industrial Blvd., Dallas, TX 75207. Representative: Sam Hallman, 4555 First National Bank Bldg., Dallas, TX 75202, 214–741–6263. As a *broker of general commodities* (except household goods), between points in the U.S. (except HI).

MC 162379, filed June 8, 1982. Applicant: CIRCLE J FARM PRODUCTS, INC., 3001 Douglas St., Omaha, NE 68131. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114, (402) 397–9900. 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).

Agatha L Mergenovich,

Secretary.

[FR Doc. 82–18885 Filed 6–22–82: 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 govered 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 form 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 sufficent opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP2–122

Decided: June 15, 1982.

By the Commission, Review Board No. 1. Members Parker, Chandler, and Fortier.

MC 8713 (Sub-5), filed June 8, 1982. Applicant: BRAUN'S EXPRESS, INC., 1494 Main Street (Rear), Millis, MA 02054. Representative: Edward J. Kiley, 1730 M Street, NW., Washington, D.C. 20036, (202) 296–2900. 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 Digital Equipment Corp. of Northborough, MA.

MC 121793 (Sub-4), filed May 17, 1982. Applicant: JESSE EASLEY, d.b.a. VAL VERDE CARTAGE AND STORAGE, P.O. Box 302, Socorro, NM 87801. Representative: James E. Sneed, P.O. Box 2228, Santa Fe, NM 87501, (505) 982–2691. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk) between points in Cibola, Valencia, Carton, Sierra, Grant, Hidalgo, Luna, Dona Ana, Otero, Socorro, and Lincoln Counties, NM, and El Paso Counties, TX.

MC 136432 (Sub-8), filed May 17, 1982. Applicant: D & M EXPRESS, INC., Rte. 19, R. D. 1, Evans City, PA 16033. Representative: Arthur J. Diskin, 402 Law & Finance Bldg., Pittsburgh, PA 15219, (412) 281–9494. Transporting *general commodities* (except household goods, commodities in bulk, and classes A and B explosives), between points in the U.S. (except AK and HI), under continuing contract(s) with Fox Grocery Company, of Belle Vernon, PA.

MC 146222 (Sub-9), filed May 27, 1982. Applicant: ILCO TRUCKING, INC., P.O. Box 528, Leeds, AL 35094. Representative: Donald B. Sweeney, Jr., P.O. Box 2366, Birmingham, AL 35201, 205–254–3880. Transporting (1) *forest products*, (2) *lumber and wood products*, (3) *metal and metal products*, (4) *machinery*, (5) *building products*, and (6) *clay, concrete, glass or stone products, and refractory products*, between points in the U.S. (except AK and HI).

MC 148873 (Sub-6), filed May 27, 1982. Applicant: ROAD–CON SYSTEMS, INC., 2500 83rd St., North Bergen, NJ 07047. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, 201–435–7140. 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 Arrow Fastener Company, Inc., of Saddle Brook, NJ.

MC 159352 (Sub-1), filed May 27, 1982. Applicant: MOVER'S INTERNATIONAL, INC., 18800 Highway 99, Lynnwood, WA 98036. Representative: Robert H. Johnson, P.O. Box 1294, Lynwood, WA 98036, 206–775–3888. Transporting *household goods and unaccompanied baggage*, between points in DE, NJ, NY, MD, PA, VA, WV, and NC.

MC 159542, filed May 10, 1982. Applicant: ADKINS CONSTRUCTION CO., INC., 1301 Portland Ave., Louisville, KY 40203. Representative: James Robert Evans, 145 W. Wisconsin Ave., Neenah, WI 54956, (414) 722–2848. Transporting *furniture and fixtures, lumber and wood products, machinery, metal products, and those commodities which because of their size or weight require the use of special handling or equipment* between points in Floyd County, IN, Jefferson County, KY and Sumter County, SC, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, IA, KY, LA, MD, MI, MS, MO, NJ, NC, OH, PA, SC, TN, TX, VA, WV and WI.

MC 162032, filed May 17, 1982. Applicant: CLASSIC LIMO LTD., INC., d.b.a. CLASSIC LIMO, 715 N. Burghley Avenue, Ventnor, NJ 08406. Representative: James F. Portock, 439 Roosevelt Avenue, Northfield, NJ 08225, (609) 646–0006. Transporting *passengers and their baggage, in the same vehicle with passengers*, between Atlantic City, NJ, and points in NY, CT, DE, MD, NJ, and DC.

MC 162072, filed May 17, 1982. Applicant: RALLY TRANSIT, INC., 714 Wheeler Street, Griffith, IN 46319. Representative: Martin J. Leavitt, P.O. Box 400, 22375 Haggerty Road, Northville, MI 48167, (313) 349–3980. Transporting *commodities in bulk*, between points in IN, IL and MI, on the one hand, and, on the other, points in the U.S. (except AK and HI)

MC 162093, filed May 19, 1982. Applicant: RAL–SAN TRANSPORT CO., INC., P.O. Box 121, Caroga Lake, NY 12032. Representative: Ralph Acquilla (same address as applicant), 518–725–5596. Transporting *beer*, between points in NY and PA, under continuing contract(s) with DeCrescente Distributing Co., Inc., of Mechanicville, NY.

MC 162222, filed May 27, 1982. Applicant: VARIETY BUS TOURS, INC., 7622 Margate Blvd., Margate, FL 33063. Representative: Richard B. Austin, 320 Rochester Bldg., 8390 N.W. 53rd., St., Miami, FL 33166, 305–592–0036. As a *broker*, at Margate, FL, in arranging for the transportation, by motor vehicle, of *passengers and their baggage*, between points in FL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 162252, filed May 28, 1982. Applicant: J. K. WHITE TRUCKING, INC., 62 Concord St., North Reading, MA 01864. Representative: Robert G. Parks, 20 Walnut St., Suite 101, Wellesley Hills, MA 02181, 617–235–5571. Transporting *metal products*, between points in MA, on the one hand, and, on the other, points, in CT, ME, NH, RI, and VT.

Volume No. OP2–124

Decided: June 16, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 139182 (Sub-5), filed May 19, 1982. Applicant: ATLAS DELIVERY SERVICE, INC., P.O. Box 1154, Athens, TX 75751. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062, (214) 255–6279. 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 (1) Nichols-Kusan, Inc. of Jacksonville, TX; (2) ARA Manufacturing Company of Grand Prairie, TX and (3) Dometic, Inc. of Bloomington, IL and its subsidiaries and divisions as follows: Viking Sewing Machine Company; Emerson Quiet Kook; The Eureka Company; Napco Plastics Company; Envirovac, Inc.; Facit, Inc.; Flymo Company; Getinge International, Inc., Husqvarna Co., Partner Pacific, Inc., Tecfor, Inc., Pioneer of Canada, Dometic Sales Corp., National Union Electric Corp., and Tappan Company, and Quaker Maid Kitchens, J-Wood, Kemper Cabinets, Schrock Cabinets, and Anaheim Manufacturing and Marblecast, Inc., its divisions.

MC 142873 (Sub-18), filed May 25, 1982. Applicant: D & W TRUCK LINES, INC., 200 1st St. (Box 427), Parsons, WV 26287. Representative: E. Stephen Heisley, 1919 Pennsylvania Ave. NW, Suite 500, Washington, DC 20006, 202–828–5015. 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 Carter Footwear, Inc., and Parsons Footwear, Inc., of Wilkes Barre, PA.

MC 150783 (Sub-24), filed April 27, 1982. Applicant: SCHEDULED TRUCKWAYS, INC., P.O. Box 757, Rogers, AR 72756. Representative: James H. Berry, P.O. Box 32, Wesley, AR 72773, 501–456–2453. Transporting *such commodities* as are dealt in or used by chain grocery stores and food business houses, department stores, and variety stores, between Phoenix, AZ, Little Rock, AR, Los Angeles, Oakland, Richmond, Sacramento, and San Francisco, CA, Denver, CO, Bonner Springs, Kansas City, and Wichita, KS, Capitol Heights, MD, Kansas City and Joplin, MO, Butte, MT, Clovis, NM, Oklahoma City and Tulsa, OK, Portland, OR, Dallas and Houston, TX, Salt Lake City, UT, Hampton and Richmond, VA, Bellview, Grandview, Seattle, and Spokane, WA, Durand and La Crosse, WI, and DC, and points in Maricopa County, AZ, White, Alameda, Kings, Los Angeles, San Diego, and San Joaquin Counties, CA, Lyon County, KS, Prince Georges County, MD, Nobles County, MN, Jasper County, MO, Clackmas and Coos Counties, OR, and Grayson, El Paso, and Dallas Counties, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151173 (Sub-15), filed June 3, 1982. Applicant: HAR–BET, INC., 7209 Tara Blvd., P.O. Box 855, Jonesboro, GA 30237. 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 Kitchens of Sara Lee, of Deerfield, IL.

MC 151193 (Sub-27), filed June 1, 1982. Applicant: PAULS TRUCKING CORPORATION, 286 Homestead Ave., Avenel, NJ 07001. Representative: Michael A. Beam (same address as applicant), 201–499–3869. Transporting *toys*, between points in the U.S., under

continuing contract(s) with Knickerbocker Toy Co., Inc., of Edison, NJ.

MC 151422 (Sub-8), filed May 24, 1982. Applicant: MINN-DAK TRANSPORT, INC., P.O. Box N — 40-1st Ave. NW, Pelican Rapids, MN 56572. Representative: Thomas J. Van Osdel, 15 Broadway-Suite 502, Fargo, ND 58102, 701-235-4487. Transporting (1) *rubber and plastic products*, between points in MN and ND, on the one hand, and, on the other, points in CO, IA, MN, NY, and OH, (2) *metal proudcts and electrical machinery and supplies* (a) between points in MN, MT, ND, and SD, on the one hand, and, on the other, points in IA, IL, MI, NJ, NY, PA, OH, SD, and WI, and (b) between points in MN and ND, on the one hand, and, on the other, points in IN, MO, MT, and NE, and (3) *chemicals and related products* (a) between points in IN and NJ, on the one hand, and, on the other, those points in the U.S., in and east of MN, WI, IL, KY, TN, MS, and LA, and (b) between points in KS, on the one hand, and, on the other, points in AZ, CA, CO, IL, IA, MN, MO, NE, NM, OK, OR, SD, TX, and UT.

MC 157923 (Sub-1), filed June 1, 1982. Applicant: TAYLOR TRUCKING, INC., 4080 Lancer Circle, Manitowoc, WI 54220. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703, 608-256-7444. Transporting *such commodities* as are dealt in or used by manufacturers and distrbutors of cement and cement products, between points in the U.S. (except AK and HI), under continuing contract(s) with Illinois Cement Company, of LaSalle, IL, and Wisconsin Cement Company, of Hartland, WI.

MC 158932 (Sub-1), filed May 18, 1982. Applicant: SMITH TOURS, INC., P.O. Box 1460, 3033 U.S. 41 North, Henderson, KY 42420. Representative: Maxwell A. Howell, 1100 Investment Bldg., 1511 K St., NW., Washington, D.C. 20005, (202) 783-7900. Transporting *passengers and their baggage* in charter and special operations, between points in KY, IN, IL and TN, on the one hand, and, on the other, points in the U.S. (including AK, but excluding HI).

MC 160612, filed May 19, 1982. Applicant: SCHEALL DRIVEAWAY SYSTEM, Suite 100, 9485 Colfax Avenue, Lakewood, CO 80215. Representative: C. Jack Pearce, Suite 1200, 1000 Connecticut Avenue, NW., Washington, D.C. 20036, (202) 785-0048. Transporting *transportation equipment*, between points in ND, SD, NE, KS, TX, OK, CA, OR, WA, MT, ID, NV, AZ, UT, WY, CO, NM, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 160803 (Sub-1), filed May 24, 1982. Applicant: CONTINENTAL MOTOR FREIGHT, INC., 11650 Court House Blvd., Inver Grove Heights, MN 55075. Representative: Robert S. Lee, 1600 TCF Tower, 121 So. 8th St., Minneapolis, MN 55402, 612-333-1341. Transporting *general commodities* (except household goods and commodities in bulk), between points in the U.S. (except AK and HI). Condition: To the extent any certificate issued in this proceeding authorizes the transportation of classes A and B explosives, it shall be limited in point of time to a period expiring 5 years from its date of issuance.

MC 162132, filed May 28, 1982. Applicant: MARTHA D. WEEKS, d.b.a. M.D. WEEKS TRUCKING CO., P.O. Box 538, Hamilton, AL 35570. Representative: E. Stephen Heisley, 1919 Pennsylvania Ave., NW., Suite 500, Washington, D.C. 20006, 202-828-5015. Transporting *lumber and wood products, machinery, and metal products*, between points in Marion and Winston Counties, AL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Volume No. OP4-214

Decided: June 14, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 105367 (Sub-7), Filed June 8, 1982. Applicant: THE HALL TRUCK LINE, INC., P.O. Box 188, Olathe, KS 66061. Representative: Everett J. Sellers (same address as applicant), (913) 782-0850. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in NE, IA, KS, MO, OK, AR and CO.

MC 129987 (Sub-3), filed June 8, 1982. Applicant: TERRA COTTA TRUCK SERVICE, INC., 4712 Amway Dr., Crystal Lake, IL 60014. Representative: Donald S. Mullins, 1033 Graceland Ave., (312) 298-1094. Transporting *petroleum, natural gas and products, coal products, and chemical and related products*, between points in the U.S. (except AK and HI), under the continuing contract(s) with Ashland Oil, Inc., of Ashland, KY, and Torco Oil Company, of Chicago, IL.

MC 141136 (Sub-8), filed June 9, 1982. Applicant: TRIANGLE TRANSPORTATION AND WAREHOUSING SYSTEMS, INC., 1930 Sixth Ave., South #404, Seattle, WA 98134. Representative: Henry C. Winters, 12600 SE 38th, Suite 200, Bellevue, WA 98006, (206) 644-2100. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between the ports of entry on the International Boundary line between the U.S. and Canada in ID, MT, and WA, on the one hand, and, on the other, points in AR, IA, IL, IN, KS, LA, MI, MN, MO, ND, NE, OK, SD, TX, and WI.

MC 143127 (Sub-85), filed June 9, 1982. Applicant: K. J. TRANSPORTATION, INC., 6070 Collett Rd., Victor, NY 14564. Representative: Catherine Jablonski (same address as applicant), (716) 924-9951. Transporting *such commodities* as are dealt in or used by grocery and food business houses, between points in the U.S. (except AK and HI), under continuing contract(s) with Super Food Services, Inc., of Orlando, FL.

MC 148697 (Sub-2), filed June 9, 1982. Applicant: TRINITY, INC., P.O. Box 327, Lenoir, NC 28645. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Bldg., Charlotte, NC 28204, (704) 372-6730. Transporting *furniture and fixtures*, between points in Cleveland, Iredell, and Caldwell Counties, NC, on the one hand, and, on the other, points in WA, OR, CA, NV, UT, and AZ.

MC 153167 (Sub-1), filed June 9, 1982. Applicant: ANGELICA ENTERPRISES, INC., Park Circle, Angelica, NY 14709. Representative: Robert D. Gunderman, Can-Am Bldg., 101 Niagara St., Buffalo, NY 14202, (716) 854-5870. Transporting *such commodities* as are used by manufacturers and distributors of dairy products, between points in the U.S., under continuing contract(s) with Friendship Dairies, Inc., of Friendship, NY.

MC 154716 (Sub-2), filed June 9, 1982. Applicant: WALGREEN OSHKOSH, INC., 200 Wilmot Rd., Deerfield, IL 60015. Representative: John T. O'Connell, 521 S. LaGrange Rd., LaGrange, IL 60525, (312) 352-7220. Transporting *paper and related products*, between points in the U.S., under continuing contract(s) with Crown Zellerbach Corporation, of Bogalusa, LA.

MC 161057, filed June 9, 1982. Applicant: RIGA TRUCK LINES, INC., P.O. Box 729, Baker, OR 97814. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701, (208) 343-3071. Transporting *lumber and wood products, building materials, and metal and metal products*, between points in AZ, AR, CA, CO, ID, KS, LA, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, and WY.

MC 162357, filed June 7, 1982. Applicant: DIVERSIFIED COMMERCIAL SERVICES, INC., 5636 Lisette, St. Louis, MO 63109. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105, (314) 727-0777. Transporting *general commodities* (except classes A

and B explosives, household goods and commodities in bulk), between St. Louis, MO, on the one hand, and, on the other, points in MO, IL, IN, OH, AR, IA, TN, MS and KY.

MC 162387, filed June 7, 1982. Applicant: AAA CHARTER BUS, INC., d.b.a. A AND A CHARTER LINES, 5136 W. 106th St., Lennox, CA 90304. Representative: Donald R. Hedrick, P.O. Box 4334, Santa Ana, CA 92702, (714) 667–8108. Transporting *passengers and their baggage*, in the same vehicle with passengers, in round-trip charter operations, beginning and ending at points in Los Angeles and Orange Counties, CA, and extending to points in AZ, NV, UT, NM, WA, CO, ID, MT, WY, SD, TN, NY and DC.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–16886 Filed 6–22–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carrier; Temporary Authority Application

Important Notice

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F–179

The following applications were filed in Region 3. Send protests to: ICC, Regional Authority Center, Room 300, 1776 Peachtree Street, NE., Atlanta, GA 30309.

MC 159046 (Sub-3–2TA), filed June 15, 1982, Applicant: BLUEGRASS TOURS, INC., 410 W. Vine, Suite 100, Lexington, KY 40507. Representative: William L. Willis, 702 McClure Building, Frankfort, KY 40601. *Pasengers in one-way and round-trip special and charter operations*, between points in Fayette County, KY, on the one hand, and, on the other, points in Knox County, TN. Supporting shippers: There are six statements in support of this application which may be examined at the ICC Regional Office, Atlanta, GA.

MC 151789 (Sub-3–2TA), filed June 15, 1982, Applicant: EASTERN CARRIERS, INC., P.O. Box 8492, Station A, Greenville, SC 29604. Representative: Eugene M. Malkin, Suite 1832, Two World Trade Center, New York, NY 10048. *Contract;* irregular. *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. (except AK and HI), under continuing contract(s) with GK Technologies, Inc. and its subsidiaries, Hydrotherm, Inc., Sprague Electric Company, Automation Industries, Inc. and its General Cable Company Division. Supporting shipper(s): GK Technologies, Inc., 500 West Putnam Avenue, Greenwich, CT 06830.

MC 162443 (Sub-3–1TA), filed June 15, 1982. Applicant: HOLLAND BROS. INC., Short Street, Box 87, Wingo, KY 42088. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. (1) *Carbon electrodes* between Hickman, KY and Rockdale, TX. (2) *Clothing and related apparel* between Wingo, KY and points in the U.S. except AK and HI. Supporting shippers: 1. Sigri Carbon Corporation, Cory Road, Hickman, KY 42050, 2. Harris Mfg. Co., Rt. 2, Box 333, Adamsville, TN 38310.

MC 162189 (Sub-3–1TA), filed June 14, 1982. Applicant: LAND OCEAN TRANSPORT, INC., 2035 N. Miami Avenue, Miami, FL 33127. Representative: Bernard C. Pestcoe, Esq., 201 Alhambra Circle, Suite 511, Coral Gables, FL 33134. *General Commodities, except hazardous materials, between points in Dade, Broward, Palm Beach, Orange, Duval, Hillsborough, Pinellas, Marion, Monroe, Collier and Lee Counties, FL, restricted to transport having a prior or subsequent movement by water.* There are five (5) supporting shippers' statements, which can be examined at the ICC's Regional Office in Atlanta, GA.

The following applications were filed in Region 6. Send Protests to: Interstate Commerce Commission, Region 6, Motor Carrier Board, 211 Main St., Suite 501, San Francisco, CA 94105.

MC 162473 (Sub-6–1TA), filed June 14, 1982. Applicant: S. Archibald Transport Company, P.O.B. 497, Rigby, ID 83442. Representative: Scott S. Archibald (same as Applicant). (1) *Title, Masonry products and related building materials* from OH, TN, NY, TX, AL, PA to CO, UT, WA, MT, WY, ID: (2) *Grocery products* from Chicago IL to UT, CO, NM, AZ, WA, OR; and (3) *Retail department store products* from IL, IN, IA, AL, GA, TX, TN, OH, NY, PA to Salt Lake City, UT for 270 days. Supporting shipper: Suenaga Masonry, 555 Warren Ave., Pocatello, ID 83201.

MC 52793 (Sub-6–21TA), filed June 15, 1982. Applicant: BEKINS VAN LINES CO., 3090 Via Mondo, Compton, CA 90221. Representative: David P. Christianson, 707 Wilshire Blvd., Ste. 1800, Los Angeles, CA 90017. *Contract carrier.* Irregular routes: *Items dealt in or utilized by furniture stores and department stores*, between points in WA, OR, CA, NV, ID, MT, WY, UT, CO, NM, AZ, TX & OK, for the account of Levitz Furniture Corporation, for 270 days. Supporting shipper: Levitz Furniture Corporation, 1317 N.W. 167th Street, Miami, FL 33169.

MC 140633 (Sub-6–4TA), filed June 11, 1982. Applicant: GAPIAL DELIVERY SYSTEMS, INC., P.O.B. 161115, Sacramento, CA 95816. Representative: John F. Parks, III (same as applicant). *Conract carrier,* Irregular Route: *Such commodities as are dealt with or used by retail department stores and catalog mail-order houses* between San Leandro, CA & Reno, NV, and all points within a 50 air-mile radius of Reno, NV for 270 days. An underlying ETA seeks 120 day authority. Supporting shipper: Montgomery Ward & Co., 3000 Alvarado, St., San Leandro, CA 94577.

MC 152000 (Sub-6–1TA), filed June 14, 1982. Applicant: WILLIAM G. TUTTLE, d.b.a. CUSTOM MOBILE HOMES, N. 2650 Corbin Rd., Post Falls, ID 83854. Representative: William G. Tuttle, P.O.B. 1321, Post Falls, ID 83854. *Mobile and Modular Homes* in Primary and

Secondary Movements between points in OR, WA, CA, NV, AZ, UT, MT, WY, CO, NM, NE, SD, ND, KS, OK, and TX for 270 days. An underlying ETA seeks 120 days. Supporting shipper: Powder Basin Home Sales, 5341 Hwy 59 South, Gillett, WY 82761.

MC 128685 (Sub-6–7TA), filed June 14, 1982. Applicant: DIXON BROS., INC., P.O.D. 8, Newcastle, WY 82701. Representative: Jerome Anderson, 100 Transwestern I, Billings, MT 59101. *Lumber and wood products,* between points in Lawrence County, SD, on the one hand, and, on the other, points in MT, CO, ND, SD, NE, KS, MN, IA, MO, WI, IN, IL, MI, OK and TX, for 270 days. Supporting shipper: Pope & Talbot, Inc., 1500 S.W. First Ave., Portland, OR 97201.

MC 150982 (Sub-6–2TA), filed June 14, 1982. Applicant: DUTRA TRUCKING CO., INC., P.O.B. 277, Arcata, CA 95221. Representative: Eugene Q. Carmody, 15523 Sedgeman St., San Leandro, CA 94579. *Contract carrier;* Irregular Routes: *Food and related products, flour and such commodities, materials and supplies used in the manufacturing and processing of food products* between Humboldt County CA, on the one hand, and Grants Pass, Eugene, Salem, and Portland, OR; South Lake Tahoe and Reno, NV; and Seattle, Tacoma and Spokane, WA on the other; *Lumber and wood products; ground bark and wood chips, in bulk,* between Humboldt and Del Norte Counties CA on the one hand, and Douglas, Jackson, Josephine, Curry, Coos, Lane, Multnomah, Washington, Yamhill, Polk, Marion, Linn, Lincoln, Clackamas, Hood River, Tillamook, Clatsop, Columbia and Benton Counties OR on the other for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Bien Padre, Sixth & C Sts., Eureka, CA 95501; Miller Redwood Company, P.O.B. 247, Crescent City, CA 95531.

MC 159103 (Sub-6–3TA), filed June 11, 1982. Applicant: KEN GEBERT, d.b.a. KEN GEBERT TRUCKING, Mill Creek Rd., Frenchtown, MT 59834. Representative: Ken Gebert (same as applicant). *Lumber products,* from points in CA, ID, MT, OR, and WA to points in AZ, CA, CO, IA, ID, IL, IN, KS, MI, MN, MO, MT, ND, NE, NM, NV, OH, OK, OR, SD, TX, UT, VA, WA, WI, and WY; and from points in KY, TN, and WV to points in MT for 270 days. Supporting shippers: Superior Hardwoods, 1900 Grant St., Missoula, MT 59801; Sunrise Forest Products Co., P.O.B. 25060, Portland, OR 97225; Western Bee Supplies, P.O.B. 171, Polson, MT 59860; North Santiam Lumber Co. of Ohio, 2533 Fisher Rd., Columbus, OH 43204.

MC 153813 (Sub-6–3TA), filed June 15, 1982. Applicant: MIDWEST PACIFIC TRANSPORT, INC., 1351 S. 351st St., Federal Way, WA 98003. Representative: Bruce A. Wolf, 2120 Pacific Building, Third & Columbia St., Seattle, WA 98104. *Contract carrier;* Irregular routes: *Building Materials,* between points in WA, OR, ID and MT on the one hand and points in MI, OH and NY on the other hand, for 270 days. Supporting shipper: Metropolitan Lumber Company, 900 Jorie Blvd., Oak Brook, IL 60521.

MC 148404 (Sub-6–7TA), filed June 14, 1982. Applicant: UNITED CARRIERS, INC., 10584 Redwood Ave., Fontana, CA 92335. Representative: Robert Fuller, 13215 E. Penn St., Ste 310, Whittier, CA 90602. *Produce, Food and Related Products, Printed Matter, and Pulp, Paper and Related Products and Chemicals and Related Products* between the facilities of WAPLES-PLATTER COMPANIES at points in Dallas and Tarrant Counties, TX, on the one hand, and, on the other, points in AL, AZ, CA, CO, FL, GA, KS, LA, MS, OR, UT and WA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: WAPLES-PLATTER COMPANIES, P.O. B 1350, Fort Worth, TX, 76101.

MC 157596 (Sub-6–2TA), filed June 14, 1982. Applicant: VANGUARD CONTRACT CARRIER, INC., P.O. B 9285, Walnut Creek, CA 94596. Representative: Alfred G. Krebs, (same address as applicant). *Contract carrier;* Irregular Routes: *General Commodities* (except Classes A and B explosives and household goods as defined by the Commission) between points in the US (except AK and HI) under a continuing contract with Global Lift & Equipment Co., Inc. for 270 days. Supporting shipper: Global Lift & Equipment Co., Inc., 1758 Empire Central, Dallas, TX 75235.

MC 162475 (Sub-6–1TA), filed June 14, 1982. Applicant: "Z" EQUIPMENT, LTD., P.O. B 15302, Rio Rancho, NM 87174. Representative: Ronald L. Bishop, 5645 E. Paradise Blvd. N.W., Albuquerque, NM 87114. *Contract carrier;* Irregular routes: *Steel water tanks, tractor drawn and truck mounted; equipment, materials and supplies used in the construction and installation of water tanks; which because of size or weight require the use of special equipment,* between Bernalillo County, NM on the one hand and on the other points in the U.S. for the account of Magnum Industries, Inc., for 270 days. for 270 days. Supporting shipper: Magnum Industries, Inc., 700 Osuna Rd., N.E., Albuquerque, NM 87125.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–16884 Filed 6–22–82; 8:45 am]

BILLING CODE 7035–01–M

INTERNATIONAL COMMUNICATION AGENCY

Book and Library Advisory Committee; Meeting

The meeting of the Book and Library Advisory Committee originally scheduled for June 24 (47 FR 25429, June 11, 1982) has been postponed until Tuesday, July 13. It will be held in conference room 600–1750 Pennsylvania Avenue NW., Washington, D.C. from 1:30 pm to 5:00 pm. The Committee will be briefed on Agency activities with primary focus on the book and library programs at posts overseas.

Dated June 18, 1982.

Mary Jane Winnett,

Management Assistant.

[FR Doc. 82–17024 Filed 6–22–82; 8:45 am]

BILLING CODE 8230–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–94 (Preliminary)]

Bicycle Tires and Tubes From Taiwan

Determination

On the basis of the record [1] developed in investigation No. 731–TA–94 (Preliminary), the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury,[2 3 4] by reason of imports of bicycle tires and tubes from Taiwan, as provided for in items 772.48 and 772.57, respectively, of the Tariff Schedules of the United States (TSUS), which are allegedly being sold in the United States at less than fair value (LTFV).

[1] The "record" is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (47 FR 6190, February 10, 1982).

[2] The vote of Vice-Chairman Calhoun reflects the statutory language which provides for a finding of "material injury or threat of material injury."

[3] Commissioner Frank determined that there is a reasonable indication that an industry in the United States is materially injured.

[4] Chairman Alberger determined that there is no reasonable indication that a domestic industry is materially injured or threatened with material injury.

Background

On April 30, 1982, a petition was filed on behalf of Carlisle Tire & Rubber Co., Carlisle, Pa., with the U.S. International Trade Commission and with the Department of Commerce alleging that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports from Taiwan of bicycle tires and tubes which are allegedly being sold at less than fair value. Accordingly, the Commission instituted a preliminary investigation under section 733(a) of the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or that the establishment of an industry in the United States is materially retarded,[5] by reason of the importation of such merchandise into the United States.

Notice of the institution of the Commission investigation and of the conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on May 12, 1982 (47 FR 20395). The conference was held in Washington, D.C. on May 27, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel. The Commission voted on this case in public session on June 8, 1982.

Views of Vice-Chairman Michael J. Calhoun, Commissioners Paula Stern, Alfred E. Eckes, and Veronica A. Haggart

We determine that there is a reasonable indication that an industry in the United States is threatened [6] with material injury, by reason of imports of bicycle tires and tubes from Taiwan allegedly being sold at less than fair value (LTFV).

The Domestic Industry

In order to analyze the effect of alleged LTFV imports on the domestic industry, the relevant domestic industry must first be defined. Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." 19 U.S.C. 1677(4)(A). Section 771(10) in turn defines "like product" as "(A) product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." 19 U.S.C. 1677(10).

Thus, we must first determine the domestic product that is "like, or in the absence of like, most similar in characteristics and uses, with" the imported product under investigation. Then, we must determine who are the domestic producers of that "like product."

The imports in this investigation are bicycle tires and tubes, which enter either separately or as sets. Each set includes one bicycle tire, one tube, one valve cap, and one rimstrip. [7] The two products under investigation, bicycle tires and bicycle tubes, are distinct. Tires are made of rubber, nylon and thread, whereas tubes are made simply from rubber. Tires are made by wrapping layers of the various materials used around rubberized metal wires, whereas tubes are fed into extruders and formed into a hose. Beyond the mixing of the rubber, the equipment used in the production of tires and tubes is different, and cannot be converted to alternative uses. Similarly, the production staff for tires and tubes is separate. The main function of a tire is traction, whereas the function of a tube is a contain the air within the tire.

Two main types of bicycle tires are imported: Pneumatic clincher-type tires and tubular tires. Clincher-type tires are designed for normal bicycle use and are intended for use with tubes that can be replaced. They account for virtually all of the bicycle tire imports and 100 percent of domestic bicycle tire production. Tubular tires are pneumatic tires in which tubes are permanently encased. They are used primarily on competitive amateur or professional racing bicycles and are not considered by the industry to be competitive with the clincher-type tires.[8] Tubular tires differ significantly from clincher-type tires in their method of manufacture, retail cost to the consumer, and the type of bicycles to which they are fitted. Tubular tires account for a relatively insignificant proportion of the alleged LTFV imports.

Most shipments of bicycle tires, both imported and domestic, are in the 20-inch, 26-inch, and 27-inch diameter categories.[9] The are characterized by two main features: (1) The color of the sidewalls which imparts a styling or cosmetic effect, and (2) the tread design. In addition to blackwalled tires, there are gumwalled tires which incorporate light or tan sidewalls or raised white lettering on the sidewalls. Tread designs include rib-type treads, and stud-type or knobby treads. Tires with rib-type treads account for the bulk of sales of both the domestic and imported products; however, the stud-type or knobby tread tires, which are generally heavier in construction and more expensive, are sold in significant quantities in the United States.

Both imported and domestic inner tubes used in bicycle tires fit the diameter and cross-sectional measurements of the tires with which they will be used. As with tires, most sales occur in the 20-, 26-, and 27-inch categories.

The manufacturing techniques for producing bicycle tires and tubes respectively are basically the same throughout the world. In the manufacture of bicycle tires, layers of fabric (usually nylon) combined with layers of tread are wrapped around two rubberized metal wires (beads) to form the tire carcass. Vulcanization completes the process. Virtually all bicycle tires are designed for use with tubes. In the manufacture of tubes, rubber is fed into extruders and formed into a hose, which is then cut to length, spliced, fitted with an air valve, and vulcanized. Most equipment used in the manufacture of bicycle tires or tubes cannot be converted to alternative uses.

Pneumatic clincher-type tires produced by Carlisle are virtually identical in characteristics and uses to imported clincher-type tires of the same size, and are made by essentially the same process. (The domestic industry does not produce tubular tires.) Similarly, bicycle tubes produced by Carlisle are virtually identical to those of the same size that are imported, and

[5] Material retardation of the establishment of an industry was not raised as an issue in this investigation.

[6] The vote of Vice Chairman Calhoun reflects the statutory language which provides for a finding of "material injury *or* threat of material injury." (emphasis added) 19 U.S.C. 1673b(a).

[7] Each major component of an imported set is classified under a different TSUS item, with the exception of the valve caps which enter as integral components of the tubes with which they are imported. Tires and tubes entered on imported bicycles are not classified separately and are not included in the import statistics for bicycle tires and tubes. The largest volume of domestic sales of bicycle tires and tubes consists of the sale of sets. However, we do not as yet have data on the percentage of allegedly LTFV imports that are sold as sets. We hope to obtain such information if the case should return for a final investigation.

[8] Report at A-1.

[9] Both bicycle tires and tubes are available in approximately 20 sizes. Sizes are measured in terms of diameter and cross-section of the tire, e.g., a 20 by 1.75 tire is 20 inches in diameter measured from tread to tread and 1.75 inches in cross section measured from sidewall to sidewall.

are made by essentially the same process. They serve precisely the same end use.

Thus, for purposes of this preliminary investigation, we find that there is a like product corresponding to each article being imported: pneumatic clincher-type tires and bicycle tubes.[10] [11]

Section 771(4)(D) provides:

Product Lines.—The effect of subsidized or dumped imports shall be assessed in relation to the United States production of a like product if available data permit the separate identification of production in terms of such criteria as the production process or producer's profits. If the domestic production of the like product has no separate identity in terms of such criteria, then the effect of the subsidized or dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes a like product, for which the necessary information can be provided. 19 U.S.C. 1677(4)(D).

Separate profit and loss data on bicycle tires and bicycle tubes are not currently available to the Commission. It is our understanding that separate profit and loss data for bicycle tires and bicycle tubes could be made available to the Commission in a final investigation.[12] Therefore, for the purposes of this preliminary investigation, we have assessed the effects of the alleged LTFV imports on the combined United States production of bicycle tires and tubes.

Reasonable Indication of Threat of Material Injury

In making its preliminary determination, the Commission is directed by Title VII of the Tariff Act of 1930 to determine, based upon the best information available at the time of the determination, whether there is a reasonable indication that an industry in the United States is materially injured or is threatened with material injury,[13] by reason of alleged LTFV imports of bicycle tires and tubes from Taiwan. 19 U.S.C. 1671b, 1673b. In making its determination of a reasonable indication of threat of material injury in this investigation, the Commission has considered, among other factors, (1) the rate of increase of the allegedly dumped imports, (2) the condition of the domestic industry, (3) the capacity of producers in the exporting country to generate exports, and (4) the likelihood that such exports will be directed to the United States.[14]

Our assessment of the impact of imports is focused on the increase in import levels during the first quarter of 1982 while economic indicators showed declines in the performance of the domestic producer. The data for January–April 1982 indicates a marked reversal of the decline in the volume of imports of bicycle tires and tubes from Taiwan from 1979 to 1981. The number of bicycle tires imported from Taiwan was more than 40 percent higher in the first 4 months of 1982 than the number imported in the first 4 months of 1981. During the same period of 1982, the average unit value of bicycle tires dropped approximately 20 percent.[15] The number of tubes imported increased by over 23 percent during the same time period.[16]

Market share data for 1982 reflect similar changes in trends. The share of the U.S. market for bicycle tires held by imports from Taiwan remained relatively stable from 1979 to 1981. However, in January–March 1982, as consumption continued to decline, the Taiwan market share was nearly 20 percentage points higher than it was in the same period of 1981, and more than 10 percentage points higher than the annual figures for 1979 to 1981. Similarly, the share of the market held by bicycle tubes from Taiwan in the first quarter of 1982 was well above the figure for early 1981, or for any of the annual figures for the period under investigation.[17]

At the same time that imports increased, the domestic industry's production, capacity utilization, shipments, employment and profitability declined. During January–April 1982, U.S. production of bicycle tires and tubes declined by nearly 15 percent compared to January–April 1982.[18] Capacity utilization in the production of tires and tubes dropped significantly below 1979 levels in 1981, and remained at or below those levels in the first quarter of 1982.[19] U.S. producer's shipments of bicycle tires and tubes declined by nearly one-third in January–March 1982 over the comparable period of 1981.[20] Domestic shipments of bicycle tires and tubes sold as sets were down by almost one half.[21]

The number of production and related workers producing bicycle tires and tubes in 1981 was approximately the same as the number working in 1979. However, the employment level of production and related workers in the first quarter of 1982 was more than 10 percent below the comparable period of 1981.[22] At the same time, the total number of hours worked by those employees dropped by nearly 20 percent.[23]

Carlisle's operations on bicycle tires and tubes are profitable. However, its net sales dropped significantly in the first quarter of 1982. In addition, its ratio of operating income to net sales in January–March 1982, dropped markedly below the figure for the first quarter of 1981, and was below any of the figures for the prior three years.[24] The cash flow on Carlisle's bicycle tire and tube operations in January–March 1982 dropped to less than half of the comparable 1981 level.

Capacity utilization in the production of bicycle tires in Taiwan[25] declined annually from 1979 to 1981. Capacity utilization in the production of tubes rose from 1979 to 1980, but sharply declined in 1981 and is projected to fall again in 1982.[26] Taiwan production of bicycle tires and tubes in 1981 was approximately 14 million units or 16 percent below capacity.[27] The United States is a major market for Taiwan tires and tubes. Thus, there is an indication of a present ability to increase exports to the United States by either increasing total production or shifting its exports.[28]

[10] According to the record in this investigation, the nature of the alleged LTFV imports is not clear. Specifically, tires and tubes enter into the United States from Taiwan both separately and in sets. The petition alleges LTFV sales of tires and tubes sold separately as well as in sets. In any final investigation, development of further data regarding imported sets may alter the analysis of the appropriate like product, and ultimately the definition of the domestic industry against which we assess the impact of these imports.

[11] See Additional Views of Vice-Chairman Calhoun, infra.

[12] Carlisle keeps separate profit and loss data for bicycle tires and bicycle tubes for use as a management tool. In addition, Carlisle provided profit and loss data to the Commission in the section 201 (escape clause) investigation conducted in 1978.

[13] Material retardation of the establishment of a domestic industry is not an issue in this case.

[14] Cf. 19 CFR § 207.26(d).

[15] Report at Table 8.

[16] Report at Table 9.

[17] Report at Table 17.

[18] Report at Table 1, Table 3.

[19] Report at Table 1.

[20] Report at Table 5.

[21] Report at Table 6.

[22] Report at Table 10

[23] Report at Table 10

[24] Report at Table 12.

[25] We currently have incomplete information on the capacity and capacity utilization of the Taiwan producers. We hope to obtain additional information on this factor if the case should return for a final investigation.

[26] Report at A–29.

[27] Report at A–30.

[28] A number of questions relating to Taiwan's potential role in the United States market were unanswered in this investigation. In any final investigation, we hope to have more data such as the number of producers in Taiwan, the facility with

In light of the recent increase in imports of bicycle tires and tubes from Taiwan, and the most recent performance of the domestic producer, we conclude that there is a reasonable indication that there is a threat of material injury to a domestic industry by reason of the alleged LTFV imports.

Additional Views of Vice Chairman Michael J. Calhoun

In its industry analysis, the majority opinion discussed various aspects of production of tubes and tires by the domestic industry, but it makes no explicit industry finding. Rather, the majority recites the requirements of section 771(4)(D) and announces that "for purposes of this preliminary investigation, we have assessed the effects of the alleged LTFV imports on the combined United States production of bicycle tires and tubes." This failure by the majority to make an explicit industry finding is a departure from established Commission practice under the Trade Agreements Act of 1979.

I am aware of certain reasoning and analysis underlying section 771(4) construction which might well support the finding of material injury without making a specific industry finding. I am not aware, however, of any principle or rationale which supports such an abrupt departure from consistent administrative practice absent explicit and reasoned explanation. Such explicit and reasoned discussion affords parties an understanding of how Commission decisionmaking proceeds and how it might be impacted. To me, this is an essential requirement to be met in avoiding arbitrary and capricious decisionmaking. Without an open and plain discussion of why such a departure from our usual practice is taken in this case, whether such a departure might be taken again in the future and, if so, under what circumstances, I am compelled to disassociate myself from the majority's view and make an industry analysis consistent with well established Commission practice.

In this regard, it is my view, consistent with the majority rationale in the Korean Nails investigation (Inv. No. 731–TA–45), that there are two products being imported and that for each imported product there is a domestic like product. Furthermore, based upon information available thus far it seems reasonable to conclude that bicycle tires and tubes are almost exclusively interdependent products and that the majority of bicycle tires and tubes are produced and sold as sets. Based on these factors, I find that there is one domestic industry consisting of the producers of bicycle tires and bicycle tubes.

Views of Commissioner Eugene J. Frank

One the basis of the record of Investigation No. 731–TA–94 (Prel.) I determine that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from Taiwan of bicycle tires and tubes allegedly sold at less than fair value.

At this point I would reiterate my position that the statute and legislation history in Title VII investigations require the Commission in its preliminary determinations for both antidumping and countervailing duty investigations to exercise only a low-threshold test based upon the best information available that the facts reasonably indicate that an industry in the United States could *possibly* be suffering material injury, threat thereof, or material retardation.[29]

Domestic Industry

Section 771(4) of the Tariff Act of 1930 defines the term "industry" as the "domestic producers as a whole of the like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."[30]

The term "like product" is defined in section 771(10) of the Act as, "a product which is like, or in the absence of like, most similar in characteristics and uses with the article subject to an investigation."[31]

The bicycle tires and tubes that are imported into the United States from Taiwan are like the bicycle tires and tubes produced by petitioner the Carlisle Tire and Rubber Co., which is the only manufacturer of pneumatic clincher-type bicycle tires and tubes in the United States. The other firms which produced these bicycle tires and tubes in the United States ceased production in the 1970's. In reaching this preliminary determination, I concluded that there is one domestic industry because the largest volume of their sales consists of the sale of sets of tires and tubes. It is common for a bicycle tire manufacturer to also produce bicycle tire tubes. They are sold through same sales channels and the products are complementary. Domestic producer manufactures both the tires and tubes in a single intergrated plant, and the two products are inventoried and sold as an intergrated product line. The profit and loss data available to the ITC at this time pertains to the bicycle tire and tube product line of the petitioner.

Reasonable Indication of Material Injury by Reason of Less Than Fair Value Imports

The statute requires the Commission to determine whether there is a reasonable indication that an industry in the United States is materially injured or is threatened with material injury by reason of imports of the products which is the subject of the investigation by the administering authority.[32] It is my opinion in this case that the record demonstrates that there is a reasonable indication that the imports of bicycle tires and tubes from Taiwan allegedly sold in the United States at less than fair value are a cause of material injury to the domestic industry.

In making its determination the Commission must consider, among other factors, the volume of imports, the effect these imports have on prices in the United States of the domestically produced like product, and the impact these imports of like merchandise have on the sole domestic producer left in this case.

U.S. production declined substantially in 1981 from the 1980 production levels and was lower than production in 1979 resulting also in a corresponding decline in capacity utilization.[33] Although part of the decline in U.S. production and shipments can be attributed to the corresponding decline in consumption of bicycles between 1979 and 1981, it appears that the share supplied by the alleged LTFV imports to U.S. consumption has increased in both tires and tubes in the January through March 1982 period reaching the highest level of penetration * * * in the years covered by this investigation in the case of tires.[34] U.S. producers' shipments of tires for this quarter dropped precipitously from the corresponding quarter back in 1981 and which continued to go down through the second half of 1981. In the bicycle tubes area, penetration by imports from Taiwan to U.S.

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which new firms can enter into production in Taiwan, Taiwan's other foreign markets and import restrictions in those markets.

[29] H.R. Report No. 96–317 96th Cong. 1st Sess., p. 52 (1979)

[30] 19 U.S.C. 1677(4)(A).

[31] 19 U.S.C. 1677(10).

[32] Material retardation of the establishment of a domestic industry is not an issue in this case.

[33] The U.S. industry consists of only one remaining U.S. producer, therefore only general trends will be discussed.

[34] Table 15, Staff Report. For some reason there was no table in the Staff Report which covered ratio of imports to U.S. consumption and U.S. producers' shipments in one table of both bicycle tires and tubes.

consumption reached a very high level in the first quarter of 1982 of * * * compared to * * * for the same period in 1981.[35] U.S. producers shipments were lower in 1981 than in 1979, and for bicycle tires they were lower than in 1980. Shipments of both tires and tubes during January-March 1982 for the the sole domestic producer left were substantially below shipments during the same period of 1981. Also, U.S. producer's year-end inventories of bicycles tires and tubes went up sharply from 1979 to 1980, came down somewhat in 1981, but at the end of the first quarter of 1982 had gone up higher than at comparable end of similar quarter of 1981. Employment since 1980, reported by the U.S. producer, has been going down in bicycle tires and tubes, as well as hours worked by production and related workers. These employment trends continued for the January through April period of 1982.

Domestic producer's bicycle tire and tube operation reported profits during the period covered by the investigation, although bicycle tire and tube income margins were substantially less than those of their total operation. Also, in 1981, the ratio of income before taxes to net sales on bicycle tire and tube operations declined by nearly half from the ratio of net income to net sales in 1980, and during the first quarter of 1982 this trend of net income before taxes continued to deteriorate, declining sharply from comparable first quarter of 1981.

In this area of prices Staff Report says that although response on each item requested from the domestic producer was obtained, response from importers was poor.[36] Price data were collected for the largest shipments by quarters for January 1979 through March 1982. The margins of underselling of bicycle tires were substantial throughout the period for which data was collected averaging * * * percent.[37] For 20-inch blackwalled, ribbed tires, the margins of underselling ranged during the period from a low of * * * percent to a high of * * * percent, and averaged * * * percent.[38] For the 26-inch blackwalled, ribbed tires, importers margins of underselling ranged from * * * percent to * * * percent, averaging * * * percent during the period for which data was available. Lost sales to imports of bicycle tires and tubes from Taiwan since 1979 were confirmed by the Staff.[39]

[35] Staff Report, Table 17, p. A-23.
[36] Staff Report, p. A-24.
[37] Staff Report, p. A-26.
[38] Staff Report, p. A-27.
[39] Staff Report, p. A-28.

Causation

The record indicates that, although imports from Taiwan of both bicycle tires and tubes declined between 1979 and 1981, Taiwan's market share increased markedly in the second half of 1981 over the 1979 level while the average unit value of bicycle tires from Taiwan declined substantially, more than doubling the margin of underselling of domestic producer. In the first quarter of of 1982, margins of underselling became larger as imports from Taiwan surged and the sole domestic producer's shipments dropped sharply. The record shows that the domestic producer was unable to increase prices to a level where they could offset higher unit costs related to less than anticipated production because of the substanital underselling of bicycle tires and tubes from Taiwan. Taiwan exports to the United States can increase quickly in bicycle tires and tubes, and together with price and other market penetration levels already reached could, if continued, cause further injury in the operations of the sole domestic producer left; but having found material injury, I do not reach the issue of threat of material injury in this determination.

Conclusion

Based on the information available to the Commission at this time, I find that there is a reasonable indication of material injury to the domestic industry, and therefore, that this investigation should be continued.

Views of Chairman Bill Alberger

I determine that there is no reasonable indication of material injury or threat of material injury, and that the establishment of an industry in the United States is not materially retarded by reason of imports of bicycle tires and tubes from Taiwan, alleged to be sold at less than fair value. My judgment is based primarily on the high level of profitability of the only domestic producer of bicycle tires and tubes, the Carlisle Tire and Rubber Company (Carlisle).

While it is common to begin opinions under Title VII of the Tariff Act of 1930 (Title VII) by defining the imported product, the like product and the domestic industry, I see no need to give that matter extensive treatment. As is apparent from the report,[40] Carlisle produces bicycle tires and tubes which are clearly "like" the imported tires and tubes under investigation from Taiwan. In my view, it makes no difference whether there is one like product or two like products or even more like products. My analysis focuses on the productive facilities of Carlisle devoted to producing bicycle tires and tubes. No other domestic company produces either bicycle tires or tubes. No allocation has been made by Carlisle between profits derived from tires and from tubes. My major concern here is the high profits, and thus the definition of the like product is superfluous.

For three full years, 1979–1981, the ratio of operating income to net sales for the bicycle tire and tube operation of Carlisle shows levels significantly in excess of the return on sales ratios for related industries.[41] In the first quarter of 1982, the last period for which profit data is available, profits have declined, but are more than * * * the average for rubber manufacturers.[42] Clearly, production, shipments, capacity utilization, and employment have all declined in the first quarter of 1982. It concerns me that declines in only one calendar quarter are relied upon so heavily by my colleagues in reaching an affirmative decision in this situation. But it disturbs me even more when the industry in question remains as profitable as this one. To find a reasonable indication of threat of material injury, you should have an industry whose profits have at least dropped below average levels. It was my view that such a standard generally prevailed in Commission decisions under Title VII prior to this case.[43] Here we have an industry that has shown the ability to be extremely profitable in the face of quite high import penetration.

From 1979 to 1981, imports of bicycle tires and tubes declined by as much as 22 percent. There is no trend that would show that the one quarter increase in 1982 will continue. Price levels for Carlisle do not seem to be adversely impacted, as they have generally increased. Further, there is no evidence of lost sales.

It is difficult to comprehend an injury finding, even at a preliminary stage, when the domestic industry is this profitable. Industries with much lower profits, and even some with losses, have been denied relief in prior cases. Such a

[40] Report at A-1.

[41] Fortune, May 3, 1982, p. 281.
[42] Report at A-18, Table 12.
[43] See Certain Steel Products from Belgium, Brazil, France, Italy, Luxembourg, The Netherlands, Romania, The United Kingdom, and West Germany, USITC Pub. 1221, Feb. 1982, pp. 88-92. Note particularly the following sentence on page 92 from the majority views: "Although production, shipments, and net sales are all down significantly from the peak years of 1978 and 1979, the industry has maintained a healthy profit picture throughout the four year span investigated." So has the bicycle tire and tube operations of Carlisle.

clear sign of health should not be ignored.

Issued: June 14, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-16979 Filed 6-22-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-113]

Certain Log Splitting Pivoted Lever Axes; Amendment of Notice of Investigation To Add Additional Counts

AGENCY: International Trade Commission.

ACTION: Amendment of notice of investigation to add five additional unfair acts or methods of competition.

SUMMARY: On June 11, 1982, the Commission granted a motion (Motion No. 113-5) to amend the notice of this investigation to add the following unfair acts or methods of competition: (1) Misappropriation of trade dress; (2) false designation of origin; (3) false representation; (4) common-law-trademark infringement with respect to an illustrative trademark; (5) false and misleading advertising; and (6) product disparagement.

SUPPLEMENTARY INFORMATION: On February 8, 1982, complainant Chopper Industries, Inc., moved (Motion No. 113-5) to amend the complaint and the notice of investigation to add the following counts: (1) Misappropriation of trade dress; (2) false designation of origin; (3) false representation; (4) common-law-trademark infringement; (5) copyright infringement; (6) false and misleading advertising; (7) trade libel; (8) product disparagement; and (9) predatory pricing.

On April 12, 1982, the administrative law judge (ALJ) issued a recommended determination that the motion be granted (Order No. 14) with respect to all but the following counts: (1) False designation of origin; (2) false representation; and (3) predatory pricing. After consideration of Motion No. 113-5, the ALJ's recommended determination, and the record in this case, the Commission determined to amend its notice of investigation pursuant to § 210.22(a) of its Rules of Practice and Procedure (19 CFR 210.22(a)) to include the following unfair acts or methods of competition: (1) Misappropriation of trade dress; (2) false designation of origin; (3) false representation; (4) common-law-trademark infringement; (5) false and misleading advertising; and (6) product disparagement.

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-9161.

FOR FURTHER INFORMATION CONTACT: Sheila J. Landers, Esq., Office of the General Counsel, telephone 202-523-0421.

By order of the Commission.

Issued: June 15, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-16976 Filed 6-22-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-111]

Certain Vacuum Cleaner Brush Rollers; Settlement Agreement, Recommended Termination, and Request for Public Comments

AGENCY: International Trade Commission.

ACTION: Request for public comments on the recommended termination of the above-captioned investigation with respect to Vacuum Parts Unlimited, Inc., (Vacuum Parts), based on a settlement agreement.

SUMMARY: Notice is hereby given that the presiding officer in this investigation has recommended that the Commission grant the joint motion of complainant Scott & Fetzer Co. and respondent Vacuum Parts that this investigation be terminated as to Vacuum Parts on the basis of a settlement agreement. Before taking final action on the motion, the Commission seeks written comments on the proposed termination from interested members of the public.

DEADLINE: All comments must be received on or before July 23, 1982.

SUPPLEMENTARY INFORMATION: The Commission is conducting investigation No. 337-TA-111 to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into, the United States of certain vacuum cleaner brush rollers, or the sale in, which are alleged to infringe claims 1 and 2 of U.S. Letters Patent 3,367,728.

On April 7, 1982, complainant Scott & Fetzer Co. and respondent Vacuum Parts filed a joint motion seeking termination of the investigation as to Vacuum Parts based on a settlement agreement. The Commission investigative attorney has also recommended that Vacuum Parts be terminated as a respondent. The presiding officer concurs. The settlement agreement and the proposed termination are now before the Commission for final action.

Under the settlement agreement, Vacuum Parts has warranted that it has ceased to import brush rollers from respondent Hornleon Co., Ltd. Furthermore, Vacuum Parts agrees to destroy any such brush rollers currently in its possession and not to infringe U.S. Letters Patent 3,367,728 owned by Scott & Fetzer. In return, Scott & Fetzer has agreed not to institute proceedings in any other forum against Vacuum Parts in connection with that firm's previous importation of brush rollers and has waived all rights against Vacuum Parts with respect to any alleged infringement of U.S. Letters Patent 3,367,728.

All comments must conform to the requirements of § 201.8 of the Commission's rules (19 CFR 210.8) and must be addressed to the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

FOR FURTHER INFORMATION CONTACT: Lairold M. Street, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0124.

By order of the Commission.

Issued: June 15, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-16977 Filed 6-22-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-118]

Certain Sneakers With Fabric Uppers and Rubber Soles; Amendment of Notice of Investigation To Add 10 Respondents

AGENCY: International Trade Commission.

ACTION: Amendment of notice of investigation to add 10 new respondents pursuant to § 210.22(a) of the Commission's Rules of Practice and Procedure (19 CFR 210.22(a)).

SUMMARY: On June 16, 1982, the Commission granted a motion (Motion No. 118-3) to amend the notice of this investigation to add Stride Rite Corporation, Stride Rite International, Ltd., San Shoe Trading Corp., Poong Young (H.S. Corporation), Melville Corp., Mei GI Footwear Co., Ltd., Dae Yang Rubber Ind. Co., Tae Hwa Co.,

Ltd., Hongson Group, and Tung Kunang Rubber Factory Co., Ltd., as additional respondents.

SUPPLEMENTARY INFORMATION: On May 13, 1982, complainant Van Doren Rubber Co., Inc., moved (Motion No. 118–3) to amend the complaint and the notice of investigation to add ten new respondents. The respondents are alleged by complainant to be engaged in unfair competition, common-law trademark infringement, false designation of source, and passing off with respect to the sneakers in controversy. Respondent Thom McAn opposes the motion. On May 19, 1982, the administrative law judge (ALJ) issued a recommended determination that the motion be granted (Order No. 6), but that the names of three respondents which supply Stride Rite Corporation be held in confidence. After consideration of Motion No. 118–3, the opposition thereto, and the ALJ's recommended determination, the Commission determined to amend its notice of investigation to add the 10 respondents named in Motion No. 118–3 and to publish their names in the **Federal Register.**

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Neeley, Esq., Office of the General Counsel, telephone 202–523–0079.

By order of the Commission.

Issued: June 17, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–16978 Filed 6–22–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–93 (Preliminary)]

Frozen French Fried Potatoes From Canada

Determination

On the basis of the record [1] developed in investigation No. 731–TA–93 (Preliminary), the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury,[2] [3] [4] by reason of imports from Canada of frozen french fried potatoes, as provided for in item 141.86, of the Tariff Schedules of the United States (TSUS), which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 30, and May 3, 1982, a petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce, respectively, by counsel on behalf of McCain Foods, Inc., Washburn, Maine. The petition alleged that frozen french fried potatoes imported from Canada are being, or are likely to be, sold in the United States at less than fair value (LTFV). Accordingly, the Commission instituted a preliminary investigation under section 733(a) of the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded [5] by reason of the importation of such merchandise into the United States.

Notice of the institution of the Commission investigation and of the conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on May 12, 1982 (47 FR 20396). The conference was held in Washington, D.C. on May 25, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel. The Commission voted on this case in public session on June 8, 1982.

Views of Chairman Alfred E. Eckes, and Commissioners Paula Stern, Michael J. Calhoun, and Veronica A. Haggart

We have found that there is no reasonable indication that a domestic industry is materially injured or is threatened with material injury [6] [7] by reason of imports of frozen french fried potatoes from Canada which are allegedly being sold or likely to be sold at less that fair value (LTFV). Our determination in the present case is based on the considerations set forth below.

Domestic industry

In order to make a determination as to whether there is a reasonable indication that a domestic industry is materially injured or is threatened with material injury, we must first define the domestic industry.[8] The domestic industry consists of the domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product. A like product is defined as a product which is like or, in the absence of like, most similar in characteristics and uses with the article under investigation.[9]

The imported product which is the subject of this investigation is frozen french fried potatoes (hereinafter referred to as frozen french fries) from Canada. The vast majority of frozen french fries imported from Canada are produced by Cavendish Farms, Moncton, New Brunswick. Cavendish informed the Commission that it produces and exports two grades of frozen french fries to the United States, the Cavendish Brand, Canada fancy grade (similar to U.S. Grade A, long) and the Scotch Maid Brand, Canada choice grade (similar to U.S. Grade B).[10] Both the Cavendish grades are produced from potatoes from the same fields are processed by the same people. There is testimony on the record that they are interchangeable.[11]

Frozen french fries produced in the United States are sold in three different grades: U.S. Grade A, extra long; U.S. Grade A, long; and, U.S. Grade B.[12] The petitioner, McCain Foods, Inc., Washburn, Maine, (hereinafter referred

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[1] The "record" is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (47 FR 6190, Feb. 10, 1982).

[2] Commissioner Michael J. Calhoun determines that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of frozen french fried potatoes which are allegedly sold or likely to be sold at less than fair value.

[3] Commissioner Frank determined that there is a reasonable indication that an industry in the United States is materially injured.

[4] Commissioner Alberger did not participate.

[5] Material retardation of the establishment of an industry was not raised as an issue in this investigation.

[6] Inasmuch as there is a domestic industry producing frozen french fries, the material retardation of the establishment of an industry is not an issue in this investigation.

[7] Former Chairman Alberger whose term expired on June 16, 1982, did not participate in the detemination.

[8] Section 771(4)(A) of the Tariff Act of 1930.

[9] *Id.*

[10] Report p. A–2.

[11] Transcript of Public Conference, May 25, 1982 (hereinafter Tr.) at p. 68.

[12] Report A–2.

to as McCain),[13] has requested that the Commission define the like product narrowly, i.e., to include only the french fries sold to food service distributors, excluding those sold to fast food chains and to retail supermarket chain stores. McCain claims that french fries which are suitable for sale to the food service market and retail supermarket chain stores do not meet the specifications for the fast food chains. McCain also alleges that there are different types of products based upon length, color, and texture.[14] McCain also claims that the imported french fries are in direct competition with its Snowflake label, and distinguishes the Snowflake french fries from its other french fries based upon both market destination and the size of its packaging.[15]

McCain processes frozen french fries and potato byproducts and considers the frozen french fry market to be made up of three different submarkets.[16] These submarkets consist of the retail market; the restaurant and fast food chains; and, the food service distributors (which supply corner diners, sub-shops, hotels and restaurants). The petitioner describes the potatoes sold to the three submarkets in the following terms:

a) *Retail market:* potatoes sliced in narrow sizes and types ranging from nine ounces to a five-pound bag with cooking instructions.

b) *Restaurant fast food chain:* a very sophisticated operation with specifications which usually exceed USDA standards. Petitioner claims that this production differs completely from the retail market.

c) *Food service distributor*—This market requires a five-pound bag and several different cuts made to specifications which are less stringent than those for fast food operators.

The imports which are the subject of this investigation are sold to distributors who sell both grades of imported french fries to the three submarkets delineated by petitioner.[17] AKF does sell its french fries to the retail market as well as to food service distributors.[18] These facts are but McCain's argument that there are distinct types of potatoes sold to the three submarkets described by petitioner.

The information Petitioner has presented is not a relevant basis upon which to find a distinction between the imported and domestic french fries for the purpose of defining the like product. The Petitioner's assertion that french fries sold to fast food chains and supermarkets should be eliminated from this investigation is based on a classification of the petitioner's customers rather than the characteristics and uses of the imported product. Minor differences in physical characteristics do not support the conclusion that there is more than one like product. Therefore, the like product consists of all frozen french fries produced in the United States.

Regional industry

McCain has requested that the Commission base its finding on a regional industry analysis. McCain argues that the region consists of the following northeastern states: Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, and Pennsylvania.[19] The statute, Section 771(4)(C) of the Tariff Act of 1930, does not require the Commission to conduct a regional analysis. Therefore, any such analysis is discretionary.[20]

The statutory criteria for such a finding of regional industry are:

(1) The producers within such market must sell all or almost all of their production of the like product in such market.

(2) The demand in such market is not to a substantial degree supplied by producers located elsewhere in the United States.

(3) The dumped imports are concentrated in the regional market.[21]

Section 771 (4)(C) requires that the producers within a regional industry must sell all or nearly all of their products within the region. Responses to the Commission's questionnaires indicate that the producers in the northeast are shipping the product under investigation outside the region. Approximately one third of the total domestic shipments of the two largest producers in the northeast region were shipped outside the region in 1981.[22] One of these two regional producers shipped approximately half of its domestic shipments outside of the region in 1981.[23]

With respect to the second criterion to be considered, there is information on the record that a substantial portion of the demand in the northeastern region for frozen french fried potatoes is served by producers outside the region. Combined shipments of AKF, McCain, and Interstate amounted to only a modest proportion of estimated apparent consumption in the northeast region in 1981.[24] The record also indicates that reporting U.S. producers outside the northeast region shipped more frozen french fries into the region during the 1979–81 period than McCain shipped in the region during the same period. In fact, reporting U.S. producers outside the northeast region accounted for over 30 percent of reported domestic shipments in the northeast region in 1981 and January–March of 1982.

Because the imposition of anti-dumping duties would affect imports of frozen french fried potatoes from Canada throughout the U.S., the statute requires that there must be a concentration of the alleged LTFV imports in the region. There is information on the record that a concentration of imports does enter the region, but that the imports are shipped directly to consignees outside the region [25] and, therefore, do not compete for sales within the region.

For the foregoing reasons we find that there is no regional industry in this investigation. Consequently, we must examine the condition of the entire domestic industry.

National industry

Since there is no regional industry, our analysis focuses on all the domestic producers of the like product. There are approximately 20 producers of frozen french fries in the United States, with a concentration of facilities in Idaho, Oregon, and Washington.[26] Although the Commission did send questionnaires to all known U.S. producers of frozen french fries, the response was

[13] The petitioner is McCain Foods, Inc., Washburn, Maine and is a wholly owned subsidiary of McCain Foods, Ltd., of Florenceville, N.B., Canada. Report at A–6.

[14] Tr. 68.

[15] Report A–2.

[16] Tr. 66.

[17] Report A–2.

[18] Tr. 52.

[19] The regional industry would consist, therefore, of the four producers located in the northeast region: AKF Foods Inc., d/b/a Potatoe Service Inc.; McCain Foods Inc., Interstate Food Processing Corp., and L. & S. Sales, Inc.

[20] In cases where the Commission finds that there is a regional industry, Section 771(4)(C) provides that "In appropriate circumstances * * * the producers within each market *may* be treated as if they were a separate industry * * *" (emphasis added). Commissioner Stern notes that the Commission exercises discretion in making a regional industry determination even in cases where the literal statutory elements for such a determination have been demonstrated. See *Sugars and Sirups from Canada*, Inv. No. 731–TA–3 (Final), Views of Commission Paula Stern, at p. 18.

[21] In those cases in which the Commission has made a finding of regional industry, Commissioners have outlined factors constituting appropriate circumstances for exercising the discretionary finding. See views of Chairman Alberger, Vice Chairman Calhoun and Commissioner Stern in Certain Steel Wire Nails from the Republic of Korea, Inv. No. 731–TA–26.

[22] Report table 3.

[23] Report A–10.

[24] Report A–14.

[25] Report A–14.

[26] Report at p. A–3.

negligible.[27] Therefore, the Commission was forced to rely on published data for information regarding the national industry. The lack of response of the national industry despite numerous requests from the Commission seems to indicate that it is not being materially injured or threatened with material injury by reason of imports from Canada.

No reasonable indication of material injury

On a national basis, market penetration of these imports from Canada remained stable in 1979 and 1980 and then rose slightly in 1981. It has remained below one percent each year during the period under investigation.[28] The ratio of imports to consumption was less than half of one percent during the period 1979 through 1981. Production of frozen french fries declined from 3.5 billion pounds in 1979 to 3.2 billion pounds in 1980, and then increased to nearly 3.6 billion pounds in 1981.[29] Although the response to the Commission's questionnaires was not sufficient for a pricing comparison, we note that the U.S. Bureau of Labor Statistics Producers' Price Index for French Fried Potatoes and Frozen Vegetables for the period 1978 to March 1982 demonstrates a steady rise in the price of french fried potatoes each year.

While the Commission has already disposed of the regional industry contention, there are several factors which indicate that were the northeast region to be considered separately, imports of frozen french fries from Canada are neither causing material injury nor threatening the producers in this region with material injury. Cavendish's exports of frozen french fries to the northeast market declined during the 1979–81 period.[30] The estimated market penetration in the northeast market of the alleged LTFV imports declined by nearly half from 1979 to 1981.

McCain indicated in its petition that only the alleged LTFV imports from Cavendish Farms were causing injury to U.S. producers.[31] In the northeast region, AKF and McCain accounted for the largest percentage of frozen french fried potatoes production. They have experienced irregular increases in production since 1979.

McCain alleged that it lost sales at six firms to Cavendish during 1979–81.[32] The Commission contacted five of these purchasers, but was able to confirm a lost sale on the basis of price in one instance. The other purchasers contacted indicated that the imported french fries were superior to the domestic product.[33] AKF also claimed lost sales to six purchasers. The Commission contacted four of those firms. It shold be noted that one of the firms contacted indicated that it buys from McCain (Maine) because of its low prices.[34] That firm did not purchase Canadian potatoes. The three remaining purchasers stated that they do not buy any imported products.

No reasonable indication of threat of material injury

In examining threat of material injury, the Commission is directed to look at the likelihood of a particular situation developing into actual material injury.[35] In this regard, "the rate of increase of the * * * dumped exports to the U.S. market, capacity in the exporting counry to generate exports, [and] the likelihood that such imports will be directed to the U.S. market taking into account the availability of other export markets," are important factors for the Commission to examine.[36]

During the 1979–81 period, Cavendish's production of and capacity to produce frozen french fries declined.[37] Its capacity has decreased since the Commission's 1980 investigation of frozen potato products, from Canada.[38] In the prior investigation on frozen potato products, the Commission found that McCain Food, Ltd., Canada's largest potato proceesor, accounted for almost half of Canadian capacity to produce frozen french fries in 1978.[39] This company does not export to the United States. Information obtained during the current investigation indicates that Cavandish will increase its percentage of exports to countries other than the United States.[40]

Conclusion

For all of the above reasons, we find that there is no reasonable indication of material injury or threat of material injury to the domestic industry.

Views of Commissioner Eugene J. Frank

Affirmative—Material Injury

On the basis of the record in investigation No. 731–TA–93 (Preliminary), I determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of frozen french fried potatoes from Canada which are allegedly sold at less than fair value.

Overview

First, I would like to note that the statute and legislative history in title VII investigations require the Commission in its preliminary determinations for both antidumping and countervailing duty investigations to exercise only a low-threshold test based upon the best information available to it at the time of such determination that the facts reasonably indicate that an industry in the United States could *possibly* be suffering material injury, threat thereof, or material retardation.[41]

The 45-day preliminary injury determination compressed time period was, in my view, intended by Congress to screen out those petitions where it was readily apparent, albeit based on a necessarily incomplete record, that there was no indication of possibly establishing injury even with adequate time, a thorough and fully developed investigation and record, and comprehensive hearing before the Commission. As Chairman Alberger stated in testimony on November 12, 1981, before the House Ways and means Trade Subcommittee:

> The "reasonable indication of material injury" standard is low enough that it does not force domestic industries to present more than a *prima facie* case before there is a full adjudication.

Such a standard applies equally to antidumping and countervailing duty investigations inasmuch as the statutory language is the same and given the intent of Congress for the ITC to follow the same general practices in both the antidumping and subsidy cases.

Of course, it is important to keep in mind that the Tariff Act of 1930 and its legislative history are quite clear that the "material injury" to be ascertained in these investigations is defined to mean harm which is "not inconsequential, immaterial, or unimportant".[42] Section 771(7)(B) of the Act provides factors the Commission shall consider, among other factors:

[27] Report at A–11. Of the 23 questionnaires sent, only 6 domestic producers responded. These producers account for an estimated 19 percent of total U.S. production in 1981.

[28] Report at p. A–19.

[29] Report at p. A–12. A shortage of raw potatoes was given by industry sources as the reason for the decline in production in 1980.

[30] *Id.* at p. 21.

[31] Report at p. A–24.

[32] Report at 24.

[33] Report at p. 28.

[34] *Id.*

[35] Senate Report No. 96–249, 96th Cong., 1st Sess. (88–89) 1979.

[36] *Id.* at 47.

[37] Report at 27.

[38] *Id.*

[39] Inv. No. 701–TA–3 at p. 14.

[40] Cavendish Brief at p. 29.

[41] H.R. Report No. 96–317, 96th Cong., 1st Sess., p. 52 (1979).

[42] Report on H.R. 4537 of the Senate Committee on Finance, p.88.

(i) The volume of imports of the merchandise which is the subject of the investigation,

(ii) The effect of imports of that merchandise on prices in the United States for like products, and

(iii) The impact of imports of such merchandise on domestic producers of like products.[43]

Within the context of evaluating the volume of imports of the merchandise which is subject to the investigation and its effect on prices, in assessing impact in the effected industry, the language of the statute maakes it clear that economic factors cited therein are not all-inclusive to wit: "* * * the Commission should evaluate all relevant economic factors which have a bearing on the state of the industry, including but not limited to * * *"[44] Legislative history on this point is also quite clear:

> In determining whether an industry is materially injured, as that phrase is used in the bill, the ITC will consider, to the extent premitted by information submitted to it in a timely manner, the factors set forth in section 771(7)(C) and (D) together with any other factors it deems relevant.[45]

There is also recognition in the Statute and legislative history that discretion necessarily must be given to the Commission to determine the significance to be assigned to a particular factor within the framework of other facts of each specific case.

> Neither the presence nor the absence of any factor listed in the bill can necessarily give decisive guidance with respect to whether an industry is materially injured, and the significance to be assigned to a particular factor is for the ITC to decide.[46]
>
> It is expected that in its investigation the Commission will continue to focus on the conditions of trade, competition, and development regarding the industry concerned.[47]

A word on the issue of causation is pertinent, because I feel there is some misunderstanding about just what is required by law in this crucial area in these prelminary investigations. The causation element is that material injury must be "by reason of" the subsidized or less-than-fair-value imports: the linkage language "by reason of" directing an examination of the effects of such imports on the domestic industry. Legislative history makes it clear that Congress did not intend for the Commission, in examining whether a causal link exists, to weigh the injury which might be incurred from such imports against other factors which may be contributing to the overall injury to an industry, although the Commission should take into account evidence alleging that such harm which was attributed to such imports was attributable to other factors. Moreover, the petitioner is not required to "bear the burden of proving the negative" that material injury is in fact *not caused* by such other factors. Further, the Commission is not required to make any precise mathematical calculations with respect to the harm associated by other factors.[48] Finally, to quote directly from the House Report:

> In short, the Committee does not view overall injury caused by unfair competition, such as dumping, to require as strong a causation link to unfairly competitive imports as would be required for determining the existence of injury under fair trade conditions.[49]

I would like to emphasize an important point, namely, that the Commission's charge in these *preliminary investigations* in evaluating the impact of alleged unfair imports, within the framework of the aforementioned discretion accorded it in analyzing relevant factors and establishing a causation link, must be undertaken within the less rigorous standard that the facts on the record and information available to it *reasonably indicate* that the affected domestic industry could *possibly be suffering material injury, threat thereof, or material retardation.*[50]

This less rigorous standard which was, as I have said earlier, intended by Congress in my view to be applied in a 45-day compressed time frame to screen petitions devoid of any merit where there was no indication of possibly establishing injury even with adequate time, must be applied with caution and equity, not in an aribtrary or capricious fashion, with the reasons set forth adequately documented.

Reasons for Affirmative Determination of Material Injury

The basic reasons for my determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of frozen french fried potatoes from Canada which are allegedly sold at less than fair value are the following:

1. Potatoes are generally "generic" and can be considered essentially to have "one overall demand" despite the fact that one segment of the potato market may be growing faster than other segments of the potato market, and prices for different types or styles of potatoes may vary significantly. The price of potatoes depends upon many factors such as: supply, weather, transportation costs, substitute non-potato foods, consumer diet or purchasing patterns, economic conditions, plant efficiencies, promotional costs and efforts, new uses, research and development achievements, productivity in plants or fields or yields, fertilizer costs, energy costs, packaging costs, U.S. or State governments' or foreign governments' agricultural-economic-social and other programs, buyer strength and purchasing power, marketing structures, alternative or opportunity cost beliefs or analyses, availability and utilization of transportation or other equipment and rates or price of other flexibilities of non-governmental sectors, financing or credits terms availabilities, ownership relationships within the industry. These are some of the factors which must be considered. What penetration or market shares or economies of scale or plant location criteria are to be applied is another matter. What market tactics or targets are chosen is important. What knowledge is there of what prices are offered or accepted and what does this do to the price frozen french fried potato processors are able to obtain from various types of customers or in certain markets? Frozen french fried potato processing plants operate based on certain breakeven or marginal unit levels. These levels vary from processor to processor and plant to plant of the same processor. Volume changes, even though slight, impact different processors differently, and this U.S. frozen french fried potatoes industry can be harmed significantly when one or several of these U.S. processors are materially harmed by imports of frozen french fried potatoes from Canada which are alleged to be sold at less than fair value.

Based upon the U.S. Department of Commerce determination of sufficiency of the petitioner's application, my own review of the best available price data in this 45-day preliminary investigation, opinions in previous investigations,[51] the

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[43] 19 U.S.C. 1677(7)(B).

[44] 19 U.S.C. 1677(7)(C).

[45] Report on H.R. 4537 of the Senate Committee on Finance, p.88.

[46] Id., and 19 U.S.C. 1677(7)(E).

[47] Senate report, p. 88.

[48] Report of the House Ways and Means Committee on H.R. 4537, p. 47.

[49] Id.

[50] Having found a reasonable indication of material injury by reason of these imports in this investigation, I did not reach the issue of threat.

[51] Based in part on portions of the analysis as expressed in "Views of Chairman Bill Alberger, Vice Chairman Michael J. Calhoun, and Commissioner Alfred Eckes", "Sugars and Sirups from Canada," Second Redetermination of Material Injury in Investigation No. 731-TA-3 (Final) under the Tariff Act of 1930, May 1982, pp. 5-7, and "Views of Commissioner Eugene J. Frank" "Chlorine from Canada" Determination of the Commission in Investigation No. 731-TA-90 (Preliminary) under the Tariff Act of 1930, May 1982, pp. 19-20.

above mentioned and related factors, product quality considerations and price relationships, regional market analyses and criteria [52] cumulative impacts, and other factors which when combined or cumulated render reasons to find a reasonable indication that an industry is materially injured from alleged less than fair value U.S. imports of Canadian frozen french fried potatoes. I believe this investigation is not frivolous, and should be allowed to continue in the form of a final investigation.

My following statements represent major portions of my preliminary investigation conclusions which I include in this opinion:

a. A low-threshold criteria should apply to this preliminary investigation.

b. I do not find a regional industry based on criteria which I believe apply to regional industries.[53]

c. I find a relatively inelastic demand for potatoes in general and a cyclical demand for frozen french fried potatoes. I find incremental changes downward in production can influence profits, especially when other costs are rising and national demand levels are static or declining or rising only slowly.

d. I do not reach the issues of threat or retardation of an industry as shown in footnotes[54] following the second from last paragraph of my *Overview* section above.

e. I find concentration of imports of Canadian frozen french fried potatoes price impacts and volume increases reflected in the first quarter of 1982 in particular and to a lesser extent in other quarters or years. I do not find it necessary that a protracted number of quarters or years be observed to determine in this preliminary investigation that there is a reasonable indication of material injury by reason of imports from Canada of frozen french fried potatoes which are allegedly sold at less than fair value.

f. I find other factors besides Canadian exports of frozen french fried potatoes are responsible for a decline in price, production or profits in this industry in the United States. These include the cyclical changes and other changes referred to in this point number 1. Some of these changes may relate to forward contracts to purchase potatoes from farmers or others, or to spot prices, and the timing and prices paid as reflected in these contract and processor management decisions.

g. I find that certain frozen french fried potatoes were being shipped into the United States in a large measure by Cavendish Farms, but the staff of the U.S. International Trade Commission which handled the research in this preliminary investigation advised me and my involved staff that they could not identify what quality of Canadian frozen french fried potatoes relative to U.S. frozen fried potatoes actually entered primarily into the Northeastern United States area. These unknown quality Canvendish frozen french fried potatoes competed with this local area and Northwestern U.S. area processed frozen french fried potatoes. I certainly contend: How can a low threshold not be applied in this preliminary investigation when the quality is unknown? Hence, the proper price is really unknown. Hence, there could be either a justified or an alleged less than fair value price charged. Certainly this preliminary investigation should not be aborted by such lack of data and action on incomplete data. The burden of such proofs or evidence should not rest upon the petitioner. The petitioner has already indicated several lost sales which were confirmed by Commission staff as a reasonable indicator of being one of the factors causing price suppression or price depression. On page A–28 in the Lost Sales section of the Report, it states: * * * purchasing companies advised that imported frozen french fries from Cavendish are superior to the domestic product." On the same page, it was stated that * * * was losing a customer (firm) to McCain Foods because of McCain's lower prices.[55]

h. There is evidence in the report that AKF Food prices were higher than those of McCain Foods, Inc. and Cavendish Farms, Ltd. Some of this price reaction may have been caused by efforts of McCain to meet or compete with the prices for the quality offered or sold by Cavendish. Hence, there was an indirect effect on AKF from Cavendish's export efforts to the United States in its frozen french fried potatoes sales and competition with McCain. The U.S.-based McCain Foods, Inc. is a wholly-owned subsidiary of McCain Foods, Ltd. of Canada which is one of the largest producers of frozen french fried potatoes in Canada, and competes in Canada and the U.S. with Cavendish Farms which recently has been one of the largest Canadian exporters of frozen french fried potatoes to the U.S. McCain Foods, Ltd. bought its two U.S. frozen french fried potatoes processing facilities in 1975 and 1976. Reportedly this was also in part to avoid potential future anti-dumping litigations. McCain Foods, Ltd. reportedly does not export Canadian frozen french fried potatoes to the United States. However, Cavendish Farms does compete vigorously in Canada and the U.S. with McCain Foods, Ltd. and McCain Foods, Inc.

i. I find that there is about 80% of the frozen french fried potatoes going into the food service trades. I do not draw the separate chain fast food service versus other food service or retail frozen french fried potato distinctions which are drawn by the petitioner, McCain, in this investigation. I do not distinguish between these markets, but I do realize prices are different and that there are accommodative sales to chains' distribution points in regions other than the Northeastern states. I do not find a regional market, but in this preliminary investigation the Commission did not have full costing and profit data on sales by states or regions and this in part reflects transportation to destination cost differentials.

j. I am not vitally concerned in this preliminary investigation with United States-Canadian trade balances in frozen french fried potatoes, but rather with reviewing the available data and governing, existing statutes or rules that apply to alleged less that fair value sales. I am not applying anlaysis of any subsidies as may exist on either side of the United States-Canadian border. This is an analysis of "dumping" allegations brought by the petitioner. The petitioner alleges the amount of "underselling" exceeds even the amount of decline in the value of the Canadian dollar versus the United States dollar. Recenlty, this amount for the first time in the post-World War II era declined to where less than 80 U.S. cents equaled one Canadian dollar. However, in the fourth quarter of 1981 and the first quarter of 1982, the rate of exchange was in the 80 to 85 U.S. cents equaling one Canadian dollar range. I find the rate of exchange factor and the impact does not diminish the reasonable indication in this preliminary investigation that an industry in the United States is materially injured by reason of imports of frozen french fried potatoes from Canada which are allegedly sold at less than fair value.

k. I find there is probability that chain and other food service purchasing agents or distributors or others involved in the entire frozen french fried potatoes distribution "network" are aware of prices offered and act quickly based upon this awareness to obtain whatever

[52] "Statement of Reasons of Vice Chairman Bill Alberger and Commissioner Calhoun " "Sugars and Sirups from Canada" Determination of Material Injury in Investigation No. 731–TA–3 (Final) under the Tariff Act of 1930, March 1980, pp. 3–5 and other sources.

[54] *Ibid.* and other sources.

[55] * * * indicates confidential. Much of the material on which my opinion is based relies upon the confidential data supplied by a small number of companies.

price or quality benefits they can for their distribution or sales organization or corporation. Hence, even price quotations or offers, besides actual sales, can have a rapid impact on prices, financial conditions, operating levels, and other factors which influence the viability of corporations or particular plants. The shutting of a plant in turn has an impact on the community and state in which the plant is located. For example, the planned closing of the McCain Foods, Inc. frozen french fried potatoes plant at Washburn, Maine, will idle over 100 workers according to public newspaper reports. More than just 111 direct jobs, which are extremely important, is at stake in any alleged dumping case. "Life-blood" of communities and indirect jobs, ability to supply and process food or other articles locally with reasonally assured supplies that are not "shiphoned-off" to "the highest-bidding" country during food or product shortage periods are the "factors" that the Commission must realize are involved in our opinions and decisions in such *preliminary* cases where low-threshold criteria should apply, especially in the absence of adequate data and comparisons. The Members of Congress from Maine in their May 27, 1982, letter to Mr. Mason provided information and identified their concerns. Their expressed points are cognizable comments to me.

l. I do not draw the conclusion that the shutting of the McCain Foods, Inc. food plant at Washburn, Maine did not involve the potential impacts of imports of frozen french fried potatoes from Canada for which there is a reasonable indication that an industry in the United States is materially injured by reason of imports of frozen french fried potatoes from Canada which are allegedly sold at less than fair value. No matter what public or phone comments may be stated or omitted by the U.S. or Canadian parent company, the fact remains and the record clearly shows that that McCain Foods, Inc. was a petitioner in this investigation.

m. I find there is no need in a dumping case to find a sole cause or "majority" cause factor, but rather it is sufficient to find that imports are a significant factor. This significance is evaluated not by just measuring of the market penetration level of the entire United States frozen french fried potatoes market, but by the impact of pricing by those who engage in trying to increase their market share and have an increase in quantities shipped in 1982 or change the prices offered in specific markets or distribution channels they target within the national U.S. market. Knowledge of offers or sales prices is widespread in the food industry, especially since companies want to "advertise or advise" to obtain business. If there were higher quality products shipped than was paid for, even assuming there was not a less than fair value issue relative to the earlier "assumed" or "stated" products, then this could be a form of unintentional or intentional "underbilling" on the shipment(s) and it could be a form of less than fair value import if all Canadian costs were not included for some reason or if different, unjustified pricing took place in the U.S. than in Canada or if other conditions applied.

n. I am not relying on capacity changes or capacity utilization rates except as these influence price possibilities and profits of U.S. producers and are related to research and development and capital spending opportunities and are influenced by imports of frozen french fried potatoes from Canada which are allegedly sold at less than fair value.

o. I understand that U.S. Producer Price Indexes as related to this and other investigations do not necessarily consider all discounts offered by food processors or other corporations.

p. I realize that in a "rushed" 45-day preliminary investigation there is a potential for sampling or research bias in selecting companies to be contacted or sources and information to be researched or presented. I do not state such a bias definitely existed in this case, either intentionally or unintentionally, but in my opinion it is more possible in a preliminary investigation for such biases to exist.

q. In my opinion, there is evidence that indicates Cavendish Farms has recently and frequently been a "price leader" and conditions in Canada and other Canadian export marketing areas—other than the United States—caused the respondent to seek markets in the United States on a sustained marketing effort and in areas which may represent new target areas for increased efforts. A final investigation, if it was carried out, could confirm such evidence and whether my opinion is well-founded and if there is merit in any charges regarding the less than fair value imports of frozen french fried potatoes from Canada.

r. I realize there has been testimony and other information indicating there are some whole or partial ownership relationships and potential antagonisms between different, outside the Commission, groups involved in this investigation. These outside groups were either in support of or against the petition. This has not altered my opinion.

2. Although, the volume of imports of frozen french fried potatoes from Canada has been and is small in percentage terms, I conclude there is a reasonable indication that such a volume of imports because of the nature of the market is not insignificant or *de minimus* in its impact on the national U.S. frozen french fried potato industry. I determine that there is a reasonable indication that this industry is materially injured by reason of imports of frozen french fried potatoes from Canada which are allegedly sold at less than fair value.

3. Point number 1 above has discussed my opinion of the impacts of imports of frozen french fried potatoes from Canada which are allegedly sold at less than fair value relative to the effect of such imports of that merchandise on prices in the United States for like products. It is sufficient to add at this point that frozen french fried potatoes are considered as like product despite different quality standards that apply in the United States and Canada and this investigation failed reasonably to assure just what quality of frozen french fried potatoes were and are being imported from Canada. The impacts of these imports from Canada of such frozen french fried potatoes has not been insignificant, inconsequential, immaterial or unimportant on domestic producers of like product—in some significant portion of the industry—in such measured areas as: profits, cash flow, capital spending, research and development spending capabilities, capacity utilization rates, employment and wage matters (including hours worked) or other areas which I conclude are important.

I conclude that this preliminary investigation is not based on *de minimus* levels of imports and impacts of frozen french fried potatoes from Canada. A low-threshold test should apply and a final investigation should result. Such a final investigation will allow clarification and resolution of important omission of data and other factors which I believe should be resolved. I determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of frozen french fried potatoes from Canada which are allegedly sold at less than fair value.

By order of the Commission.

Issued: June 14, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-16980 Filed 6-22-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-92 (Preliminary)]

Stainless Steel Sheet and Strip From West Germany

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from West Germany of stainless steel sheet and strip, provided for in items 607.7610, 607.9010, 607.9020, 608.4300, and 608.5700 of the Tariff Schedules of the United States Annotated, which are alleged to be sold, or likely to be sold, in the United States at less than fair value (LTFV).[2]

Background

On April 26, 1982, petitions were filed with the Commission and the Department of Commerce by members of the Tool and Stainless Steel Industry Committee[3] and the United Steelworkers of America alleging that imports of stainless steel sheet and strip from West Germany are being, or are likely to be, sold in the United States at LTFV within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673). Accordingly, effective April 26, 1982, the Commission instituted preliminary antidumping investigations under section 733(a) of the Act (19 U.S.C. 1673b(a) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise from West Germany.

Notice of the institution of the Commission's investigation and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** of May 5, 1982 (47 FR 19488). The conference was held in Washington, D.C. on May 17, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Views of the Commission

Introduction

After considering the record in this investigation, we determine, pursuant to section 733(a) of the Tariff Act of 1930, that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury[4] by reason of imports of stainless steel sheet and strip from the Federal Republic of Germany which are allegedly being sold or are likely to be sold at less than fair value. Our determination is based primarily upon the deteriorating condition of the domestic industry, the growing market share of imports of West German sheet and strip, and the preliminary indications of underselling by these imports.[5]

In the following analysis, we first define the domestic industry, then examine the state of the domestic industry in terms of the relevant economic indicators. Finally, we consider the causal relationship between the state of the domestic industry and the allegedly dumped imports from West Germany.

Domestic Industry

Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."[6] Section 771(10) defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with" the article under investigation.[7]

The products being imported are stainless steel[8] sheet and strip. These are flat-rolled stainless steel products produced by passing slabs or sheet bars through a series of reducing rolls on continuous or hand mills. They are principally used in applications requiring resistance to oxidation and/or corrosion and are produced with a wide range of tolerances and finishes, depending on application. Stainless sheet and strip are generally considered to be finished products.

Stainless steel sheet and strip products imported from West Germany and domestic products of the same grades and specifications are essentially identical in metallurgical composition, sizes, and quality. There are generally no stainless steel products that are imported from West Germany that are not produced by domestic producers.[9] Nor generally are there stainless steel products that are imported from West Germany that are not produced in sufficient quantity by domestic producers to satisfy consumer demand within the United States.[10]

Stainless steel sheet is often fabricated into food processing equipment, chemical fertilizer tanks, liquid gas storage tanks, hospital equipment, and various defense applications. Stainless steel strip is used in automobiles, appliances, industrial equipment and various defense applications.[11]

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure [19 CFR 207.2(i)].

[2] Chairman Alberger and Commissioners Frank and Haggart determine that there is a reasonable indication that an industry in the United States is materially injured by reason of the subject imports.

[3] Member firms included Allegheny Ludlum Steel Corp., Armco Inc., Carpenter Technology Corp., Colt Industries, Inc. (Crucible Materials Group), Eastern Stainless Steel Co., Guterl Special Steel Corp., Jones & Laughlin Steel, Inc., Republic Steel Corp., Universal-Cyclops Speciality Steel Division, Cyclops Corp., and Washington Steel Corp.

[4] Chairman Alberger and Commissioner Haggart, having found material injury, do not reach the issue of threat of material injury.

[5] Commissioner Frank notes that the statute and legislative history require the Commission in its preliminary determinations in both antidumping and countervailing duty investigations to exercise only a low threshold test based upon the best information available to it at the time of such determination that the facts reasonably indicate that an industry in the United States could possibly be suffering injury, threat thereof or material retardation. H.R. Rep. No. 96-317, 96th Cong., 1st sess., 52 (1979).

[6] 19 U.S.C. 1677(4)(A).

[7] 19 U.S.C. 1677(10).

[8] Stainless steel is an alloy steel containing by weight less than 1 percent of carbon and over 11.5 percent of chromium. Although the alloy mix generally includes nickel, molybdenum, and manganese, which improve its performance under chemical or temperature stress, it is primarily the addition of chromium swhich makes the product corrosion resistant.

[9] Respondent Krupp Specialty Steel Corp. maintains that the production program of the largest stainless steel producers (Allegheny, Jones & Laughlin and Republic) does not show items thinner than .015" in a width over 36" wide, whereas the West German mills produce and export these items. (Respondents' Post-Conference brief, Appendix B at 1.) The Commission does not, at this time, have sufficient information upon which to evaluate this argument. However, if this case returns for a final determination, we will explore this assertion further.

[10] Respondent Krupp Specialty Steel Corporation (Krupp) maintains that only one U.S. producer, Republic, can produce 60" cold-rolled sheet, which is used exclusively in the production of holding tanks. Krupp characterizes the demand for this product as "ever-expanding," and states that it is "questionable" whether this one domestic producer could meet this demand. Krupp also maintains that its customers for the 60" cold-rolled sheet buy a percentage of their requirements from foreign mills as a hedge against strikes and "Acts of God." Respondents' Post-Conference Brief, Appendix B at 3. The Commission does not have sufficient information upon which to evaluate this claim at this time. However, if this case returns for a final determination, the Commission will explore this assertion further.

[11] Staff Report at A-7.

Sheet and strip[12] are metallurgically identical, and both are under 0.1875 of an inch in thickness. The only difference between sheet and strip is width. Sheet is 24 inches or wider, whereas strip is less than 24 inches in width.[13]

Strip is often produced by "slitting," or slicing sheet at one of the last stages in the production process. Although certain producers manufacture both sheet and strip on the same mill equipment,[14] other mills produce only strip. Many service center customers purchase sheet which they themselves slit into strip. Most of the petitioners produce both sheet and strip.[15]

Sheet and strip can be further differentiated. Both can be produced as hot-rolled or cold-rolled products. Hot-rolled sheet and strip are primarily an intermediate product that is used to produce cold-rolled sheet and strip. Cold-rolled sheet or strip is hot-rolled sheet or strip that is subjected to the additional steps of pickling, high pressure rolling, and annealing to attain more uniform dimensions and a smoother surface.

Stainless steel sheet and strip are predominantly cold-rolled. Hot-rolled stainless steel sheet and strip as a finished product accounts for only approximately 5 percent of total domestic production of stainless steel sheet and strip and the same percentage of imports from West Germany. The information available to the Commission indicates that the uses for hot-rolled and cold-rolled sheet and strip overlap.[16] Moreover, some of the hot-rolled sheet and strip which is sold as a finished product is purchased for subsequent re-rolling, including cold-rolling.

Based on the data presently available, no meaningful distinctions are evident between the characteristics and uses of the finished hot-rolled product and the cold-rolled product.[17] Therefore, for the purposes of this preliminary determination, we determine that the like product is all stainless steel sheet and strip, whether hot-rolled or cold-rolled, and that the domestic industry is composed of the producers of stainless steel sheet and strip.[18]

Cumulation [19] [20]

Petitioners alleged that imports of West German stainless sheet and strip alone are the cause of material injury to the domestic industry. However, petitioners have also taken the position that the Commission should: (1) Cumulate the allegedly less than fair value imports of French stainless steel sheet and strip which are subject to a preliminary investigation currently pending before the Commission; and (2) cumulate all allegedly unfair like product imports from those countries under investigation by the Office of U.S. Trade Representatives under section 301 of the Trade Act of 1974, as amended.[21]

We have not cumulated in making an affirmative determination in this investigation.[22] However, we believe that the cumulation issues petitioners have raised should be addressed, particularly because the same arguments may otherwise be raised in future proceedings before the Commission.

(1) *Cumulation of allegedly LTFV imports from France prior to Commission consideration of the French case.* Petitioners filed an antidumping petiton against French stainless steel sheet and strip producers on May 10, 1982. The preliminary conference took place June 7, with the Commission vote scheduled on June 17. Petitioner's suggestion that we cumulate the imports from France with the imports from West Germany presents not only procedural and administrative problems, but risks running afoul of the basic statutory framework within which the Commission must operate. First, we note that Title VII of the Tariff Act of 1930 imposes upon the Commission a very strict statutory deadline of 45 days in preliminary investigations. Given this deadline, petitioner's filing of the French case two weeks after the West German case has made it impossible for us to make a determination on the two preliminary investigations concurrently. Second, we are required to base our determinations on the information on the record of the investigation. In this connection, the Commission voted on the West German investigation before the respondents in the French case had an opportunity to present their views to the Commission staff, and before the Commission staff was able to provide the Commission with its report on the French investigation. If, in this preliminary investigation, we were to take into account the imports from France in assessing the impact of the imports from West Germany, we would be basing our decision largely on the unevaluated and unrebutted allegations of the petitioners. Under these circumstances, any cumulation of imports from France with those from West Germany would be contrary to basic principles of administrative fairness regarding notice, hearing and record requirements.[23]

(2) *Cumulation of stainless steel sheet and strip imports from countries designated in a section 301 investigation.* Upon petitioners' request, the U.S. Trade Representative's office has initiated an investigation pursuant to section 301 of the Trade Act of 1974 [24] to determine whether certain countries (France, Italy, Austria, Sweden and the United Kingdom) have bestowed domestic subsidies upon their specialty steel industries. Petitioners maintain that they have no immediate plans to file countervailing duty petitions with the Commission regarding these cases, but reserve their right to do so in the future.

Petitioners supplied figures to use on imports of stainless steel sheet and strip from each of the countries subject to the

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[12] Hereinafter, the terms "sheet" or "strip" refer to stainless steel sheet and strip.

[13] This is the American Iron and Steel Institute (AISI) standard. The TSUSA defines sheet as having a minimum width over 12 inches, and strip as having a maximum width under 12 inches. The West German standard for strip is equivalent to less than 9 inches. Report at A-5.

[14] The term "mill" refers to one piece of equipment or series of pieces of equipment that produce a certain product. Within one stainless steel plant, there may be several mills, each producing a different product or products.

[15] Report at A-9. Guterl and Jessop produce sheet but not strip. Carpenter Technology Corp. produces strip but not sheet. Petition at 6.

[16] Conference Transcript at 50.

[17] In the carbon steel investigations, hot-rolled and cold-rolled sheet and strip were treated for the purposes of our preliminary determinations as two industries. (*Certain Steel Products from Belgium, Brazil, France, Italy, Luxembourg, The Netherlands, Romania, The United Kingdom, and West Germany*, USITC Publications 1221 and 1226, February 1982.) For the reasons mentioned above in this stainless steel investigation such as differentiation does not appear to be appropriate.

[18] We emphasize that the definition of the domestic industry in this preliminary investigation is based on the information now available. Based on the record developed in any final investigation, a different defnition of the domestic industry is not precluded.

[19] Commissioners Eckes and Haggart made their determination regarding the impact of the alleged LTFV imports from West Germany on a case-by-case basis, and do not reach the further issues of cumulation raised for discussion in this opinion.

[20] Commissioner Frank did not reach either of the cumulation issues raised by petitioners in making his determination in this preliminary investigation. However, he does not join in this discussion and determinations therein on these cumulation issues inasmuch as in his view these issues have not been completely resolved at this time. He would invite further arguments on these issues from pertinent parties to this investigation should they wish to profer them in the event this case returns for final investigation.

[21] Petitioners' Post-Conference Brief at 12-17.

[22] Chairman Alberger agrees with the conclusions reached but does not join the following discussions.

[23] Commissioner Stern further notes that, in any case, the practice of cumulation is discretionary and is only appropriate when it has been demonstrated that "the factors and conditions of trade in the particular case show its relevance to the determination of injury." (See Views of Chairman Alberger, Vice Chairman Calhoun and Commissioners Stern and Eckes in the investigations of Certain Steel Products * * * USITC Pub. 1221, February 1982.)

[24] 19 U.S.C. 2411.

section 301 investigation. They also asked the Commission to consider these allegedly subsidized imports in assessing injury in this antidumping investigation. We note that petitioners have also requested the Commission to cumulate these imports in assessing injury in *Stainless Steel Hot-rolled Bar, Stainless Steel Cold-formed Bar, and Stainless Steel Wire Rode from Spain,* Inv. Nos. 701–TA–176 through 178 (Preliminary), subsidy investigations.

Of course, the Commission may consider all relevant factors and conditions of trade in making a determination. As petitioners point out, information regarding other imports of the products under investigation is relavent to the evaluation of the strength of the domestic industry. However, there is no material injury requirement in a section 301 case and the practice complained of need not necessarily fall within the purview of title VII. Therefore we believe that it is inappropriate to make a determination in an antidumping or a countervailing duty investigation based upon the cumulation of imports from countries designated in a section 301 proceeding.

Reasonable Indication of Material Injury

Section 733(a) of the Tariff Act of 1930 provides that the Commission shall make a determination based on the best information available to it. Section 771(7) directs the Commission to consider, among other factors, (1) the volume of imports of the merchandise under investigation, (2) the effect of imports of that merchandise on prices in the United States for like products, and (3) the impact of imports of such merchandise on domestic producers of like products.

The domestic stainless steel sheet and strip industry is experiencing difficulties. The industry's production, shipments, capacity utilization, and employment have declined since 1979. The production of firms that submitted usable data[25] fell from 728,000 short tons in 1979 to 671,000 tons in 1981. Production for the first quarter of 1982 declined to 130,000 tons as compared with 188,000 tons in the first quarter of 1981.[26] Similarly, net shipments declined by 13 percent from 874,000 tons in 1979 to 759,000 tons in 1981. Shipments in the first quarter of 1982 were 148,000 tons as compared with 207,000 tons for the same period in 1981.

[25] Report at A–12. These firms accounted for about 90 percent of the total shipments of stainless steel sheet and strip in 1981 as reported by the American Iron and Steel Institute.

[26] *Id.*

Capacity utilization rates fell from 83.8 percent in 1979 to 70.6 percent in 1981. In the first quarter of 1982, the capacity utilization rate fell to 51.6 percent, as compared to a rate of 81.7 percent for the first quarter of 1981.[27] Although capacity to manufacture increased by 9 percent form 1979 to 1981, the increase does not fully account for a decline in utilization.[28] Utilization of melting capacity for stainless steel has also steadily declined from 83 percent in 1979 to 64 percent in 1981. It was 53 percent for the first quarter of 1982 as compared with 77 percent for the first quarter of 1981.[29]

Employment figures also declined during this period. The average number of production and related workers engaged in producing stainless steel sheet and strip declined from 7,965 in 1979 to 7,288 in 1981. Other relevant factors, including the average number of workers employed and the average number of hours paid for production and related workers, also registered declines during this period.

Financial indicators for sheet and strip production also presented a negative trend. Gross profits, operating profits, net profits before taxes, and cash flow all declined steadily—if not precipitously—between 1979 and 1981.[30] Operating profits fell from $175 million in 1979 to $19 million in 1981 and interim 1982 figures show a loss. Aggregate net sales [31] declined by 13 percent between 1979 and 1980, increased by 10 percent between 1980 and 1981, and fell by 27 percent in the first quarter of 1982 compared with the corresponding period in 1981.[32] The ratio of operating profit to net sales fell from 13.7 percent in 1979 to 1.6 percent in 1981.[33] The ratio of net operating profit to net sales declined from a profit of 1.5 percent in the first quarter of 1981 to a loss of 13.8 percent in the first quarter of 1982.[34]

Volume of Imports

As the condition of the domestic industry deteriorated and its share of the U.S. market declined, the volume of imports of stainless steel sheet and strip from West Germany rose during 1979–1981 both in absolute and relative terms.[35] West Germany became the largest foreign supplier of stainless steel sheet and strip to the U.S. market in 1981 and in 1982 it maintained this position.

Imports from West Germany fell from 3,844 tons in 1979 to 305 tons in 1980,[36] then increased to 15,489 tons in 1981. Imports in January–March 1982 amounted to 7,001 tons compared to 1,173 tons for the first quarter of 1981, a 500 percent increase. The ratio of imports from West Germany to apparent U.S. consumption was 0.4 percent in 1979, 0.1 percent in 1980, 2.0 percent in 1981, and 4.1 percent in the first quarter of 1982, as compared with 0.6 percent in the first quarter of 1981.

Effect of Imports on Prices

The information currently available to the Commission on prices is limited. There are, however, indications that imports from West Germany undersold the domestic product. The Commission investigation revealed margins of underselling for certain imports from West Germany during the period under investigation ranging from 5 percent to 30 percent.[37] Contacts with purchasers revealed an instance, in the last quarter of 1981, in which the price of stainless sheet was 30 to 35 percent lower than that available from domestic mills.[38]

There are some indications of sales lost by domestic producers to imports from West Germany. It was confirmed that four sales totalling 850 tons were lost to imports from West Germany on the basis of price.[39]

Reasonable Indication of a Threat of Material Injury [40]

The issue of whether there is a reasonable indication of a threat of material injury turns on the "likelihood of a particular situation developing into actual material injury."[41] The threat must be real and the injury imminent, not a mere possibility based on supposition and conjecture. In examining threat of material injury, the Commission looks for, among other factors, demonstrable trends in the

[27] *Id.*

[28] *Id.*

[29] *Id.* at A–13.

[30] *Id.* at A–18.

[31] Financial data was received from 8 U.S. producers on their stainless steel sheet and strip operations. These producers accounted for 85 percent of U.S. production in 1981. Report at A–16.

[32] Id. at A–19.

[33] *Id.*

[34] *Id. at A–18.*

[35] *Id.* at A–25.

[36] Imports of stainless steel sheet and strip, as well as other stainless steel products, were subject to quantitative restrictions from June 1976 to February 1980. Although 1979 was the last full year that the quota was in effect, the practice of entering as much material as possible at the beginning of the quota year forced foreign producers to find other markets after the quota was filled. This practice, in conjunction with declining U.S. demand and strong foreign demand, is believed to account for the decline in imports in 1980. Report, at A–25.

[37] *Id.* at A–38.

[38] *Id.* at A–41.

[39] *Id.* at A–40.

[40] *See* note 1.

[41] H.R. Rep. No. 96–317, 96th Cong., 1st Sess. 47 (1979).

following areas: (1) Rates of increase of the allegedly dumped exports to the U.S. market; (2) importers' inventories; (3) capacity in the exporting country to generate exports; and (4) the likelihood that such imports will be directed to the U.S. market taking into account the availability of other markets.[42]

The steadily increasing rate of West German imports, both in absolute terms and in terms of the ratio of West German imports to domestic consumption, has already been noted. This is seen even more clearly in an examination of quarterly imports penetration data for 1981 and 1982. In nearly every quarter, imports penetration by the alleged LTFV imports has increased.[43]

Importers' inventories of stainless steel sheet and strip imported from West Germany were well above 1,000 tons in December 1981 and were sustantially higher than inventories reported in previous years. In addition, inventories reported in March 1982 were almost double those reported in Decmeber 1981 and nearly eleven times greater than those reported in March 1981.

Importers alleged that the "Buy American" procurement provisions of the Department of Defense Appropriations Act [44] and the Urban Mass Transportation Act of 1978 [45] substantially restrict further exports from West Germany to the U.S. market.[46] Preliminary research indicates that the Department of Defense (DOD) during the years 1977–82 has had substantial authority to waive such provisions with respect to NATO allies. DOD estimates that in 1980, a year in which the waiver provisions were in effect, DOD and U.S. defense contractors used only 2 to 4 percent of the total U.S. specialty metals industry output, of which sheet and strip are just a part.[47] Thus, it appears that, whatever restrictions are placed on the market share for imports from West Germany by these provisions, they are not substantial. Although less information is known regarding the impact of the Urban Mass Transportation Act, it, too, is not a blanket restriction on foreign imports. It includes several exemptions, including one that exempts projects if the cost overrun resulting from the use of domestic products exceeds 10 percent.[48] Thus, the Urban Mass Transportation Act, also, does not appear to be a substantial bar to the ability of imports from West Germany to increase market shares in these markets.

Conclusion

Therefore, on the basis of the best available information, we determine that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of stainless steel sheet and strip from West Germany.

By order of the Commission.

Issued: June 10, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-16975 Filed 6-22-82; 8:45 am]

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[Investigations Nos. 701-TA-176 through 178 (Preliminary)]

Hot Rolled Stainless Steel Bar, Cold-Formed Stainless Steel Bar, and Stainless Steel Wire Rod From Spain

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the following products which are alleged to be subsidized by the Government of Spain:

Hot-rolled stainless steel bar [2] (investigation No. 701–TA–176 (Preliminary)), [3]

Cold-formed stainless steel bar [4] (investigation No. 701–TA–177 (Preliminary)); [3], and

Stainless steel wire rod [5] (investigation No. 701–TA–178 (Preliminary)).[6]

Background

On February 17, 1982, petitions were filed with the Department of Commerce by counsel for Al Tech Specialty Steel Corp., Armco Stainless Steel Division, Carpenter Technology Corp., Colt Industries (Crucible Materials Group), Cyclops Corp., Guterl Special Steel Corp., Joslyn Stainless Steels, and Republic Steel Corp. alleging that producers, manufacturers, or exporters in Spain of hot-rolled stainless steel bar, cold-formed stainless steel bar, and stainless steel wire rod receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303). Although Commerce subsequently initiated countervailing duty investigations on such merchandise under section 303, Spain was not at that time a "country under the Agreement" within the meaning of section 701(b) of the Act (19 U.S.C. 1671(b)), and there was no requirement for the Commission to conduct preliminary injury investigations pursuant to section 703(a).

On April 14, 1982, the United States Trade Representative announced that Spain had become a "country under the Agreement" (47 FR 16697). On April 26, 1982, Commerce notified the Commission that it was terminating its investigations under section 303 and commencing investigations under section 702. Accordingly, effective April 26, 1982, the Commission, pursuant to section 703(a) of the Act (19 U.S.C. 1671b(a)), instituted preliminary countervailing duty investigations to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Spain of the merchandise which is the subject of the investigations by the Department of Commerce.

Notice of the institution of the Commission's investigations and of a conference to be held in connection

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[42] Should this case return for a final investigation, we hope to obtain information concerning West German capacity to generate exports and the likelihood that such exports will be directed to the United States.

[43] Report at A–11.

[44] 32 CFR Para. 6–300–303 (xi) DAC No. 76–25.

[45] 26 U.S.C. 1602.

[46] Commissioner Eckes did not consider the impact of "Buy America" policies in his analysis of future import levels. See generally the Views of Commissioners Eckes, Frank and Haggart in *Sugar From The European Community*, Inv. No. 104–TAA–7 (May 1982).

[47] 128 Cong. Rec. 55189 (May 13–14), remarks of Senator Tower.

[48] See note 40.

[1] The record is defined in § 207.2(i) of the Commission's rules of practice and procedure (19 CFR 207.2(i)).

[2] For purposes of these investigations, hot-rolled stainless steel bar is provided for in item 606.9005 of the Tariff Schedules of the United States Annotated (TSUSA).

[3] Chairman Alberger and Commissioners Eckes and Haggart determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of the subject imports. Commissioner Frank determines that there is a reasonable indication that an industry in the United States is materially injured by reason of the subject imports.

[4] For purposes of these investigations, cold-rolled stainless steel bar is provided for in item 606.9010 of the TSUSA.

[5] For purposes of these investigations, stainless steel wire rod is provided for in items 607.2600 and 607.4300 of the TSUSA.

[6] Chairman Alberger and Commissioners Frank and Haggart determine that there is a reasonable indication that an industry in the United States is materially injured by reason of the subject improts.

therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the Federal Register of May 5, 1982 (47 FR 19487). The conference was held in Washington, D.C., on May 19, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Views of the Commission

Introduction

After considering the record in these investigations, we determine, pursuant to section 703(a) of the Tariff Act of 1930, that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of stainless steel hot-rolled bar, cold-formed bar,[7] and wire rod[8] from Spain which are alleged to be subsidized by the Government of Spain.[9] [10]

Standards for Determination

In making a determination as to whether there is material injury, the Commission is required to consider, among other factors: (1) The volume of imports; (2) the effect of imports on domestic prices for like products; and (3) the impact of imports on the domestic industry.[11]

In making a determination as to whether there is a threat of material injury, the Commission considers, among other factors: (1) The rate of increases of subsidized or dumped imports into the U.S. market, (2) the capacity in the exporting country to generate exports, and (3) the availability of other export markets.[12] Findings of a reasonable indication of threat of material injury must be based on a showing that the likelihood of harm is real and imminent, and not on mere supposition, speculation, or conjecture.[13]

Domestic Industry

Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."[14] Section 771(10) defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses" with the article under investigation."[15]

The imported articles under investigation are stainless steel hot-rolled bar, stainless steel cold-formed bar, and stainless steel wire rod. Stainless steel bars[16] are semifinished products that have numerous applications in the manufacture of such items as pump shafts, ball bearings, automotive parts, and medical instruments.[17]

Hot-rolled stainless steel bar is produced from stainless steel billets in a rolling mill. Unlike hot-rolled stainless steel sheet, a significant amount of hot-rolled bar is sold as a finished product.[18] In comparison to cold-formed bar, much hot-rolled bar is a flat bar product. The principal applications of hot-rolled bar are in the manufacture of turbines, and industrial equipment.[19]

Cold-formed bar is a refinement of the hot-rolled product that is of higher quality, both in terms of finish and tolerances.[20] Therefore, cold-formed bar has several applications that hot-rolled bar is not suitable for, such as airplane landing gears and boat propeller shafts.[21] As a refinement of the hot-rolled product, cold-formed bar is more expensive.[22]

Stainless wire rod is a semifinished, hot-rolled product that is round in cross section, between 0.20 inch and 0.74 inch in diameter, and, unlike the bar products, is produced in coils.[23] The manufacture of stainless rod requires specialized equipment and manufacturing processes that are different from those used to produce bar.[24] Wire rod is used primarily in the manufacture of stainless steel wire and fasteners.[25]

On the basis of the information available, we have determined that there are three domestic products like the imported products that are subject to these investigations. Each of the three stainless steel products under investigation is fungible with the corresponding product of the domestic manufacturers. Separate data are available for each of the three products, allowing the Commission to examine the impact of imports on each group separately. Accordingly, we determine that there are three separate domestic industries consisting of the domestic producers of each like product.

We emphasize that the definitions of the industries in these preliminary investigations are based on the best information now available. We do not preclude the possibility of defining the domestic industries differently in any final investigation.

Hot-Rolled Stainless Steel Bar

Condition of the Domestic Industry

The condition of the domestic stainless steel hot-rolled bar industry has been deteriorating since 1979, and

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[7] Chairman Alberger and Commissioners Eckes and Haggart determine that there is a reasonable indication of threat of material injury, and Commissioner Frank determines that there is a reasonable indication of material injury by reason of imports of stainless steel hot-rolled bar and cold-formed bar from Spain which are alleged to be subsidized by the Government of Spain. Commissioner Frank did not reach the issue of threat of material injury.

Commissioner Stern notes that her vote language of "material injury or threatened with material injury" repeats the statutory language of sec. 703(a). Her analysis that the domestic hot-rolled and cold-formed stainless steel bar industries are threatened with material injury differs in no significant respect from that of her colleagues, Chairman Alberger and Commissioners Eckes and Haggart.

[8] Chairman Alberger and Commissioners Frank and Haggart determine that there is a reasonable indication of material injury, and therefore do not reach the issue of reasonable indication of threat of material injury.

Commissioner Stern notes that her vote language of "material injury or threatened with material injury" repeats the statutory language of sec. 703(a). Her analysis that the domestic stainless steel wire rod industry is materially injured differs in no significant respect from that of her colleagues, Chairman Alberger and Commissioners Frank and Haggart.

[9] Petitioners argue that, in determining whether a reasonable indication of injury or threat of injury exists, the Commission may cumulate allegedly subsidized imports from other countries which are currently the subject of an investigation under section 301 of the Trade Act of 1974. Chairman Alberger, Vice Chairman Calhoun and Commissioner Stern do not find it appropriate to cumulate imports that are not subject to an antidumping or countervailing duty investigation as provided under the Trade Act of 1930.

Commissioners Eckes, Frank and Haggart made their determinations regarding the impact of the alleged subsidized imports from Spain on a case-by-case basis, and do not reach the issue of cumulation.

Commissioner Frank's view is that this issue has not been completely resolved. He would invite further arguments on this issue from the pertinent parties to these investigations should they wish to proffer them in the event these cases return for final investigation.

[10] Commissioner Frank notes that the statute and legislative history require the Commission in its preliminary determinations in both antidumping and countervailing duty investigations to exercise only a low threshold test based upon the best information available to it at the time of such determination which reasonably indicates that an industry in the United States could possibly be suffering injury, threat thereof or material retardation. H.R. Rep. No. 96-317, 96th Cong., 1st sess., 52. (1979).

[11] 19 U.S.C. 1677(7)(B).

[12] 19 CFR 207.26(d).

[13] S. Rep. No. 96-249, 96th Cong., 1st Sess. 88-89 (1979); S. Rep. No. 1298, 93d Cong., 2d Sess. 180 (1974); Alberta Gas Chemicals, Inc. v. United States, 515 F. Supp. 780, 790 (Ct. Int'l Trade 1981).

[14] 19 U.S.C. 1677(4)(A).

[15] 19 U.S.C. 1677(10).

[16] For the definition of stainless steel bars, see Report at A-6.

[17] *Id.* at A-9.

[18] Transcript of conference, pp. 55-56.

[19] *Id.*

[20] Report at A-7.

[21] *Id.* at A-6, A-7.

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.* at A-11.

this downward trend quickened in the first quarter of 1982. Domestic production of hot-rolled bar declined by 13 percent between 1979 and 1981,[26] a drop considerably greater than the 8 percent decline in U.S. consumption for this period.[27] The first quarter of 1982 resulted in a decline of over 25 percent from the comparable 1981 quarter.[28] Domestic shipments also declined during this period,[29] and end-of-period inventories reached a level in 1981 equivalent to 25 percent of producers' 1981 shipments.[30]

Utilization of hot-rolled bar capacity also declined steadily, from 67 percent in 1979 to 57.1 percent in 1981. It plummeted to 43 percent for the first quarter of 1982, as compared with 57.6 percent for the first quarter of 1981.[31]

Employment patterns also evidenced a steadily negative trend. The average number of production and related workers producing hot-rolled bar declined 6 percent between 1979 and 1981, and fell 18 percent in the first quarter of 1982 compared with the first quarter of 1981.[32] The number of hours paid—a more accurate indicator of loss of employment in an industry with reduced hours and furloughs—fell by 14 percent between 1979 and 1981, and by 23 percent during the first quarter of 1982 as compared to the first quarter of 1981.[33]

The ratio of operating profit to net sales was relatively stable, moving from 9.1 percent in 1979 to 9.6 percent in 1981.[34] However, the figures for the first quarter of 1982 indicate a rapidly deteriorating position. All financial indicators, including sales, gross profits, the ratio of operating profit to net sales, net profits before taxes, and cash flow, fell dramatically compared with figures for the first quarter of 1981.[35] For example, the ratio of operating profit to net sales declined to 5.9 percent from 7.6 percent.[36]

The aggregate figures mask significant losses that have been experienced on an individual producer basis. Two of the domestic producers reported operating losses in 1980 and 1981. In the first quarter of 1982, the number rose to four.[37] Thus, half of the industry is currently experiencing losses.

Material Injury or Threat of Material Injury [38]

Imports of hot-rolled bar from Spain totalled 766 tons in 1981.[39] Quarterly data indicate that imports of hot-rolled bar from Spain have increased steadily since the first quarter of that year.[40] Imports for the first quarter of 1982 jumped to 314 tons, as compared with 15 tons for the same quarter in 1981.[41]

In addition, the ratio of imports from Spain to domestic consumption increased from 1.2 percent in 1980 to 1.7 percent in 1981, and in first quarter of 1982, the ratio jumped to 2.4 percent as compared with 0.1 percent in the first quarter of 1981.[42] Quarterly figures also reveal an upward trend for import penetration ratios starting from the first quarter of 1981.[43] In contrast, domestic producers' market share has dropped 6.2 percentage points from 1980 through the first quarter of 1982. Furthermore, during the first quarter of 1982, inventory levels of hot-rolled bar from Spain almost doubled as compared with the first quarter of 1981.[44]

Spain's export orientation is also very strong. The United States is Spain's second largest export market for stainless steel bar.[45] In 1981, 56 percent of Spanish stainless steel bar [46] production was exported, 22.3 percent of it to the United States.[47]

In addition, there are indications that the United States has become an increasingly attractive market for Spanish exports of stainless steel bar. Stainless steel bar exports to the United States increased from 3,600 tons in 1979 to 3,700 tons in 1980, then jumped to 6,500 tons in 1981.[48] Spain's production of bar products increased by 21 percent between 1980 and 1981.[49] Spain's exports of bar to the EC, its largest export market, decreased by 30 percent, and its exports of bar to all other countries (except the United States) decreased by 43 percent in this period.[50] Spain's exports of bar to the United States, however, increased by 43 percent.[51] Thus, an increasing share of Spanish exports of bar is being exported to the United States.

Furthermore, responses by purchasers indicate that the margins by which Spanish hot-rolled bar undersells the domestic product are large.[52] However, as importers did not provide price data for Spanish imports of this product, the Commission could not make specific price comparisons at this time. We anticipate developing more information on underselling and lost sales should we conduct a final investigation.[53]

Conslusion

Our investigation reveals a recent dramatic increase in imports of hot-rolled bar from Spain, indications that the domestic stainless steel hot-rolled bar industry is experiencing serious economic problems, and information confirming that hot-rolled bars from Spain are underselling the domestic product by wide margins. Therefore, we find that there is a reasonable indication that the domestic stainless steel hot-rolled bar industry is materially injured or threatened with material injury [54] by reason of allegedly subsidized imports of hot-rolled stainless steel bar from Spain.

Cold-Formed Stainless Steel Bar

Condition of the Domestic Industry

The condition of the domestic stainless steel cold-formed bar industry is rapidly deteriorating. Domestic production of cold-formed bar declined by 19 percent between 1979 and 1981.[55] Domestic shipments also declined by 21 percent during this period,[56] with end-of-period inventories increasing from a level equivalent to 27 percent of

[26] Report at A-16 (Table 8).
[27] *Id.* at A-13.
[28] *Id.* at A-16.
[29] *Id.* at A-17.
[30] *Id.* at A-19.
[31] *Id.* at A-16.
[32] *Id.* at A-21 (Table 11).
[33] *Id.*
[34] *Id.* at A-23 (Table 13).
[35] *Id.*
[36] These figures are based on the ratio of operating profit to net sales figures provided in Table 13 of the Staff Report as adjusted in the confidential memorandum from the Director, Office of Investigations, to the Commission dated June 3, 1982, at 2 (INV-F-073).
[37] Report at A-23.
[38] *See* footnote 1.
[39] *Id.* at A-38 (Table 25).
[40] *Id.* at A-42 (Table 30).
[41] *Id.* at A-38 (Table 25).
[42] *Id.* at A-41 (Table 29).
[43] *Id.* at A-42 (Table 30).
[44] *Id.* at A-34.
[45] *Id.* at A-35 (Table 22).
[46] We do not, at this time, have data on exports from Spain of bars broken out between hot-rolled and cold-formed. However, in 1981, of the total stainless steel bars imported into the United States, 11.3 percent was hot-rolled bar, and 88.7 percent was cold-formed bar.
[47] Report at A-35.
[48] Report at A-35 (Table 22).
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.* at A-51.
[53] Commissioner Frank notes that petitioners experessed concern during the public conference (transcript, pp. 48-50) that representative pricing items had not been selected for use in the Commission's questionnaires. The items chosen for use in the pricing sections of the questionnaires reflected the product specifications most often imported from Spain. However, further consultations will be held with both domestic producers and importers to select comparable pricing items should a final investigation be conducted.
[54] *See* footnote 1.
[55] Report at A-16 (Table 8).
[56] *Id.* at A-17.

shipments in 1979 to 44 percent of shipments in 1981.[57]

Utilization of cold-formed capacity also declined steadily, from 79.4 percent in 1979 to 64.7 percent in 1981, then fell to 55.1 percent for the first quarter of 1982, as compared with 60.6 percent in the first quarter of 1981.[58]

Employment patterns also declined steadily. The average number of production and related workers producing cold-formed bar decreased by 14 percent between 1979 and 1981, then fell by 11 percent in the first quarter of 1982 compared with the first quarter of 1981.[59] The number of hours paid fell by 21 percent between 1979 and 1981, and by 15 percent during the first quarter of 1982, as compared with the first quarter of 1981.[60]

Although the ratio of operating profit to net sales increased slightly during this period, from 9.3 percent in 1979 to 10.5 percent in 1981,[61] the figures for the first quarter of 1982 indicate a markedly deteriorated position. In the first quarter of 1982, sales, cash flow, the ratio of operating profit to net sales, and other profit margins all fell dramatically compared with the indicators for the first quarter of 1981.[62] For example, in the first quarter of 1982, the ratio of operating profit to net sales declined to 1.6 percent as compared with 7.7 percent in the first quarter of 1981.[63]

Furthermore, the aggregate figures mask a trend toward significant losses that have been experienced on an individual producer basis. Whereas one firm sustained operating losses for each of the years 1979 to 1981, during the first quarter of 1982, five domestic producers sustained operating losses compared with four firms in the first quarter of 1981.[64] Thus, more than half of the industry is currently experiencing operating losses.

Material Injury or Threat of Material Injury [65]

While the market share of the domestic industry has declined 7.5 percentage points between 1979 and 1981, the market share of imported cold-formed bar from Spain increased by 3.7 percentage points from 1.7 to 5.4 percent.[66]

Imports of cold-formed bar from Spain increased from 2,185 tons in 1979 to 6,010 tons in 1981. Imports for the first quarter of 1982 increased to 971 tons, as compared with 858 tons for the same quarter in 1981.[67] Furthermore, inventory levels of cold-formed bar from Spain in the first quarter of 1982 were 11 percent greater than in the first quarter of 1981.[68]

As already discussed in relation to hot-rolled bar, the United States is receiving an increasing share of exports of stainless steel bar from Spain.[69]

Pricing information received from purchasers indicates that for at least one geographical area during 1981, Spanish stainless cold-formed bar undersold the domestic product by margins of 10 to 17 percent for one item and 14 percent for another item.[70] In additon, preliminary price data indicate that Spanish prices declined between 1980 and 1981, and that domestic prices generally began to decline in the first quarter of 1982.[71] Therefore, there are preliminary indications of possible price suppression. We anticipate developing more information on underselling and lost sales should a final investigation be conducted.[72]

Conclusion

Our investigation reveals a recent dramatic increase in imports of stainless steel cold-formed bar from Spain, indications that the domestic stainless steel cold-formed bar industry is experiencing serious economic problems, and preliminary information confirming that cold-formed bars are underselling the domestic product by wide margins. Therefore, we find that there is a reasonable indication that the domestic cold-formed stainless steel bar industry is materially injured or threatened with material injury [73] by reason of allegedly subsidized imports of cold-formed stainless steel bar from Spain.

Stainless Steel Wire Rod

Condition of the Domestic Industry

The condition of the domestic stainless steel wire rod industry has already substantially declined, and continues to deteriorate at an alarming rate. Domestic production of wire rod dropped by 18 percent between 1979 and 1981.[74] This drop in production was considerably greater than the 4.2 percent decline in U.S. consumption of wire rod for the period.[75] Domestic shipments also fell by 24 percent during this period.

Utilization of wire rod capacity also declined steadily, from 67.7 percent in 1979 to 56.8 percent in 1981, and dropped to 42.7 percent for the first quarter of 1982, as compared with 57.4 percent in the first quarter of 1981.[76]

Employment patterns also evidence a sharply negative trend. The average number of production and related workers producing wire rod declined 7 percent between 1979 and 1981, and fell 19 percent in the first quarter of 1982. The number of hours paid dropped by 14 percent between 1979 and 1981, and by 24 percent during the first quarter of 1982 as compared with the first quarter of 1981.[77]

Operating profit plunged by 93 percent from $4.9 million in 1979 to $336,000 in 1980, and turned into an operating loss of $1.4 million in 1981. In the same period, the ratio of operating profit to net sales dropped from 6.6 percent in 1979 to 0.5 percent in 1980, to a negative 2.3 percent in 1981. Similarly, cash flow from operations declined from $5.1 million in 1979 to a deficit of $922,000 in 1981.[78] This negative trend substantially worsened during the first quarter of 1982, with the margins of operating loss to net sales increasing to 14.8 percent as compared with 2.7 percent in the first quarter of 1981.[79] Furthermore, the number of firms reporting operating and net losses increased from 2 in 1979 to 3 in 1980 and 1981, and rose to 4—or 80 percent of the domestic industry—in the first quarter of 1982.[80] In fact, one of the domestic producers, Crucible, announced in April, 1982, that it was permanently discontinuing its wire rod operation.[81]

Material Injury or Threat of Material Injury [82]

While the share of the domestic stainless steel wire rod market held by

[57] *Id.* at A–19.
[58] *Id.* at A–16.
[59] *Id.* at A–21 (Table 11).
[60] *Id.*
[61] *Id.* at A–26 (Table 15).
[62] *Id.*
[63] These figures are based on the ratio of operating profit to net sales figures provided in Table 13 of the Staff Report as adjusted in the confidential memorandum from the Director, Office of Investigations, to the Commission dated June 3, 1982) INV–F–073 at 3.
[64] Report at A–26.
[65] See footnote 1.
[66] *Id.* at A–41 (Table 29).
[67] *Id.* at A–38 (Table 25).
[68] *Id.* at A–34.
[69] *See* discussion at pp. 11–12.
[70] *Id.* at A–50 (Table 35).
[71] *Id.* at A–47 through A–48 (Tables 32–33).
[72] *See* footnote 47.
[73] *See* footnote 1.
[74] *Id.* at A–14 (Table 6).
[75] *Id.* at A–13.
[76] *Id.* at A–16.
[77] *Id.* at A–21 (Table 11).
[78] *Id.* at A–28 (Table 17).
[79] These figures are based on the ratio of operating profit to net sales figures provided in Table of the Staff Report as adjusted in INV–F–073 (Memorandum from Director, Office of Investigations, to the Commission dated June 3, 1982) at 4.
[80] Report at A–28.
[81] Statement of Dr. Adolph J. Lena, Transcript of Preliminary Conference at 4 (May 19, 1982).
[82] *See* footnote 2.

the domestic industry decreased from 68 percent in 1979 to 55 percent in 1981, and to 46 percent in the first quarter of 1982, as compared with 63 percent in the first quarter of 1981,[83] the market share held by imports of stainless steel wire rod from Spain has increased steadily.

Imports of stainless steel wire rod from Spain increased from zero tons in 1979 to 1,674 tons in 1980 to 2,763 tons in 1981. In addition, imports for the first quarter of 1982 increased to 685 tons, as compared with 524 tons for the same quarter in 1981.[84] Quarterly data indicate that imports of wire rod from Spain have increased steadily since the first quarter of 1981.[85]

The ratio of Spanish wire rod imports to consumption also increased from 2.9 percent in 1980 to 4.9 percent in 1981, and rose in the first quarter of 1982 to 5.2 percent, as compared with 4.1 percent in the first quarter of 1981.[86] In fact, quarterly figures reveal an upward trend starting in the first quarter of 1981, when the import penetration ratio was 4.1 percent, and continuing through the last quarter of 1981, when it reached 6 percent.[87] Furthermore, although inventory levels of imports of stainless steel wire rod from Spain were miniscule for 1980 and 1981, inventory levels began to grow during the first quarter of 1982.[88]

The United States is Spain's largest export market for stainless steel wire rod. In 1981, 25 percent of Spanish stainless steel wire rod production was exported, 96.2 percent of it to the United States.[89] In addition, there are indications that the United States has become an increasingly attractive market for Spanish exports of stainless steel wire rod. Spain's production of stainless steel wire rod remained at the same level for 1980 and 1981.[90] Spain's exports of wire rod to the EC, its second largest export market, decreased by 80 percent between 1980 and 1981, and its exports of wire rod to all other countries (except the United States) decreased by 83 percent. Spain's exports of wire rod to the United States, however, increased by 24 percent during the same period.[91] Thus an increasing share of total Spanish exports or wire rod has been exported to the United States.

Furthermore, responses by purchasers indicate that wire rod from Spain has been offered at prices 20 to 40 percent lower than those offered by domestic producers.[92] We anticipate developing more information on underselling and on lost sales should a final investigation be conducted.[93]

Conclusion

We find that there is a reasonable indication that the domestic stainless steel wire rod industry is materially injured or threatened with material injury [94] by reason of imports of stainless steel wire rod from Spain. Our conclusion is based upon significant increases in imports of stainless steel wire rod from Spain, clear indications that the domestic stainless steel wire rod industry has experienced and is continuing to experience serious economic problems, and indications that Spanish wire rod is underselling the domestic product by wide margins.

By order of the Commission.

Issued: June 10, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-16974 Filed 6-22-82; 8:45 am]

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[83] Report at A-41 (Table 29).
[84] *Id.* at A-38 (Table 25).
[85] *Id.* at A-40 (Table 28).
[86] *Id.* at A-41.
[87] *Id.*
[88] *Id.* at A-34.
[89] *Id.* at A-35 (Table 23).
[90] *Id.* at A-35.
[91] *Id.*
[92] *Id.* at A-52.
[93] *See* footnote 47.
[94] *See* footnote 3.

DEPARTMENT OF JUSTICE

Antitrust Division

U.S. v. ARA Services, Inc.; Proposed Consent Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Consent Decree and Competitive Impact Statement ("CIS") as set out below have been filed with the United States District Court for the Southern District of Ohio, Eastern Division, in *United States v. ARA Services, Inc., et al.*, Civil Action Number C-2-82-436. Also set forth below is a *Stipulation and Amended Order* of April 29, 1982.

The complaint in this case alleged that the proposed acquisition of and merger with Means by ARA would substantially lessen competition in the sale of textile rental services in the Cleveland-Akron-Lorian, Ohio area, the Columbus, Ohio area, and the Southern West Virginia-Eastern Kentucky area in violation of Section 7 of the Clayton Act.

The proposed Judgment would require Means to divest certain assets in each of these three geographic areas.

Public comment on the proposed Judgment is invited within the statutory 60-day comment period. Comments should be directed to John A. Weedon, Chief, Great Lakes Office, Antitrust Division, United States Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199 (telephone: 216-522-4070).

Joseph H. Widmar,

Director of Operations.

United States District Court, Southern District of Ohio, Eastern Division

United States of America, Plaintiff v. ARA Services, Inc. and Means Services, Inc., Defendants

Civil No. C-2-82-436.

Filed: April 29, 1982.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 US.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at an time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceding.

Dated:

For the Plaintiff: William F. Baxter, *Assistant Attorney General;* Joseph H. Widmar, John A. Weedon, *Attorneys, Antitrust Division, United States Department of Justice.*

Richard E. Reed, Donald S. Scherzer, Theresa M. Majkrzak, *Attorneys, Antitrust Division, United States Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199, (216) 522-4080*

For the Defendants: Arnold M. Lerman, *Wilmer, Cutler & Pickering, 1666 K Street, NW., Washington, D.C. 20006, Attorneys for ARA Services, Inc.*

Sidney Sosin, *Arvey, Hodes, Costello & Burman, 180 North LaSalle Street, Chicago, Illinois 60601, Attorneys for Means Services, Inc.*

United States District Court, Southern District of Ohio, Eastern Division

United States of America, Plaintiff v. ARA Services, Inc. and Means Services, Inc., Defendants.

Civil No. C-2-82-436.

Filed: April 29, 1982.

Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on April 26, 1982, and plaintiff and defendants, by their

respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against, or any admission by, any party with respect to any issue of fact or law herein;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

This Court has jurisdiction of the subject matter herein and of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

Definitions

As used in this Final Judgment:

A. "ARA" means ARA Services, Inc., each division, subsidiary or affiliate thereof, each successor or assign, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them, but shall not include Means.

B. "Means" means Means Services, Inc., each division, subsidiary or affiliate thereof, each successor or assign, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them, but shall not include ARA.

C. "Textile rental" means the rental and laundering or dry cleaning of a variety of textile products, including but not limited to, work garments, wiping cloths, dust control items, continuous roll towels, fender and seat covers, bed linen, table linen, and face and hand towels.

D. "Person" shall mean any individual, partnership, firm, corporation, association, or any other business or legal entity.

III

The provisions of this Final Judgment shall apply to the defendants and to each of their subsidiaries, successors and assigns, and to each of their officers, directors, agents, employees, and attorneys, and to all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

The defendants shall divest themselves of the Means textile rental operations conducted or formerly conducted from the Means facilities in Akron, Ohio; Columbus, Ohio; and Huntington, West Virginia. The textile rental operations to be divested are described in the following Agreements for Sale:

1. An Agreement (attached hereto as Exhibit A and incorporated by reference herein) with Uniwear, Inc. dated March 31, 1982 with respect to the Akron, Ohio textile rental operations;

2. An Agreement (attached hereto as Exhibit B and incorporated by reference herein)[1] with United Services Company dated April 23, 1982 with respect to the Columbus, Ohio textile rental operations; and

3. An Agreement (attached hereto as Exhibit C and incorporated by reference herein) with Mid-West Towel & Linen Service, Inc. dated April 26, 1982 with respect to the Huntington, West Virginia textile rental operations which include lands, buildings, and rights and obligations with respect to leases of real property.

V

The divestiture required by Paragraph IV is absolute and unconditional. ARA or Means may, however, retain security interests in the aforesaid textile rental operations in connection with the sales thereof. If, subsequent to the date of entry of this Final Judgment, either ARA or Means reacquires pursuant to any such security interest any of the assets as described in the aforementioned agreements referred to in Paragraph IV, ARA shall immediately provide written notice of such reacquisition to plaintiff and shall immediately transfer the reaquired assets to an independent trustee who shall have the power and authority to sell the assets. The trustee shall sell the assets on the best available terms. If the trustee does not find a purchaser for such assets within six months after he receives them, they shall be sold at auction at the best available price. The defendants are prohibited from purchasing or bidding for the assets to be sold by the trustee.

VI

Should ARA or Means retain any of the assets as described in the aforementioned agreements referred to in Paragraph IV beyond August 6, 1982, or the effective date of this Final Judgment, whichever shall be later, ARA shall immediately provide written notice of such retention to plaintiff and shall immediately transfer the retained assets to an independent trustee who shall have the power and authority to sell the assets. The trustee shall sell the assets on the best available terms. If the trustee does not find a purchaser for such assets within six months after he receives them, they shall be sold at auction at the best available price. The defendants are prohibited from purchasing or bidding for the assets to be sold by the trustee.

VII

If necessary, the Court shall appoint a trustee to accomplish the divestiture of any assets reacquired or retained by ARA or Means. The defendants shall provide to the trustee such information, capital, personnel, or other assistance as the trustee may request. The trustee shall serve at the cost and expense of the defendants on such terms and conditions as the Court may set. The trustee shall account to the Court for all monies derived from the sale of any assets and all expenses incurred. All monies derived by the trustee from the sale of assets, after expenses, shall be turned over to the defendants.

VIII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted:

1. Access during the office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees and agents of such defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to any defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as othewise required by law.

C. If at the time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

IX

This Final Judgment will expire on the tenth anniversary of its date of entry or upon motion by plaintiff.

X

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith and for the punishment of any violation hereof.

[1] Exhibit B filed as part of the original document.

XI

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge.

United States District Court, Southern District of Ohio, Eastern Division

United States of America, Plantiff v. ARA Services, Inc. and Means Services, Inc., Defendants.

Civil No. C–2–82–436.

Filed: April 26, 1982.

Competitive Impact Statment

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment against the defendants in this civil antitrust proceeding.

I

Nature and Purpose of the Proceedings

On April 26, 1982 the United States filed a civil antitrust Compliant under Section 15 of the Clayton Act, 15 U.S.C. § 25, challenging the acquisition of and merger with Means Services, Inc. ("Means") by ARA Services, Inc. ("ARA") as a violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that the effect of the acquisition may be substantially to lessen competition in the sale of textile rental services in the Cleveland-Akron-Lorain, Ohio area, the Columbus, Ohio area, and the Southern West Virginia-Eastern Kentucky area.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Judgment and to punish violations of the proposed Judgment.

II

Events Giving Rise to the Alleged Violation

The textile rental services business involves the rental of various textile items to industrial, institutional, and commercial establishments. Some of the textile items which are rented are work garments, wiping cloths, dust control items, continuous roll towels, bed linen, table linen, and face and hand towels. A textile rental services firm delivers clean items to a customer on a regular basis. At each delivery of clean items, the company picks up the soiled items and transports them to a processing plant for cleaning (and finishing and repair, if needed). Textile rental services firms generally own the textile items and provide the items and their services on a contract basis. Contracts for textile rental services are typically for a term of one to three years.

ARA is the second largest textile rental services firm in the United States. ARA operates 39 textile rental processing plants throughout the United States. Since mid-1977 ARA has made 15 acquisitions of textile rental services firms. In the fiscal year ending October 2, 1981, ARA's sales of textile rental services in the United States were approximately $168 million. In the Cleveland-Akron-Lorian, Ohio area, ARA was the second largest seller of textile rental services in 1981 with sales of approximately $7.5 million, accounting for approximately 18.6% of total sales in that market. In the Columbus, Ohio area, ARA was the second largest seller of textile rental services in 1981 with sales of approximately $2.9 million, accounting for approximately 15.5% of total sales in that market. In the Southern West Virginia-Eastern Kentucky area, ARA was the second largest seller of textile rental services in 1981 with sales of approximately $3.5 million, accounting for approximately 18.2% of total sales in that market.

Means is the largest textile rental services firm in that Midwest. The company operates 27 processing plants in 18 states. Its sales of textile rental services in 1981 were approximately $115.5 million. In the Cleveland-Akron-Lorain, Ohio area, Means was the seventh largest seller of textile rental services in 1981 with sales of approximately $2.7 million, accounting for approximately 6.6% of total sales in that market. In the Columbus, Ohio area, Means was the third largest seller of textile rental services in 1981 with sales of approximately $1.7 million, accounting for approximately 9.3% of total sales in that market. In the Southern West Virginia-Eastern Kentucky area, ARA was the largest seller of textile rental services in 1981 with sales of approximately $5.8 million, accounting for approximately 30.2% of total sales in that market.

ARA and Means are direct competitors in the sale of textile rental services in the Cleveland-Akron-Lorain area, the Columbus area and the Southern West Virginia-Eastern Kentucky area. In 1981, the four largest firms in the Cleveland-Akron-Lorain area accounting for more than 59% of the total sales, in the Columbus area they accounted for more than 60% of the total sales, and in the Southern West Virginia-Eastern Kentucky area they accounted for more than 68% of total sales. Based upon the foregoing facts, the Complaint alleges that the effect of the acquisition may be to substantially lessen competition in the sale of textile rental services in the Cleveland-Akron-Lorain area, the Columbus area, and the Southern West Virginia-Eastern Kentucky area in violation of Section 7 of the Clayton Act.

III

Explanation of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The proposed Judgment constitutes no admission by either party as to any issue of fact or law. Under the provisions of the Antitrust Procedures and Penalties Act, entry of the proposed Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest.

The proposed Final Judgment orders the divestiture of certain assets by Means in Akron and Columbus, Ohio, and Huntington, West Virginia. The proposed Final Judgment permits Means to retain security interests in the assets which have been or will be sold. If these assets are not sold before the entry of the proposed Final Judgment, or if, subsequent to the date of entry of the Final Judgment, either ARA or Means reacquires, pursuant to Means' security interest, the assets transferred in the sale of such operations, ARA shall immediately provide written notice of such retention or reacquisition to the United States and shall promptly thereafter transfer the retained or reacquired assets to an independent trustee who shall have the power and authority to sell the trust assets as soon as possible and in no event later than six months after the trustee receives the assets. If the trustee does not find a purchaser for such assets within six months after he receives them, they will be sold at auction at the best possible price.

In accordance with the provisions of the Final Judgment, Means entered into a contract on March 31, 1982 with Uniwear, Inc. of Akron, Ohio to sell its Akron business. Uniwear, or its assignee, now services all of Means former Akron customers and Means is no longer in the textile rental services business in the Cleveland-Akron-Lorain area. On April 23, 1982, Means entered into a contract with United Services Company of Youngstown, Ohio to sell its Columbus business. The scheduled consummation date of that agreement is July 12, 1982. On April 26, 1982 Means entered into a contract with Mid-West Towel and Linen Service, Inc. of Muncie, Indiana to sell its business and facilities in Huntington, West Virginia. The consummation date of this sale is June 1, 1982.

Until the sale of Means' assets in Columbus, Ohio and Huntington, West Virginia are accomplished, ARA and Means have agreed that ARA is precluded from exercising control over the conduct of Means. As a result ARA is precluded from voting the shares of Means stock which it will acquire; A majority of Means' Board of Directors shall consist of persons who are demonstrably independent of ARA's control; ARA will take all steps necessary to assure that Means is operated as a separate entity; and communications and exchanges of information between ARA and Means are limited.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V

Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Judgment is in the public interest.

The Act provides a period of at least sixty (60) days preceeding the effective date of the proposed Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: John A Weedon, Chief, Great Lakes Office, Antitrust Division, United States Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199.

VI

Alternatives to the Proposed Final Judgment

As an alterantive to a consent decree, the United States had considered seeking a preliminary injuction to block ARA's acquisition of and merger with Means. The United States filed motions for a Temporary Restraining Order and a Preliminary Injuction, but its Motion for a Temporary Restraining Order was denied on April 28, 1982. The United States decided to accept the proposed Final Judgment rather than continuing to seek to enjoin the acquisition because (1) Means had contracted to sell the assets which gave rise to the alleged violation, and the United States was satisfied that the contracts were binding and would be executed; (2) the proposed Final Judgment and an agreed upon hold separate order provided adequate assurances of divestiture in the event that the contracts were not executed or were defaulted upon; and (3) in the government's judgment the chances of obtaining a preliminary injunction were not good.

The relief obtained in the proposed Final Judgment, together with the agreement of ARA and Means to hold their operations separate, substantially eliminate the anticompetitive effects of the acquisition. The relief is therefore substantially similar to the relief the United States would expect to obtain after trial on the merits, assuming that no preliminary injunction had been initially obtained.

Although most provisions of the proposed Judgment were revised and refined in the course of negotiations, no other relief substantially different in kind was considered by the United States.

VII

Determinative Documents

There are no materials or documents which the United States considered determinative in formulating this proposed Final Judgment. Therefore, none are being filed along with this Competitive Impact Statement.

Respectively submitted,

John A. Weedon, *Attorney, Antitrust Division, Department of Justice.*

Richard E. Reed, Donald S. Scherzer, Theresa M. Majkrzak, *Attorneys, Antitrust Division, Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199, (216) 522-4080.*

Exhibit A

Agreement

Agreement made this 31st day of March, 1982 by and between MEANS SERVICES, INC., an Illinois corporation (hereinafter "Means") and UNIWEAR, INC., an Ohio corporation (hereinafter "Uniwear").

Witnesseth

Whereas, Means has been operating a textile service business in the State of Ohio from offices in Akron, Ohio; and

Whereas, Means wishes to sell and Uniwear wishes to purchase that business and certain inventory used in the conduct of that business;

Now therefore, in consideration of the mutual promises and covenants contained herein,

It is hereby agreed as follows:

1. Means hereby agrees to sell and Uniwear hereby agrees to purchase the following assets of Means relating to the business presently being conducted by Means from the said locations:

a. All right, title and interest of Means after March 31, 1982 in and to contracts between Means and its customers which contracts require Means to furnish Rental Services to those locations in the States of Ohio and Pennsylvania currently being serviced through the Akron Market Center, but not including any accounts receivable arising from sales prior to April 1, 1982. Such locations are hereinafter referred to as the "Territory".

b. All inventory of Means necessary to service customer locations within the Territory, including:

1. Merchandise located on the premises of such customers;

2. Merchandise in transit to such customers;

3. Merchandise picked up prior to the closing for delivery subsequent to the closing;

4. Merchandise on location at both Akron Production Plants of Means.

Means guarantees that the inventory shall be at least 2.3 times current average weekly usage.

c. All Means equipment, such as cabinets, dispensers, containers, lockers, mop equipment, dust tools, and the like situated at customer locations within the Territory as of the closing and on location at both Akron plants.

d. An adequate number of good, serviceable vehicles to service the routes being sold, but not to exceed 16 vehicles.

2. Except as set forth in Paragraph 9 hereof with respect to certain accounts receivable, only the assets listed in Paragraph 1 hereof are being sold and purchased hereunder. It is expressly understood and agreed that the following assets are not being sold hereunder:

a. Real estate, leases or plant equipment;

b. The name "F.W. Means", "Means Services", or any other trademark, service mark, trade name, copyright or similar intangible property belonging to Means.

3. Purposely omitted.

4. From and after April 1, 1982, Uniwear shall service all customer locations within the Territory and shall perform in a prudent manner and in accordance with good business practices, pursuant to all of the terms and conditions of all customer contracts being assigned to Uniwear pursuant to this Agreement. The total purchase price for all assets being sold pursuant to the provisions of Paragraph 1 hereof shall be determined in accordance with the following formula:

$$P = \frac{S}{23} \times 5 \times 25$$

Where:

P=Purchase price.

S=Gross rental sales during the month of March, 1982 to all Means' customers in the Territory.

The parties anticipate that the total purchase price based on the above formula will be approximately $1,625,000. The purchase price will be paid in installments as follows:

a. $250,000 on March 31, 1982; plus

b. $250,000 on August 1, 1982; plus

c. The balance of the purchase price in 12 equal quarterly installments, plus interest from August 1, 1982 on the balance from time to time remaining unpaid at the rate of 13% per annum, computed quarterly on the unpaid balance, such installments to commence on November 1, 1982, and on the 1st days of each February, May, August and November thereafter until fully paid.

The balance due may be prepaid in whole or in part at any time without penalty. All payments shall be applied first to accrued interest and the balance to principal. For purposes of this Agreement, sales shall be considered to be made at the time that clean linen and other merchandise is returned or delivered to a customer.

5. In determining the purchase price pursuant to Paragraph 4 hereof, the parties have assumed and projected that normal and customary business conditions will prevail during March, 1982 ("formula month"). Means warrants and represents to Uniwear that, consistent with the terms and obligations of this Agreement, it will use its best efforts and assistance to assure continued sales and service to all customers during the formula month, and will not act in such a manner as might tend to distort sales to customers in the ordinary course of business during the formula month; nor will Means do

anything that will cause said sales not to be normal or fairly representative of past sales. If, due to strike, work stoppage, act of God, disaster, or other similar unusual or unforeseen event, the sales results to customers for the formula month would be substantially abnormal, then the parties shall substitute for the purposes of this Agreement, the next succeeding month, where relevant conditions are substantially normal, as the formula month for purposes of determining the purchase price pursuant to Paragraph 4 hereof; and the parties shall make all other equitable mathematical adjustments as relate to the substituted formula month.

6. The parties recognize that the accounting systems and methods of doing business employed by the respective parties may not be identical and that in order for the business of Means to be transferred to Uniwear the parties must cooperate in the orderly transition of said business so as to accommodate the varying systems and known needs of each of the parties. To that end each of the parties agrees to cooperate with the other in whatever reasonable means are required to the end that Uniwear may be able to integrate into its system the business being acquired from Means. At closing Means will furnish to Uniwear a complete list of all of Mean's customers in the Territory for the month of March, 1982. The list will include the following information with respect to each customer: name, address, type of service and amount of sales to such customer. This information will be furnished on Means computer report No. A–018–1, provided that such report is amended to include the address of each customer. During the month of April, 1982, Means shall continue its Management Information System with respect to such customers. Such system creates reports and documents for deliveries to customers and for invoicing purposes. For purposes of applicatin of the formula to determine the purchase price of the assets being sold pursuant to this Agreement, the sales figures shall be taken from Means computer report No. A–018–2, but Uniwear shall be permitted to check out and verify the accuracy of said report. Final sales figures shall be agreed to by June 30, 1982. Sales for application of the formula shall be the gross rental sales shown on that report less applicable sales taxes. In the event that Uniwear deems it necessary to continue Means Management Information System beyond April, 1982, Means shall furnish such services for up to six (6) months at a charge of $4,000 per month. In addition to the reports specifically mentioned above, Means shall provide Uniwear with any and all other data, records and such other information as may be reasonably required and requested by Uniwear and which is readily available to Means, all to the end of effectuating an orderly transition.

7. During the month of April, 1982, Means will exercise its best efforts to train and orient the personnel of Uniwear and to assist them in servicing the customers.

8. Means, at its expense, shall process all merchandise allocated to the customers in the Territory through April 16, 1982. At Uniwear's request, Means shall continue to process such merchandise at Uniwear's expense, but not beyond August 1, 1982.

9. All counts receivable from customers resulting from sales made prior to April 1, 1982 shall remain the sole and exclusive property of Means. Such receivables, as represented by an aging of accounts as of March 31, 1982 shall be collected by Means. Uniwear shall have the option of purchasing from Means all such receivables not collected prior to August 1, 1982. The purchase price for each receivable shall be negotiated. Means retains the right to turn the receivables over to a collection agency or directly sue the customer for payment, after 15 days notice to Uniwear.

10. The tangible assets being sold to Uniwear shall be transferred by appropriate bill of sale with warranties of title free of all liens, security interests and encumbrences. All such assets are being sold and shall be delivered "as is" as of the closing. ALL WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY EXCLUDED. The various customer contracts shall be assigned to Uniwear by a blanket assignment, and the actual contracts shall be delivered to Uniwear at closing. The specific assets being sold shall be taken from Means' records and computer printouts of such assets shall be delivered to Uniwear at closling. Said assets shall be maintained in a normal fashion prior to closing.

11. The closing shall be held on March 31, 1982 commencing at 10:00 a.m. at the Means' office in Akron, Ohio, or at such other time and place as the parties may subsequently mutually agree.

12. Means warrants and represents to Uniwear as follows:

a. Means is a corporation duly organized and existing under the laws of the State of Illinois;

b. All taxes with respect to the assets being sold hereunder, including sales and use taxes and property taxes, assessed by federal, state or local governments have been and will be paid as the same have matured, and that there are no claims pending against Means for any of such taxes as of the date hereof and as of the closing;

c. To the best of its knowledge and belief all of the contracts to be assigned by Means to Uniwear have been validly executed and will be in full force and effect free and clear of any liens or encumbrances as of the closing, and that no such contracts have a duration of more than two years from the date hereof unless there is a provision therein for price changes;

d. To the best of its knowledge and belief there are no agreements or promises or obligations to customers other than those contained in the contracts being assigned, and that the best of Means' knowledge and belief Uniwear will be under no obligation to do or perform anything other or different than that which is specifically set forth in the contracts being assigned;

e. It has full power and authority to enter into this Agreement and that the signing of this Agreement by its president and secretary will fully bind and obligate Means to this Agreement;

f. The customer contracts herein can be assigned to Uniwear by Means, and there are no prohibitions against such assignments in said contracts.

g. With respect to the business and assets being sold to Uniwear, Means has complied with all laws, rules and regulations of state and federal governments, and there are no judgements, liens, actions or proceedings pending in any court.

13. Means shall indemnify and hold Uniwear harmless from any and all claims for federal or state income or withholding taxes or any claims for sales and use taxes from federal, state or local governments that may be asserted subsequent to the closing for transactions prior to April 1, 1982, it being intended that any and all taxes due and owing by Means or which may have accured heretofore as a result of the business conducted by Means prior to April 1, 1982, shall be the sole responsibility of Means.

14. Uniwear warrants and represents to Means as follows:

a. It is a corporation duly organized and existing under the laws of the State of Ohio;

b. It has full power and authority to enter into this Agreement and that the signing of this Agreement by its president and secretary will fully bind and obligate Uniwear to this Agreement;

c. It will fully and faithfully comply with all of Means' obligations under the contracts to be assigned to Uniwear.

Uniwear shall indemnify, save and hold Means harmless from all liability, damage, loss, claims, costs (including reasonable attorneys' fees), demands and actions of any nature whatsoever which arise out of or are connected with, or which are claimed to araise out of or be connected with, subsequent to March 31, 1982 any of the following:

a. The tangible assets being sold to Uniwear;

b. The customer contracts being assigned to Uniwear;

c. Relations with customers subsequent to March 31, 1982;

provided that said actions do not relate to any activity or conduct by Means, its agents or employees.

15. Means shall indemnify, save and hold Uniwear harmless from all liability, damage, loss, claims, costs (including reasonable attorneys' fees), demands and actions of any nature whatsoever which arise out of or are connected with, or which are claimed to arise out of or be connected with, prior to April 1, 1982 any of the following:

a. The tangible assets being sold to Uniwear;

b. The customer contracts being assigned to Uniwear;

c. Relations with customers prior to April 1, 1982;

d. Labor union contracts;

e. Pension, profit sharing and/or health and welfare plans;

f. Claims of Means' employees;

provided that said actions do not relate to any activity or conduct by Uniwear, its agents or employees.

16. In order to secure payment of all obligations of Uniwear to Means pursuant to this Agreement, Uniwear shall grant to Means a security interest in all of the assets being sold by Means to Uniwear. While the parties acknowledge that accounts receiveable are not presently being sold by Means to Uniwear, yet, for Means' better security, such accounts receiveable shall be listed in the security agreement and financing statement.

16A. Means understands that Uniwear plans to sell to United Service Co. (United) a portion of the business and assets being purchased from Means and that Uniwear would not have entered into this agreement unless it first had such a purchase agreement with United. In consideration of Uniwear's purchase from Means, and in consideration of United's consummating its purchase agreement with Uniwear, Means agrees that the warranties, representations, gurantees and indemnities contained herein shall inure to the benefit of United.

17. All notices required or permitted to be given under the terms of this Agreement shall be deemed given when served personally or when deposited in the United States mail with proper postage affixed, certified mail, return receipt requested. Notices shall be given to the respective parties at the following addresses:

To Means: Means Services, Inc., 35 East Wacker Drive, Chicago, Illinois 60601, Attention: Robert A. Fried, Chairman.

With a copy to: Sherwin D. Abrams, 30 North La Salle Street, Suite 2700, Chicago, Illinois 60602.

To Uniwear: Uniwear, Inc., 825 East Tallmadge Avenue, Akron, Ohio, Attention: David Lockshin, President.

With a copy to: Harry Stein, Buckingham, Doolittle and Burroughs, LPA Attorneys, Box 1500, 1 Cascade Plaza, Akron, Ohio 44309.

18. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Uniwear may not, prior to payment to Means of all sums to become due hereunder assign any of its obligations hereunder. This Agreement may be executed in several counterparts, each of which shall be deemed a duplicate original. This Agreement sets forth the entire understanding of the parties.

19. Anything herein to the contrary notwithstanding, the purchase price shall be adjusted and recomputed on August 1, 1982 by deducting from gross sales the March, 1982 sales to customers who terminate their service prior to August 1, 1982 through normal attrition. The formula set forth in Paragraph 4 shall then be applied to the revised gross sales figure in order to determine the adjusted purchase price. The quarterly payment due beinning November 1, 1982 shall be adjusted accordingly. If a customer terminates service because of a rate increase that is in excess of 8%, such termination shall not be deemed to have been through normal attrition, and no deduction shall be made with respect to such customer.

21. Anything herein contained to the contrary notwithstanding, customer contract with, and sales to, Republic Steel Co. and Jones & Laughlin Steel Co. shall be treated as hereinafter set forth:

a. Effective april 1, 1982, Uniwear shall service each customer pursuant to Means' contractural obligations to each. During such time as Uniwear services either such customer, Uniwear shall be entitled to the proceeds of sales made to each respectively;

b. Uniwear shall have the option of discontinuing service to either such customer. Such options shall be exercised by Uniwear's giving written notice to means at least 15 days prior to the proposed date of discontinuance of service. Notice of the exercise of each option must be given by Uniwear no later than June 15, 1982;

c. If Uniwear exercises its option to discontinue service, then the customer contract shall be reassigned to Means and March, 1982 sales to the customer will be excluded from gross rental sales in computing the adjusted purchase price.

d. If Uniwear fails to exercise its option with respect to either customer, or if having exercised its option Uniwear commences service to such customer on or before August 1, 1982, then March, 1982 sales to such customer shall be included in gross rental sales in computing the adjusted purchase price.

22. Anything contained herein or in the security agreement to the contrary notwithstanding, Uniwear shall have the right to sell the linen business, customers outside of Uniwear's market area, and associated assets which it is purchasing from Means free and clear of Means' security interest. Means will execute and deliver any and all documents reasonably necessary to effectuate the provisions of this Paragraph. No such sale shall relieve Uniwear of its obligations hereunder.

23. Means and its successors covenant and agree not to induce any custmer whose contract is being assigned to Uniwear to breach such contract. Means will not solicit any such customer for a period of two years from such closing.

In witness whereof, the parties hereto have signed this Agreement as of the day and year first above written.

Attest: B. J. Smith, *Secretary.*
Attest: Carl Osherow.
Means Services, Inc., By: James E. Stefoff, *President.*
Uniwear, Inc., By: David Lockshin, *President.*

Agreement

Exhibit B

Agreement made this 23rd day of April, 1982 by and between MEANS SERVICES, INC., an Illinois corporation (hereinafter "Means") and UNITED SERVICES COMPANY, an Ohio corporation (hereinafter "Buyer")

Witnesseth

Whereas, means has been operating a textile service business in the Columbus, Ohio area; and

Whereas, Means wishes to sell and Buyer wishes to purchase that business and certain inventory used in the conduct of that business;

Now therefore, in consideration of the mutual promises and convenants contained herein,

It is hereby agreed as follows:

1. Means hereby agrees to sell and Buyer hereby agrees to purchase the following assets of Means relating to the business presently being conducted by Means from the said locations:

a. All right, title and interest of means after the Closing Date in and to contracts between Means and its customers which contracts require Means to furnish Rental Services to those locations in the Columbus, Ohio area currently being serviced through Mean's Columbus Market Center. Such locations are hereinafter referred to as the "Territory". On the Closing Date, Means shall, to the extent reasonably available, deliver copies of customer lists and price lists with respect to customers in the Territory for the prior six (6) months.

b. All in-service merchandise inventory of Means necessary to service customer locations within the Territory, including:

(1) Merchandise located on the premises of such customers;

(2) Merchandise in transit to such customers;

(3) Merchandise picked up prior to the closing for delivery subsequent to the Closing Date;

(4) Merchandise on location at both Columbus and Chillicothe Production Plants of Means required to service the rental accounts.

c. All Means equipment, including but not limited to cabinets, dispensers, containers, lockers, mop equipment, dust tools, and the like situated at customer locations within the Territory as of the Closing Date and on location at both the Columbus and Chillicothe Production Plants of Means.

d. An adequate number of good, serviceable vehicles (including one 18 basket van) presently used to service the routes in the Territory as of April 23, 1982 but not to exceed 19 vehicles.

e. Means telephone numbers and listings, advertising contracts and post office boxes in the Territory, to the extent transferable.

2. Except as set forth in Paragraph 9 hereof with respect to certain accounts receivable, only the assets listed in Paragraph 1 hereof are being sold and purchased hereunder. It is expressly understood and agreed that the following assets are not being sold hereunder:

a. Real estate, leases or plant equipment;

b. The name "F.W. Means", "Means Services", or any other trademark, service mark, trade name, copyright or similar intangible property belonging to Means.

From and after the Closing Date, Buyer shall service all customer locations within the Territory and shall perform in a prudent manner and in accordance with good

business practices, pursuant to all of the terms and conditions of all customer contracts being assigned to Buyer pursuant to this Agreement.

3. The total purchase price for all assets being sold pursuant to the provisions of Paragraph 1 hereof shall be determined in accordance with the following formula:

$$P = \frac{S}{23} \times 5 \times 23$$

Where:
P=Purchase price.
S=Gross rental sales during the month of March, 1982 to all Means' customers in the Territory.

The parties anticipate that the total purchase price based on the above formula will be approximately $1,180,000. The purchase price will be paid in installments as follows:

a. $50,000 on the execution hereof receipt of which is hereby acknowledged; plus

b. $127,000 on the Closing Date; plus

c. The balance of the purchase price in 32 substantially equal quarterly installments of principal and interest at the rate of 13% per annum until July 12, 1986 when the interest rate shall then become the rate of interest charged by the Chemical Bank, New York, N.Y. to its preferred corporate customers (the "Prime Rate") but no more than 15% per annum, such installments to commence on October 12, 1982, and on the 12th day of each January, April, July and October thereafter until fully paid.

The obligation created hereby shall be evidenced by a promissory note, substantially in the form attached hereto as Exhibit "A". The balance due may be prepaid in whole or in part at any time without penalty. All payments shall be applied first to accrued interest and the balance to principal. For purposes of this Agreement, sales shall be considered to be made at the time that clean linen and other merchandise is returned or delivered to a customer.

4. Buyer shall have the right to purchase from Means such new unused merchandise at the Columbus and Chillicothe Production Centers as it desires and shall pay to Means for any such purchases Means' cost of such merchandise as evidenced by invoices covering such inventory, payment to be in full in cash at closing.

5. The purchase price shall be allocated as follows with the understanding that in-service merchandise and customer contracts shall be adjusted in proportion to each other as indicated to account the full purchase price:

In Service Merchandise	475,000
Cabinets and lockers	132,000
Haul baskets	13,000
Autos and Trucks	76,000
Customer Contracts	454,000
Goodwill	50,000

6. The parties recognize that the accounting systems and methods of doing business employed by the respective parties may not be identical and that in order for the business of Means to be transferred to Buyer the parties must cooperate in the orderly transition of said business so as to accommodate the varying systems and known needs of each of the parties. To that end each of the parties agrees to cooperate with the other in whatever reasonable means are required to the end that Buyer may be able to integrate into its system the business being acquired from Means. At closing Means will furnish to Buyer a complete list of all of Means' customers in the Territory for the month of March, 1982. The list will include the following information with respect to each customer: name, address, type of service and amount of sales to such customer. This information has been furnished on Means computer report No. A-018-1 which Means represents to be true and correct. The address of each customer will be furnished to Buyer on or prior to the Closing Date. During the month of July, 1982, Means shall continue its Management Informataion System with respect to such customers. Such system creates reports and documents for deliveries to customers and for invoicing purposes. For purposes of application of the formula to determine the purchase price of the assets being sold pursuant to this Agreement, the sales figures shall be taken from Means computer report No. A-018-2A, but Buyer shall be permitted to check out and verify the accuracy of said report. Final sales figures shall be agreed to by June 30, 1982. Sales for application of the formula shall be the gross rental sales shown on that report less applicable sales taxes. In the event that Buyer deems it necessary to continue Means Management Information System beyond July, 1982, Means shall furnish such services for up to six (6) months at a charge of $4,000 per month. In addition to the reports specifically mentioned above, Means shall provide Buyer with any and all other data, records and such other information as may be reasonably required and requested by Buyer and which is readily available to Means, all to the end of effectuating an orderly transition.

7. During the month of July, 1982, Means will exercise its best efforts to train and orient the personnel of Buyer and to assist them in servicing the customers.

8. Means, at its expense, shall process all merchandise allocated to the customers in the Territory through July 23, 1982.

9. All accounts receivable from customers resulting from sales made prior to the Closing Date shall remain the sole and exclusive property of Means. Such receivables, as represented by an aging of accounts as of the Closing Date shall be collected on Means' behalf by Buyer on a first in, first out basis unless the payments is otherwise designated by the customer with such collections being remitted to Means monthly. Buyer shall have the option of purchasing from Means all such receivables not collected prior to October 1, 1982, for a purchase price for each receivable as mutually agreed upon by the parties. Means retains the right to turn the receivables over to a collection agency or directly sue the customer for payment, after giving 15 days prior notice to Buyer.

10. The tangible assets being sold to Buyer shall be transferred by appropriate bill of sale with warranties of title free of all liens, security interests and encumbrances. All such assets are being sold and shall be delivered "as is" as of the closing. *All warranties, including the implied warranties of merchantability and fitness for a particular purpose are hereby excluded.* The various customer contracts shall be assigned to Buyer by a blanket assignment, and the actual contracts shall be delivered to Buyer at closing.

The specific assets being sold shall be taken from Means' records, and computer printouts of such assets shall be delivered to Buyer at closing. Said assets shall be maintained in a normal fashion prior to closing.

11. The closing shall be held on July 12, 1982 commencing at 10:00 a.m. at the Means' office in Columbus, Ohio (the "Closing Date").

12. In addition to the representations and warranties elsewhere contained in this Agreement, Means hereby makes the following representations and warranties, all of which are made to Buyer for the purpose of inducing it to purchase the assets and business included in this sale, and upon which representations and warranties Buyer has and does rely:

(A) That Means is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois and qualified to do business in the State of Ohio.

(B) That Means has good, legal and marketable title to all of the properties and assets, tangible and intangible, sold and/or assigned hereunder and that same are free and clear of all liens, mortgages, pledges, charges, encumbrances and claims of every kind and description whatsoever and that Means has full right to sell same in the manner herein provided and upon the closing hereof, Buyer shall obtain absolute title thereto free and clear of all liens, mortgages, pledges, charges, claims and encumbrances of every kind and description.

(C) That Means has the right to unilaterally assign its customer contracts and purchase orders without causing a breach or default under any such contract or purchase order, and has no notice or knowledge of default under any customer contracts or purchase orders provided hereunder. Means has no notice nor knowledge that any customer will be terminating service.

(D) That no prepayment for services of any kind to be rendered or furnished following the closing date to any customer or accounts being purchased hereunder has been received by Means. Means shall turn over to Buyer such prepayment hereinafter received.

(E) That Means has made no commitments to customers for free service, loans, gratuities, credits, rebates or allowances which will be in effect after the closing date, and Means agrees to indemnify and hold the Buyer harmless against any and all such commitments or claims.

(F) That Means has full corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereby. The execution, delivery and performance by Means of this Agreement and all over other acts required hereunder to be done by Means have been duly authorized by all requisite corporate action, and the

consummation of the transactions contemplated hereby will not violate any provisions of the Articles of Incorporation or Code of Regulations of Means.

(G) That the Board of Directors of Means have duly approved and authorized the execution and delivery of this Agreement; and Means shall deliver to Buyer at the closing a true and complete copy of resolutions duly adopted by its Board of Directors, certified by its Secretary approving and authorizing such actions and designate Sidney Sosin to execute any and all agreements necessary to consummate this transaction.

(H) That there are no outstanding orders or contracts for the purchase of any inventory, machinery, equipment or supplies being sold hereunder which cannot be cancelled or terminated by Means or Buyer without liability.

(I) That Means will conduct and operate the business to the Closing Date in its usual and orderly manner; that it will use its best efforts to preserve and protect the business, quality and patronage of all of its cusomers; and will generally conduct, maintain and operate its business, assets and property the same as if no sale thereof was contemplated except with respect to renewal of accounts which require the purchase of new Goods.

(J) That Means has timely filed all federal, state and local tax returns and reports (collectively "Reports") and will forthwith file any and all Reports which may be required for the periods prior to Closing Date and shall pay any and all taxes, charges, penalties and interest which may be required to be paid.

(K) That Means will pay all wages and fringe benefits to its employees through the Closing Date including wage and fringe benefits under Means' labor agreement.

(L) That no more than fifteen percent (15%) of the aggregate value of its customer accounts are more than sixty (60) days in arrears.

(M) That no representation or warranty by Buyer in this Agreement nor any statement, exhibit or schedule furnished or to be furnished to the Buyer pursuant hereto, or in connection with the transactions contemplated hereby contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statements contained therein not misleading.

(N) With respect to the business and assets being sold to Buyer, Means has reasonably complied with all laws, rules and regulations of State and Federal governments, and there are no judgments, liens, actions or proceedings pending in any court.

13. Means shall indemnify and hold Buyer harmless from any and all claims or liabilities for federal or state income, property, real or personal or withholding taxes or any claims or liabilities for sales or use taxes from federal, state of local governments that may be asserted subsequent to the closing for transactions prior to the Closing Date, including any and all liability, loss, costs and expenses arising out of or in connection with the failure of Means to comply with applicable "Bulk Sales Laws" relating to the transfer of assets herein conveyed, it being intended that any and all taxes due and owing by Means or which may have accrued heretofore as a result of the business conducted by Means prior to the Closing Date, shall be the sole responsibility of Means.

14. Buyer warrants and represents to Means as follows:

a. It is a corporation duly organized and existing under the laws of the State of Ohio;

b. It has full power and authority to enter into this Agreement and that the signing of this Agreement by its president and secretary will fully bind and obligate Buyer to this Agreement;

c. It will fully and faithfully comply with all of Means' obligations under the contracts to be assigned to Buyer.

15. Each party shall indemnify, save and hold the other harmless from all liability, damage, loss, claims, costs (including reasonable attorneys' fees), demands and actions of any nature whatsoever which arise out of or be connected with respect to Means prior to July 12, 1982 and with respect to Buyer after July 12, 1982, any of the following:

a. The tangible assets being sold to Buyer;

b. The customer contracts being assigned to Buyer;

c. Relations with customers, with respect to Means prior to the Closing Date, and, with respect to Buyer on and after the Closing Date;

d. The respective labor union contracts of the parites;

e. The respective pension, profit sharing and/or health and welfare plans of the parties; or

f. Claims of the employees of the respective parties.

16A. Notwithstanding any other provision in this Agreement to the contrary, Buyer shall have the right to assign by written assignment (the "Assignment") any and all of its right, title and interest in this Agreement to Cintas (the "Purchaser") without recourse as to any of the representations, warranties and covenants Buyer has made hereunder or under any other agreement or instrument it is required to execute in order to consummate this Agreement, which Assignment shall be on such terms and conditions satisfactory to Buyer. In such event, Means shall consent to such assignment in writing, accept Purchaser's consideration upon the same terms and conditions provided in this Agreement as a credit against Buyer's purchase price, adjust the terms of payment thereof, and look to Purchaser for payment. In consideration of the foregoing, and in consideration of Buyer's consummating this Agreement, Means agrees that the warranties, representations, guarantees and indemnities contained in this Agreement shall inure to the benefit of the Purchaser. All of the representation, warranties, and covenants in this Agreement shall survive the closing date hereof for a period of eight (8) years.

16B. Anything herein to the contrary notwithstanding, the purchase price shall be adjusted and recomputed on November 12, 1982 by (a) deducting from gross rental sales the March, 1982 sales to customers who terminate their service prior to November 12, 1982 through normal attrition and (b) adding to such gross rental sales the gross rental sales made to new customers after March 31, 1982 to and including July 11, 1982; provided, that such adjustment shall not increase the purchase price. The formula set forth in Paragraph 4 shall then be applied to any such revised gross rental sales figure in order to determine the adjusted purchase price. The quarterly payment due beginning January 12, 1983 shall be adjusted accordingly. If a customer terminates service because of a rate increase that is in excess of 8%, such termination shall not be deemed to have been through normal attrition, and no deduction shall be made with respect to such customer.

17. Means guarantees that the in-service inventory shall be 2.3 times current average weekly usage.

18. All notices required or permitted to be given under the terms of this Agreement shall be deemed given when served personally or when deposited in the United States mail with proper postage affixed, certified mail, return receipt requested. Notices shall be given to the respective parties at the following addresses:

To Means: Means Services, Inc., 35 East Wacker Drive, Chicago, Illinois 60601, Attention: Robert A. Fried, Chairman

With a copy to: Sidney Sosin, Esq., Arvey, Hodes, Costello & Burman, One Eighty North LaSalle Street, Chicago, Ill. 60601

To Buyer: United Service Company, 350 North Ave., Youngstown, Ohio 44502

19. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may be executed in several counterparts, each of which shall be deemed a duplicate original. This Agreement sets forth the entire understanding of the parties.

20. Means and its successors covenant and agree not to induce any customer whose contract is being assigned to Buyer to breach such contract. Means will not solicit any such customer for a period of two (2) years from the Closing Date.

In witness whereof, the parties hereto have signed this Agreement as of the day and year first above written.

Means Services, Inc, by Sidney Sosin, *Authorized Representative.*

United Services Company, by Leslie W. Spero, *President.*

Deed

This deed made this 20th day of June, 1964 by and between Standard Overall Service Co. (formerly "Standard Industrial Laundries, Inc."), a Kentucky corporation duly authorized to transact business in the State of West Virginia, party of the first part, and F. W. MEANS & COMPANY, an Illinois corporation duly authorized to transact business in the State of West Virginia and having its principal office at 35 East Wacker Drive, Chicago, Illinois, 60601, party of the second part.

Witnesseth: That, for the consideration hereinafter stated and the sum of One Dollar ($1.00) in hand paid, the receipt whereof is hereby acknowledged, the said party of the first part hereby grants and conveys unto the party of the second part all of those certain

lots or parcels of land, together with the improvements thereon and the appurtenances thereunto belonging, situate in the City of Charleston, Kanawha County, West Virginia, and being all of Lot Nos. One (1), Two (2), Three (3) and Four (4) in Block "T" of Fitzgerald's Addition to the said City of Charleston, as shown upon that certain map entitled "Map of Fitzgerald's Addition to the City of Charleston, West Virginia", which map is recorded in the office of the Clerk of the County Court of Kanawha County, West Virginia, in Map Book 2, at page 152, and being the same property conveyed to the party of the first part herein by Standard Overall Service, Inc., a Kentucky corporation, by deed dated November 11, 1961 and recorded in the aforesaid Clerk's office in Deed Book 1350 at page 249, to which said map and deed reference is hereby made for a more particular description of the property hereby conveyed.

Subject to real property taxes for the year 1964, the party of the first part warrants generally the property hereby conveyed.

Declaration of consideration or value: Party of the first part hereby declares that the property transferred by this document is not subject to State Excise Tax on privilege of transferring real property, for the reason that it is a transfer made by a subsidiary corporation to its parent corporation for no consideration other than the cancellation or surrender of the stock of the subsidiary.

In witness whereof, Standard Overall Service Co., (formerly Standard Industrial Laundries, Inc."), a corporation, has caused its corporate name to be signed and its corporate seal to be hereunto affixed by its President and attested by its Secretary this 20th day of June, 1964.

Standard Overall Service Co.:
J. A. Quigley, *President.*
John H. Bishop, *Assistant Secretary.*

Exhibit B–2

Mill Creek Road, Peaks Mill, West Virginia, Dated April 6, 1979
Harper Park, I–77 and West Virginia Route 3, Beckley, West Virginia, Dated March 15, 1977.
Betsy Lane, Floyd, Kentucky, Dated June 6, 1980.
Unit #1, Congress Park, U.S. Route No. 50 and Congress Road, Belpre, Ohio, Dated March 5, 1977.
Building No. 59, Armco Steel, Ashland Works, Ashland, Kentucky, Dated May 1, 1974.
3882 Gallia Street, New Boston, Ohio, Dated July 29, 1977.

Exhibit "C"

$5,000,000—June 1, 1982

Negotiable Promissory Note

For value received, Mid-West Towel & Linen Services, Inc., an Indiana corporation ("Maker") promises to pay to the order of Means Services, Inc., an Illinois corporation, its successors or assigns, ("Payee") the principal amount of Five Million ($5,000,000.00) Dollars, in lawful money of the United States of America, together with interest at the rate of 12% until June 1, 1987 and thereafter with interest at the prime rate of interest charged from time to time by the Chemical Bank, New York, N.Y., (the "Prime Rate"), but not to exceed the rate of 13% per annum.

This note shall be payable in 20 equal quarterly installments of principal and accrued interest of $216,311.89 each and 8 equal quarterly installments of principal and accrued interest at the Prime Rate (not to exceed 13%) on the basis of a ten (10) year amortization schedule, with the then balance of principal being due and payable seven (7) years after date. Such payments shall commence on September 1, 1982 and shall be payable on the first day of December, March, June and September thereafter, until the final payment date, 7 years after date.

Prepayments of principal may be made by Maker at any time in any amount not less than $10,000, but any such prepayment shall not preclude the obligation to timely make all scheduled subsequent payments when due.

All payments of principal and interest shall be made to Payee in care of ARA Services, Inc., Independence Square West, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, Attention: Treasury Department, or at such other place as the holder hereof shall hereafter designate and shall be applied first to accrued interest and the remainder, if any, to the payment on the principal balance hereof.

This Promissory Note is secured by and entitled to the benefit of a certain Security Agreement of even date therewith between Maker and Payee, (the "Security Agreement") which Security Agreement is attached hereto as Exhibit "A" and made a part hereof. The Security Agreement, among other things, contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Promissory Note shall be governed by and construed in accordance with, the law of the Commonwealth of Pennsylvania.

In witness whereof, Maker, intending to be legally bound, has duly executed this Not this 1st day of June 1982.

Attest:

Secretary.

Mid-West Towel & Linen Services, Inc.
By: A. Jack Hertz, *President.*

Exhibit "D"

Security Agreement

Security agreement made and entered into as of the 1st day of June, 1982, by and between Means Services, Inc. and Illinois corporation, its successors or assigns (hereinafter referred to as "Secured Party") and Mid-West Towel & Linen Service, Inc., an Indiana corporation, (hereinafter referred to as "Debtor").

Witnesseth

Whereas, Secured Party and Debtor are parties to a certain Agreement for the Purchase and Sale of Certain Assets of Means Service, Inc. and dated April 27, 1982 (hereinafter referred to as the "Agreement"), whereby Debtor has agreed to purchase from the Secured Party certain assets described in Section 1.1 of the Agreement; and

Whereas, as security for payment of Debtor's obligations under the Agreement and an installment note dated of even date herewith in the principal amount of $5,000,000.00 given to Secured Party under the Agreement (hereinafter referred to as the "Note") whether such obligations are direct or indirect, absolute or contingent, due or to become due, whether at maturity or by acceleration upon default, now existing or hereafter arising, Debtor desires to mortgage, pledge and grant to Secured Party a general lien upon and a continuing security interest under the Uniform Commercial Code, as amended in certain collateral hereinafter described;

Now, therefore, for and in consideration of the promises herein contained and the sum of One Dollar ($1.00) paid to Debtor by Secured Party, and for other good and valuable considerations, receipt and sufficiency of which are hereby acknowledged, Secured Party and Debtor hereby agree as follows:

1. *Collateral.* Debtor hereby grants to Secured Party a security interest in the following property of Debtor (hereinafter referred to as the "Collateral"):

(a) All of the assets listed and described in Section 1.1 of the Agreement;

(b) All intangible assets of the Business, including, without limitation, all notes and accounts receivable, unbilled receivables, all contract rights, leasehold interest, licenses, registered trade name rights, consulting agreements, trade secrets and customer lists used in conjunction with such assets; and

(c) All property, goods and chattels of the same classes as those listed in subparagraphs 1(a) and 1(b) hereof acquired for use in the Business (as that term is defined in the Agreement) by the Debtor subsequent to the execution of this Security Agreement and prior to its termination, proceeds of such assets and all increases, substitutions, replacements, additions and accretions to such assets.

2. *Obligations Secured by this security Agreement.* The Security interest provided for is to secure the payment and performance of the obligations evidenced by the Note.

3. *Ownership of Collateral.* The Debtor is, or is to become, the owner of the Collateral, and has, or will have when the Collateral is acquired, the right to convey a first and prior security interest in the Collateral to Secured Party.

4. *Use of Collateral.* The Collateral has been acquired and is used by the Debtor, or will be acquired and will be used, in connection with the Business.

5. *Title.* This Security Agreement is not intended to affect the title to the Collateral, which is, or will become, vested in the Debtor.

6. *Acts to be Performed by Debtor.* The Debtor agrees as follows:

(a) *Payment and Performances.* The Debtor shall pay and perform all of the obligations secured by this Security Agreement according to their terms.

(b) *Further Assurances.* The Debtor shall defend the title to the Collateral against all persons. On demand by the Secured Party, the Debtor shall execute any written instruments or do any other acts reasonably necessary to make effective the purposes and provisions of this Security Agreement.

(c) *Possession.* The Debtor shall remain in possession of the Collateral during the term of this Security Agreement.

(d) *Sale and Exchange.* The Debtor may sell or exchange the Collateral in the ordinary course of business without the written consent of the Secured Party, but the proceeds of such sale or exchange and all increases, substitutions, replacements, additions and accretions thereto shall be subject to the lien of this Security Agreement. Debtor may otherwise sell the Collateral with the consent of Secured Party, which consent shall not be unreasonably withheld.

(e) *Certain Acts Required:* At all times prior to the final payment of all balances due under the Note, Debtor shall and Debtor shall cause any company to which the assets and Business transferred hereunder may be transferred to:

(i) Use reasonable care in the custody and preservation of the Collateral and shall keep the same free from any adverse lien, security interest or encumbrance. The Secured Party may enter upon the premises where the Collateral is located and examine it;

(ii) Keep the Collateral insured for the benefit of the Secured Party against loss by fire and other casualties or risks, in such form and amount as is commonly maintained by companies similarly situated;

(iii) Furnish to Secured Party within 45 days after the end of each fiscal quarter of Debtor and 120 days after the end of each fiscal year of Debtor, a copy of the Debtor's individual division balance sheet as at the close of such period and from time to time, such other information as Secured Party may reasonably request;

(iv) Permit reasonable access by Secured Party and its agents and representatives to the books and records of the Debtor relating to the operations of the Business (excluding information regarding customer accounts) however such operations are constituted after Time of Closing;

(v) Maintain all of the properties and assets of the Business in good condition, order and repair, reasonable wear and use excepted, and maintain insurance to such extent and against such hazards and liabilities as is commonly maintained by companies similarly situated;

(vi) Pay when due all taxes, assessments, and other liabilities, except and so long as contested in good faith and provided that adequate reserves have been established therefore;

(vii) Operate the Business only in the ordinary course so as to maintain the goodwill it presently enjoys, and to the extent of and consistent with such operation, use its best efforts to preserve intact the present Business;

(viii) Promptly advise Secured Party in writing of facts or events which could have a material adverse impact on Debtor's ability to make payments of principal and interest under the Note;

(ix) Not declare or pay any dividends on the stock of Debtor, reacquire or repurchase the shares of Debtor or make any other distributions to Debtor's respective shareholders;

(x) Not permit total capital expenditures of Debtor and all of its subsidiaries, to be in excess of 125% of the depreciation expensed for financial reporting purposes per annum, on a cumulative basis, if such capital expenditures are encumbered in any manner, without written permission of Secured Party, which permission shall not be unreasonably withheld;

(xi) Not permit the sale or transfer of any asset of Debtor, other than in the ordinary course of business, unless like assets are purchased for use by Debtor or the proceeds are paid to the Company as a prepayment of principal of the Note without the consent of Secured Party, which consent shall not be unreasonably withheld;

(xii) Deliver to Secured Party the certificate of an officer of Debtor within 90 days from the end of its fiscal year certifying that it is in compliance with the covenants set forth in this Section 6(e).

(f) *Failure to Perform Required Acts:*

(i) *Performance by Secured Party.* Upon failure by the Debtor to perform the acts described in subparagraph (e) of this paragraph 6, the Secured Party is authorized and has the option to perform any of said acts in any manner deemed proper by the Secured Party, without waiving any rights to enforce this Security Agreement.

(ii) *Advances Secured.* The reasonable expenses, including the cost of any insurance and payment of taxes or other charges, paid by the Secured Party in respect to the preservation of the Collateral shall be deemed advanced to the Debtor by the Secured Party, shall be payable on demand and shall bear interest at the rate provided for in the Note and shall be secured by this Security Agreement.

7. *When Obligations Become Due.* At the option of the Secured Party, the obligations secured by this Security Agreement may be declared immediately due and payable upon the happening of one or more of the following events:

(a) *Default in Obligation.* If the Debtor shall fail to perform any of the obligations described in the Note and secured by this Security Agreement, and such failure is not remedied within thirty (30) days following receipt by Debtor of written notice from Secured Party.

(b) *Default in Security Agreement.* If the Debtor shall fail to perform any covenant, condition or provision of this Security Agreement, and such failure is not remedied within thirty (30) days following receipt by Debtor of written notice from Secured Party.

8. *Remedies upon Default.*

(a) *General.* In the event of default under this Security Agreement, the Debtor and Secured Party shall have the rights and remedies provided in Article 9 of the Uniform Commercial Code, and in addition, those provided in this Security Agreement.

(b) *Disposition of Collateral.* If any notification of intended disposition of any of the Collateral is required by law, such notification, if mailed shall be deemed properly given if mailed at least fifteen (15) days before such disposition, postage prepaid, addressed to the Debtor as provided for in subparagraph 10(e) hereof. Any proceeds of any disposition of any of the Collateral may be applied by the Secured Party to the payment of expenses in connection with the Collateral, including reasonably attorneys' fees and legal expenses, and any balance of such proceeds may be applied by the Secured Party toward the payment of the Note.

9. *Convenant to Pay Deficiency.* Upon default, if the sale or other disposition of the Collateral fails to satisfy the obligations secured by this Security Agreement and the reasonable expenses of retaking, holding, preparing for sale, selling and the like, including reasonable attorneys' fees and legal expenses incurred by the Secured Party in connection with this Security Agreement or the obligations of Secured Party, the Debtor shall be liable for any deficiency.

10. *Miscellaneous.* The Debtor and Secured Party agree as follows:

(a) *No Discharge.* No party to this Security Agreement shall be discharged by any extension of time, additional advance and notes, renewals and extensions of the Note, the taking of further security, releasing security, extinguishment of the security as to all or any part of the Collateral or any other act, except a release or discharge of the security interest upon full payment of the obligations secured by this Security Agreement, including charges, expenses, fees, costs and interest.

(b) *No Waiver or Estoppel.* Any failure by the Secured Party to exercise any right set forth in this Security Agreement shall not constitute a waiver thereof. Nothing in this Security Agreement or in the obligations secured by it shall preclude any other remedy by action or otherwise for the enforcement of this Security Agreement or the payment in full of the obligations secured by it.

(c) *Succession.* This Security Agreement shall bind the respective successors and assigns of the Debtor and the Secured Party.

(d) *Governing Law.* The rights and duties of the parties hereto shall be governed by the laws of the State of Pennsylvania.

(e) All communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or mailed first class, postage prepaid, registered or certified, addressed as follows:

If to Secured Party: Means Services, Inc., c/o ARA Services, Inc., Independence Square, West, Philadelphia, Pennsylvania 19106, Attention: W. J. O'Kane, Esquire.

If to Debtor: Mid-West Towel & Linen Service, Inc., 601 E. Main Street, Muncie, Indiana 47305.

In witness whereof, the parties hereto, intending to be legally bound hereby, have duly executed this Agreement as of the date and year first above written.

Attest:

Secretary.

Attest:

Secretary

Mid-West Towel & Linen Service, Inc., A. Jack Hertz, *President.*

Means Services, Inc., James E. Stefoff, *president.*

Exhibit E

Guaranty (Unlimited)

To: MEANS SERVICES, INC., an Illinois Corporation ("MEANS").

1. *Guaranty of Payment and Performance of Obligations.* In consideration of Means' extending credit to Mid-West Towel & Linen Service, Inc., an Indiana Corporation ("Purchaser"), in the amount of Five Million Dollars ($5,000,000) in connection with the sale to Purchaser of certain assets owned by Means pursuant to a certain Agreement for Purchase and Sale of certain assets of Means between Means and Purchaser dated April 26, 1982 ("Purchase and Sale Agreement"), the undersigned (the "Guarantors"), hereby unconditionally guarantee to Means that (a) the Purchaser shall duly and punctually pay, when due, at the expiration of the grace period set forth in paragraph 4 (a) and (b) of the Security Agreement delivered pursuant to the Purchase and Sale Agreement and attached to the Note, at the place specified therefor, or if no place is specified, to Means c/o ARA Services, Inc., Independence Square West, Sixth at Walnut Street, Philadelphia, Pennsylvania 19106, (Attention: Treasurer) all indebtedness when due, at maturity, or by acceleration upon default (after the lapse of the cure period, if any, applicable to any default), and shall timely perform all obligations and liabilities, direct or indirect, matured or unmatured, primary or secondary, certain or contingent, of the Purchaser to Means now or hereafter owing or incurred (including without limitation costs and expenses incurred by Means in attempting to collect or enforce any of the foregoing) which are chargeable to the Purchaser either by law or under the terms of Means' agreements with the Purchaser or under the Purchase and Sale Agreement, accrued in each case to the date of payment hereunder (collectively the "Obligations" and individually an "Obligation"); and (b) if there is an agreement evidencing or executed and delivered in connection with any Obligation, the Purchaser shall perform in all other respects strictly in accordance with the terms thereof. This Guaranty is an absolute, unconditional and continuing guaranty of the full and punctual payment and performance by the Purchaser of the Obligations and not of their collectibility only and is in no way conditioned upon any requirement that Means first attempt to collect any of the Obligations which Means now has or may acquire after the date hereof, or that Means pursue any other remedies available to it, or upon any other contingency whatsoever. Upon any default by the Purchaser in the full and punctual payment and performance of the Obligations and the failure by Purchaser to cure such default within the applicable cure period, if any, the liabilities and obligations of the Guarantors hereunder shall, at the option of Means, become forthwith due and payable to Means without further demand or notice to the Guarantors, all of which are expressly waived by the Guarantors. Payments by the Guarantors hereunder may be required by Means on any number of occasions, and Means may at its discretion enforce this Guaranty against either or both of the Guarantors.

2. *Guarantors' Further Agreements to Pay.* The Guarantors further agree, as the principal obligors and not as guarantors only, to pay to Means forthwith upon demand, in funds immediately available to Means, all costs and expenses (including court costs and reasonable legal expenses) incurred or expended by Means in connection with this Guaranty and the enforcement hereof, together with interest on amounts recoverable under this Guaranty from the time such amounts become due until payment at the usual rate changed by Means in similar circumstances, but in no event less than twelve percent (12%) per annum.

3. *Unlimited Liability of Guarantors.* The liability of the Guarantors hereunder shall be unlimited. Although referred to as a Guaranty, this instrument is intended as well to be a contract of suretyship by which the undersigned intend to be legally bound.

4. *Security; Set-Off.* (a) If a default exists in any of the Obligations under the Security Agreement, the Guarantors grant to Means, as security for the full and punctual payment and performance of the Guarantors' liabilities and Obligations hereunder, a continuing lien on and security interest in all property of the Guarantors, and in the proceeds therefrom.

(b) The Guarantors shall have no right of set-off, subrogation, reimbursement or indemnity whatsoever and no right of recourse to any assets or property of Purchaser or to any collateral for the liabilities of Purchaser until all liabilities of Purchaser to Means have been paid in full.

5. *Subordination by Guarantors.* The Guarantors, and each of them, subordinate to the payment in full of the Obligations any claim to payment now or hereafter held by such Guarantor or either of them, against the Purchaser or against any other person or entity directly or indirectly liable for the Obligations.

6. *Means' Freedom to Deal with Purchaser and Other Parties.* Means shall be at liberty, without giving notice to or obtaining the assent of the Guarantors and without relieving the Guarantors of any liability or obligation hereunder, to deal with the Purchaser and with each other party who now is or after the date hereof becomes liable in any manner for any of the Obligations, in such manner as Means in its sole discretion deems fit, and to this end the Guarantors give to Means full authority in its sole discretion to do any or all of the following: (a) extend credit, make loans and accord other financial accommodations to the Purchaser at such times, in such amounts and on such terms as Means may approve, (b) vary the terms and grant extensions or renewals of the Obligations on any present of future indebtedness or obligation to Means of the Purchaser or of any such other party, (c) grant time, waivers and other indulgences in respect thereto, (d) vary, exchange, release or discharge, wholly or partially, or delay in or abstain from perfecting and enforcing any security or guaranty or other means of obtaining payment of any of the Obligations which Means now has or acquires after the date hereof, (e) accept partial payments from the Purchaser or any such other party, (f) release or discharge, wholly or partially, any endorser or guarantor, (g) compromise or make any settlement or other arrangement with the Purchaser of any such other party, (h) sell, collect or otherwise dispose of any collateral now or hereafter held by Means as security for the Obligations at public or private transaction, and become the Purchaser thereof, free and clear of any interest therein on the part of the Guarantors, and apply the net proceeds of any such sale or disposition to the Obligations or any indebtedness of the Purchaser to Means in the order selected by Means, it being understood that Means shall not be under any obligation to hold any such Collateral in favor of any Guarantor or with respect to the Obligations, (i) subordinate the payment of the Obligations, or any part thereof, to the payment of any indebtedness of the Purchaser, and (j) take or refrain from taking any action deemed to be in Means' best interest with respect to the Obligations, the Purchaser, any Collateral or with respect to any person or entity liable for the Obligations.

7. *Unenforceability of Obligations Against Purchaser; Invalidity of Security or Other Guaranties.* If for any reason the Purchaser has no legal existence or is under no legal obligation to discharge any of the Obligations undertaken or purported to be undertaken by it or on its behalf, or if any of the monies included in the Obligations are not recoverable from the Purchaser by operation of law or for any other reason, this Guaranty shall nevertheless be binding on the Guarantors to the same extent as if the Guarantors at all times had been the principal debtor on all such Obligations. This Guaranty shall be independent of and in addition to any other guaranty or other security for the Obligations, and it shall not be prejudiced or rendered unenforceable by the invalidity of any such other guaranty or security.

8. *Waivers by Guarantors.* The Guarantors waive: Notice of acceptance hereof, notice to the Guarantors of the occurrence of an event of default under the Purchase and Sale Agreement or under any agreement between, or instrument executed by, Means and/or Purchaser, notice of any action taken or omitted by Means in reliance hereon, and any requirement that Means be diligent or prompt in making demands hereunder, giving notice of any default by the Purchaser or asserting any other right of Means hereunder. The Guarantors also irrevocably waive, to the fullest extent permitted by law, all defenses which at any time may be available in respect of the Guarantors' liabilities and obligations hereunder by virtue of any homestead exemption, statute of limitations, valuation, stay, moratorium law or other similar law now or hereafter in effect.

9. *No Contest with Means.* So long as any obligation remains upaid or undischarged, the Guarantors will not, by paying any sum recoverable hereunder (whether or not demanded by Means) or by any means or any other ground, claim any set-off of counterclaim against the Purchaser in respect of any liability of the Guarantors to the Purchaser or, in proceedings under the Bankruptcy Code or insolvency proceedings of any nature, prove in competition with

Means in respect of any payment hereunder or be entitled to have the benefit of any counterclaim or proof of claim or dividend or payment against, by or on behalf of the Purchaser or the benefit of any other security for any obligation which, now or hereafter, Means may hold or in which it may have any share.

10. *Demands and Notices.* Any demand on or notice to any of the Guarantors shall be in writing and shall be effective when handed to such Guarantor or left at or mailed to such Guarantor's usual or last-known address.

11. *Amendments, Waivers, Etc.* Guarantors and each of them acknowledge that no promises, representation, agreements, conditions or covenants have been made relating to this Guaranty other than those contained herein, and agree that no provision of this Guaranty can be changed, waived, discharged or terminated except by an instrument in writing signed by Means and the Guarantors expressly referring to the provision of this Guaranty to which such instrument relates; and no such waiver shall extend to affect or impair any right with respect to any Obligation which is not expressly dealt with therein. No course of dealing or delay or omission on the part of Means in exercising any right shall operate as a waiver thereof or otherwise be prejudicial thereto.

12. *Miscellaneous Provisions.* This Guaranty is intended to take effect as a sealed instrument, to be governed by an construed in accordance with the laws of the Commonwealth of Pennsylvania, and shall inure to the benefit of Means and its successors and assigns, and shall be binding on the Guarantors and their respective heirs, personal representatives and assigns.

In witness whereof, the Guarantors have executed this on the 1st day of June 1982.

Witness:

A. Jack Hertz, c/o Mid-West Towel & Linen Service, Inc., 601 East Main St., Muncie, Indiana 47305.

Marc I. Hertz, c/o Mid-West Towel & Linen Service, Inc., 601 East Main St., Muncie, Indiana 47305.

Memorandum of Additional Understandings

Means Services, Inc. (the "Company"), ARA Services, Inc. ("ARA") and Mid-West Towel & Linen Service, Inc. ("Buyer") entered into a certain agreement for purchase and sale of certain assets of the Company in the Huntington, West Virginia area (the "Business") as of the 26th day of April, 1982. Defined terms in the Agreement shall have the same meaning in this Memorandum.

The parties have reached the following additional specific understandings in addition to those set forth in the above referred to Agreegment:

1. The Company will deliver to the Buyer at the Time of Closing as one of the vehicles referred to in the Agreement, a 40 foot trailer.

2. The Company and ARA agree that the Buyer may sell routes in the Wheeling and Morgantown, West Virginia market areas and retain the proceeds of such sale in its business notwithstanding anything which may appear to be to the contrary in the Security Agreement.

3. The Company will provide the Buyer with data processing services free of charge for one month following the Time of Closing and will continue to provide such services if requested by the Buyer for up to an additional 5 months at the Company's cost of providing such services estimated to be approximately $4,000.00 per month.

4. The present manager of the Company's business, Randall Hamby, has tentatively agreed, with the consent of the Company and ARA, to enter into an employment agreement with the Buyer at the Time of Closing and for a periord of 10 years following the Time of Closing. The Company and ARA agree that neither will employ Hamby for a period of two years following the Time of Closing, neither will solicit Hamby to leave employment with the Buyer and, if at the request of Hamby without any such solicitation, either the Company or ARA should employ Hamby during the 10 years following the Time of Closing, each agrees that Hamby will be assigned to an area that does not include any part of the area of the Business.

5. The parties agree that they will work together to make reasonable adjustments required in connection with the sale contemplated by the Agreement such as the adjustment of consideration to reflect the accounts receivable delivered at the Time of Closing, adjustments relating to vacation pay and sick pay, if any, accruals for employees who are employed by the Buyer, and will work together to provide such computer software services and the like as may be necessary for the conduct of the Business in order to make meaningful those agreements set forth in the Agreement.

6. Notwithstanding the provisions in the Agreement relating to the sale of computer hardware, Buyer has the option of returning any or all of such hardware and on such return Buyer shall be relieved of its obligations for future payments on such equipment and Buyer shall be given a credit equal to the net book value of such equipment on the Company's books.

Dated: April 27, 1982.

Means Services, Inc., By: Kenneth L. Koski, *Vice President.*

ARA Services, Inc., By: William J. O'Kane, *Vice President.*

Mid-West Towel & Linen Service, Inc., By: A. Jack Hertz, *President.*

Exhibit A

To be provided to Buyer within 72 hours of the purchase or acquisition by ARA of at least 51 percent of the outstanding shares of the Company.

Exhibit A–1

MAJOR ACCOUNTS

	Daily	
Ashland Synthetic Fuel	2,500	3 yr—expires 1982.
Raleigh General Hospital	1,500	6 yr,—expires 1983.
Armco	800	40 yr.
Ashland Oil	600	40 yr.
Monsanto	575	20–30 yr.
Ashland Solvay	400	6 yr.
Union Carbide	300	20–30 yr.
DuPont—Charleston	400	20–30 yr.

MAJOR ACCOUNTS—Continued

	Daily	
DuPont—Parkersburg	200	20–30 yr.
Huntington Hospital	500	3 yr.—1983.
Logan General Hospital	1,000	5 yr.
FMC Corporation	350	20–30 yr.
New Boston Coke	200	1 yr, c.o.d.
Allied Chemical Tar Plant	150	3–4 yr.

Exhibit B–1

Certificate of Title

To: F. W. Means & Company.

I certify that I have made an examination of the title to real estate situated in Wayne County, West Virginia, described as follows:

Beginning at the point of intersection of the south line of the right of way of the Chesapeake & Ohio Railway Company, said point being 33 feet south of the Center line of said right of way, with the west line of Vernon Street, as shown on a map of Westmoreland Subdivision No. 2, a copy of which map is of record in said Clerk's Office in Deed Book 79 at Page 85, if said street line were produced southerly to its point of intersection of said south right of way line; thence with the said line of Vernon Street, produced, S. 20° 24′ E., 209 feet to a point in the north right of way line of the James River and Kanawha Turnpike as now located and being 20 20 feet northerly from the center line thereof; thence with the north right of way of the Turnpike, S. 81°19′ W., 102 feet; thences S. 77°49′ W., 102 feet; thence S. 75°59′ W, S. 75°32′ W., 452 feet; thence S. 84°18′ W., 156.28 feet; thence N. 88°35′ W., 122.5 feet; thence N. 88°47′ W., 105.49 feet to a point in the easterly end of a parcel of land being a part of the above mentioned Lots 10, 11, 12, 13, 14 and 15 of Bowman Realty Company's Addition which was conveyed by the Gould-National Batteries, Inc., to the State Road Commission of West Virginia, a corporation, as part of the right of way acquired by the said Commission for Project No. I–64–1(31)0; thence with the easterly end of said parcel, N. 3°48′ E., 17.98 feet; thence with the north line of said parcel, it being now the north line of the relocated James River and Kanawha Turnpike, N. 86°12′ W., 362 feet; thence S. 77°58′ W., 41.61 feet to a point in the line between Lots 9 and 10 of said Bowman Addition; thence with the line between said lots, N. 11°12′ W., 59.64 feet to a point in the said south right of way line of the Chesapeake & Ohio Railway Company; thence with the north line of all of the above named lots, crossing Vinson Street and continuing with said right of way line, N. 78°48′ E., a total distance of 1,491.88 feet to the point of Beginning and containing a total of 6.25 acres, more or less; excepting and reserving from this conveyance however that part of Vinson Street as shown on a map of the said Bowman Addition which lies within the boundary of the land herein described.

I certify that my examination covers the period from a date prior to 1900 to December 10, 1971, and that in my opinion:

1. Good and marketable title in fee simple is vested in F. W. Means & Company, a corporation, by virtue of a deed from Gould-National Batteries, Inc., a corporation dated

December 1, 1971, and recorded December 10, 1971, in the office of the Clerk of the County Court of Wayne County, West Virginia, in Deed Book 406, at Page 237.

Exhibit C

Agreement for Purchase and Sale of Certain Assets of Means Services, Inc.

This agreement is made as of this 26th day of April, 1982, by and among Means Services, Inc., an Illinois corporation (the "Company"), ARA Services, Inc., a Delaware corporation ("ARA") and Mid-West Towel & Linen Service, Inc., an Indiana Corporation ("Buyer").

Recitals

The Company, is engaged in the rental, cleaning and servicing of uniforms, garments, linen items, dust control items, towels, mops and mats in the Huntington, West Virginia area (the "Business"). ARA has made an offer to purchase from the Company's shareholders, all of the issued and outstanding stock of the Company. In the event that ARA purchases at least 51% of the issued and outstanding stock of the Company, the Company will be desirous of selling to Buyer and Buyer wil be desirous of purchasing from the Company all the tangible personal and real property used in the Business, including, without limitation, the accounts, contracts, in-service inventory, goodwill, real estate, and vehicles for the consideration and on the terms hereinafter set forth.

Agreement

The parties agree as follows:

Article I

Purchase and Sale: Closing

Section 1.1 Purchase and Sale: On the basis of the representations and warranties contained herein and subject to the terms and conditions set forth in this Agreement and subject to the purchase by ARA of at least 51% of the issued and outstanding common stock of the Company prior to Time of Closing, the Company agrees to sell to Buyer and Buyer agrees to purchase from the Company all of the Company's assets (except as otherwise excluded herein) used in conjunction with the Business including, but not necessarily limited to the following:

(a) The Company's entire useable in-service inventory of garments, uniforms, linen, towels, mops, mats and other dust control items used in conjunction with the Business, whether located on the Company's premises, in the possession of Company's customers, or in transit;

(b) All of the Company's contracts or agreements (whether oral or written) between the Company and its customers; all customer lists, daily delivery lists, records and other similar data relating to the customers of the Business serviced by the Company, including names, addresses, price lists, and type and frequency of service; a complete list of the Company's customers serviced by the Business is attached hereto and made a part hereof as Exhibit "A";

(c) All of the Company's machinery and equipment, office equipment, vehicles, cabinets, dispensers, haul baskets and other assets used by the Company in the Business as more fully described on Exhibit "B" attached hereto and made a part hereof;

(d) The land and buildings owned by the Company and employed in the Business, as more fully described in Exhibit "B-1" attached hereto (the "Real Estate"), and the Company's rights and obligations with respect to leases of property described in Exhibit "B-2" attached hereto (the "Leased Property"), being all of the real estate used in conjunction with the Business;

(e) The accounts receivable with respect to the Business at Time of Closing; and

(f) The goodwill associated with respect to the Business.

subject to no liabilities of the Company except for continuing obligations under leases for computers, computer terminals, and all other computer equipment and copy equipment or conditional sales contracts covering such equipment, but specifically excluding all cash of the Business and computer programs and software.

Section 1.2 Purchase Price: Buyer agrees to pay to the Company, in exchange for the assets, accounts and Business described in Section 1.1, a Purchase Price of $6,250,000, plus (or minus) the amounts by which the collectable accounts receivable exceed (or are less than) $648,000. The total purchase price, shall be allocated among the assets as follows:

Inventory	$290,000
In-Service Merchandise	1,500,000
Accounts Receivable	650,000
Land and Building	1,300,000
Machinery and Equipment	800,000
Haul Baskets	50,000
Office Equipment	90,000
Vehicles	200,000
Cabinets and Dispeners	70,000
Goodwill	150,000
Customer Lists	1,150,000

Section 1.3 Payment of Purchase Price: The Purchase Price shall be paid by Buyer to the Company as follows:

(a) $100,000 at the time of Execution of this Agreement; and

(b) Delivery at Time of Closing of Buyer's check in the sum of $1,150,000; and

(c) Delivery at Time of Closing of Buyer's seven (7) year promissory note in the principal sum of the balance of the Purchase Price, payable in equal quarterly installments of principal together with accrued interest at 12% per annum until the fifth (5th) anniversary date of the Time of Closing and thereafter at the prime interest rate charged from time to time by Chemical Bank, New York, N.Y. (the "Prime Rate") but not in excess of 13% per annum. Payments of principal and interest shall be made on the basis of a ten (10) year amortization schedule with the balance of principal being due and payable on the seventh (7th) anniversary of the date of the Time of Closing. (ARA shall use its best efforts to help Buyer to re-finance said balance with commercial banking institutions for an additional three (3) year period at then commercially available rates of interest. In the event Buyer is unable to obtain such financing at a rate of interest equal to or better than the rate of interest charged to ARA by its primary lending institutions, then ARA will refinance the said balance of the Note at rates of interest equal from time to time to those then paid by ARA, provided that at the time of such refinancing, Buyer is not in default under the terms of the Note or the Security Agreement.) The promissory note shall be in the form of the note attached hereto as Exhibit "C" (the "Note"). The Note shall be secured by the assets, contracts, accounts, accounts receivable, goodwill and inventory of the Business in accordance with the Security agreement attached hereto as Exhibit "D" (the "Security Agreement") and shall be guaranteed by A. Jack Hertz and Marc I. Hertz in accordance with the form of Guaranty attached hereto as Exhibit "E" (the "Guaranty").

(d) The Real Estate shall be secured by a mortgage in a form acceptable to counsel for ARA and the Company and counsel for the Buyer, which acceptance shall not be unreasonably withheld (the "Mortgage").

Section 1.4 Closing: The closing under this Agreement will take place as of 10:00 AM Local Time June 1, 1982, or such other date as the parties hereto may agree upon (such time and date being hereinafter referred to as the "Time of Closing"), at the office of Hoffberg, Rabin & Engler, 29 West 57th Street, New York, New York 10019 (or at such other place as the parties hereto may agree upon).

Section 1.5 Closing Actions: Subject to the terms and conditions set forth in this Agreement, the following steps will be taken concurrently by the Company and Buyer, respectively, at the Time of Closing and thereafter:

(a) The Company shall transfer, assign and deliver to Buyer all assets to be sold or assigned to Buyer pursuant to this Agreement. Such transfer and assignment shall be made by bills of sale, assignments, special warranty deeds and other instruments containing full warranties consistent with this Agreement and sufficient to vest in Buyer title to the assets being sold, subject to no mortgage, lien, encumbrance, or other security arrangement, except as created herein; and

(b) Buyer shall deliver to Company at Time of Closing its certified check in the sum of $1,150,000; and

(c) Buyer shall deliver the Note, the Security Agreement, the Guaranties and the Mortgage.

Article II

Representations and Warranties of the Company and the ARA

The Company and ARA represent and warrant to Buyer that:

Section 2.1 Business Organization: Authority: The Company and ARA are corporations duly organized and legally existing in good standing under the laws of the states of Illinois and Delaware, respectively, each with full power and authority to own its respective properties and conduct its respective business as now being conducted. Each has by proper corporate proceedings duly authorized the execution, delivery and performance of this Agreement.

Section 2.2 Title: The Company has and will transfer to Buyer at the Time of Closing title to all of the assets, accounts, and rights

which are to be sold to Buyer pursuant to this Agreement, free and clear of any mortgage, lien, encumbrance, charge or other security interest or arrangement or liability of any kind or nature, except as otherwise created hereunder. Such assets are being sold and delivered in an "as is" condition, wherever such assets are located, AND NO WARRANTY AS TO THEIR CONDITION, EXPRESS OR IMPLIED, INCLUDING MERCHANTIBILITY OR FITNESS FOR A PARTICULAR PURPOSE, IS MADE BY THE COMPANY OR ARA, except as otherwise provided herein.

Section 2.3 Legal Proceedings: There is no suit, proceeding or investigation pending or threatened against the Company or the Business which might result in any material adverse change in the assets of the Company or the business being sold hereunder, or which would question the validity of this agreement or of any action taken in accordance with or in connection with this Agreement, except for a suit filed by the Justice Department of the United States of America on April 26, 1982 against ARA seeking to enjoin its acquisition of the Company (the "Justice Department Action").

Section 2.4 Employee Relations: There is no pending or threatened dispute between the Company and any of the employees of the Business which might materially and adversely affect the continuance of the Business.

Secion 2.5 Brokers or Finders: No agent, broker or other person acting pursuant to the authority of the Company is entitled to any commission or finder's fee in connection with the transaction contemplatd by this Agreement.

Section 2.6 Material Agreements: The Company shall provide Buyer, at least 10 days prior to the Time of Closing, with copies of all customer contracts currently in effect together with any amendments thereto; all employment contracts; all agreements with collective bargaining representatives of its employees, if any; all agreements, notices, memoranda or reports covering or describing fringe benefits for its employees including, without limitation, life insurance or death benefits, hospitalization or surgical coverage, pensions, bonuses or profit sharing, if any. The Company is not in material default under any such contracts or agreements, and there has occurred no event which, with the passing of time or giving or notice, would constitute such a default.

Section 2.7 Customer Contracts: All customer contracts listed in Exhibit "A" hereof are currently in full force and effect.

Section 2.8 Inventory: The in-service inventory of merchandise is sufficient to service the customers and clients of the business at present levels of demand and normal levels of operations in the ordinary course of the Business as of the Time of Closing in accordance with the following formula:

1 delivery per week=2.3 times average weekly usage
2 deliveries per week=1.8 times average weekly usage
3 deliveries per week=1.6 times average weekly usage
4 deliveries per week=1.5 times average weekly usage
5 deliveries per week=1.4 times average weekly usage

The inventory of new, unused merchandise of textiles, soaps, other items usually sold in the course of the Business and laundry processing supplies shall be at least $290,000.00 at the Time of Closing. To the extent said merchandise inventory is less than $290,000.00 at Time of Closing, the Company shall provide enough useable merchandise inventory to bring the said merchandise inventory levels to $290,000.00.

Section 2.9 Real Estate: In connection with the sale by the Company to the Buyer of the Real Estate, the Company hereby covenants with the Buyer and warrants to the Buyer as follows:

(a) This sale includes all right, title and interest, if any, of the Company in and to any land lying in the bed of any street, road or avenue opened or proposed, in front of or adjoining said premises, to the center line thereof, and all right, title and interest of the Seller in and to any award made in lieu thereof and in and to any unpaid award for damages to said premises by reason of change of grade of any street; and the Company will execute and deliver to the Buyer, at the Time of Closing, or thereafter, on demand, all proper instruments for the conveyance of such title and the assignment and collection of any such award.

(b) The Real Estate is to be conveyed subject to:

(i) Zoning regulations and ordinances of the city or subdivision in which the premises lie, which are not violated by existing structures.

(ii) Consents by the Company or any former owner of premises for the erection of any structure or structures on, under or above any street or streets on which said premises may abut.

(iii) Encroachments of stoops, areas, cellar steps, trim and cornices, if any, upon any street or highway.d

(c) All notes or notices of violations of law or municipal ordinances, orders or requirements noted in or issued by the Departments of Housing and Buildings, Fire, Labor, Health, or other State, County or Municipal Departments having jurisidiction, against or affecting the premises at the date hereof, shall be complied with by the Company and the premises shall be conveyed free of the same. The Company shall, upon request, furnish the Buyer with an authorization to make the necessary searches therefor.

(d) If, at the time of the delivery of the deed, the premises or any part thereof shall be or shall have been affected by an assessment or assessments which are or may become payable in annual installments, of which the first installment is then a charge or lien, or has been paid, then for the purposes of this contract all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and to be liens upon the premises affected thereby and shall be paid and discharged by the Buyer, upon the delivery of the deed. This provision shall not apply to any charge, fee or assessment for municipal services such as police or fire protection.

(e) The following are to be apportioned:

(i) Rents as and when collected if there are any third party tenants in the demised premises.

(ii) Premiums on existing transferable insurance policies or renewals of those expiring prior to the closing.

(iii) Taxes and sewer rents, if any, on the basis of the fiscal year for which assessed.

(iv) Fuel, if any, to be adjusted regardless of the provision above set forth.

(f) If the closing of title shall occur before the tax rate is fixed, the apportionment of taxes shall be upon the basis of the tax rate for the next preceding year applied to the latest assessed valuation.

(g) If there be a water meter on the premises, the Buyer shall furnish a reading as of the date of Time of Closing and an apportionment shall be made for any water or sewer rates accrued to date of Time of Closing.

(h) A bargain and sale (special warranty) deed with covenants against grantor's acts or such similar deed in use in West Virginia in proper statutory form of record shall be duly executed and acknowledged so as to convey to Buyer good and marketable title to the Real Estate, free of all encumbrances, except as herein stated and such as shall be insured by a requtable title company at normal rates.

(i) The Company will deliver to the Buyer at the time of the delivery of the deed hereunder a resolution of its Board of Directors authorizing the sale and delivery of the deed, and a certificate by the Secretary or Assistant Secretary of the corporation certifying such resolution and setting forth facts showing that the conveyance is in conformity with the requirements of the law in West Virginia. The deed in such case shall contain a recital sufficient to establish compliance with said statutes.

(j) At the Time of Closing of the title the Company shall deliver to the Buyer a certified check to the order of the recording officer of the county in which the deed is to be recorded for one half the amount of the documentary stamps, if any, to be affixed thereto in accordance with West Virginia Law, and a certified check to the order of the appropriate county officer for any other tax payable by reason of the delivery of the deed, and a tax return, if any be required, duly signed and sworn to by the Company; and the Buyer also agrees to sign and swear to the return and to cause the check and the return to be delivered to the appropriate county officer promptly after the Time of Closing.

Section 2.10 Equipment: From and after the date hereof until the Time of Closing the Company shall maintain the machinery and equipment of the business in good order and repair.

Section 2.11 Financial Records: The Company has provided Buyer with profit and loss statements for the three years ended December 31, 1981; Stage II Management Information Quarterly Branch Sales Analysis for the reporting period covered by the third month in 1982 (Means report #M-029-1) and accounts receivable aging recap as of March 31, 1982. Such statements and reports are accurate in all material respects as and for the dates indicated consistent with the

accounting practices employed by the Company in prior periods.

Section 2.12 Continuation of Representations: All of the representations and warranties hereinabove contained in this Article will be true and correct at and as of the Time of Closing, with the same force and effect as though made at and as of the Time of Closing, except for changes specifically provided for in this Agreement.

Articile III

Representations and Warranties of Buyer

Buyer represents and warrants to the Company and ARA the following:

Section 3.1 Good Standing: Buyer is a corporation duly organized and legally existing in good standing under the laws of the State of Indiana.

Section 3.2 Corporate Authority: Buyer has full corporate power and authority to enter into this Agreement and has, by proper corporate proceedings, duly authorized the execution, delivery and performance of this Agreement on behalf of Buyer.

Section 3.3 Brokers of Finders: No agent, broker or other person acting pursuant to Buyer's authotity will be entitled to make any claim against the Company for any commission or finder's fee in connection with the transactions specifically provided for in this Agreement.

Section 3.4 Financial Condition: Buyer has delivered to ARA and the Company its financial statements for the year ended June 27, 1981 and for the 34 weeks ended February 20, 1982 and the personal financial statements of the Guarantors. Such statements are accurate in all material respects as of and for the dates indicated.

Article IV

Additional Agreements of the Company and the Shareholders

Section 4.1 Continuation of Business: The Company shall, until the Time of Closing, preserve its business organization intact, keep available to Buyer its present key employees, and preserve for Buyer its relationships with suppliers, customers, and others, all to the end that the Business will be unimpaired at the Time of Closing.

Section 4.2 Post Closing Actions: The Company will, from time to time, at the request of Buyer and without further consideration, execute and deliver such further instruments of transfer and take such other action as may be reasonably necessary in order to more effectively transfer and assign all of the assets, accounts, and rights intended to be sold or tranferred by the Company pursuant to this Agreement.

Section 4.3 Restrictive Covenant: The Company and ARA covenant and agree that they will not directly or indirectly, as principal, agent, employer, partner, financial backer, employee, stockholder, or in any other representative capacity whatsoever, solicit, sell, serve, cater to the industrial laundry and the linen supply and industrial garment rental service requirements of any of the Company's present customers described in Exhibit "A" for a period of 3 years and with respect to the customers described in Exhibit "A–1", for a period of 5 years, or attempt to do any of the foregoing, to or with any of the customers of Seller, nor will they, or either of them, do anything, directly or indirectly, to divert said customers' patronage to others and/or to prejudice the existing good will of the business to be acquired by the Buyer, pursuant to the terms of this Agreement, or to prejudice, alter or influence the relationship between the Buyer and any of the customers of said business on and after the date hereof for the periods indicated.

Section 4.4 Liabilities; Indemnity: Except as otherwise provided for herein, Buyer is not assuming any liability or other obligation of any kind or nature of the Company and the Company and ARA agrees to indemnify Buyer, its successors and assigns against, and to save each of them harmless of and from all liabilities from or arising out of claims which may be asserted against them or the assets, accounts, or rights acquired by it pursuant to this Agreement. ARA and the Company shall also indemnify and hold Buyer harmless for its reasonable legal fees incurred in defense of the Justice Department Action, in the event Buyer is joined as a party therein or if an action is brought against Buyer by an independent third party action against the Buyer with respect to the transaction contemplated by this Agreement. Buyer shall give the Company notice of any such liability, claim or action and the Company shall either defend such action at its own cost and expense or shall promptly pay such claim or liability. In the event the Company fails to either pay or defend against such claim or liability, then the Company or ARA shall also reimburse Buyer for its reasonable costs and expenses (including legal fees) of the defense of any such claim or liability or action, and the Company or ARA shall promptly satisfy any judgment rendered against Buyer for any matter covered by this Section 4.4.

This indemnity agreement of the Company and ARA shall survive the completion of the transaction described in this Agreement for a period of 3 years.

Section 4.5 Books and Records; Audit: The Company will give Buyer and its representatives from and after the date of execution hereof full access during normal business hours to all of the properties, books, contracts, documents and records of the Business relating to the assets and accounts being sold hereunder and will furnish to Buyer and its representatives all additional financial statements of and other information with respect to the assets, accounts, and rights sold hereunder which Buyer may reasonably request.

For purposes of verifying the rental volume of the Business as set forth in the profit and loss statement referred to in Section 2.11, and complying with the warranties and agreements herein contained, and verifying the condition of the assets and equipment, Buyer may cause an examination of the books and records of the Company with respect to the Business to be made prior to the Time of Closing by a person or persons selected by Buyer at its expense.

Section 4.6 Expenses of Negotiation: The Company and ARA will pay all expenses incurred by them in connection with the negotiation, execution and performance of this Agreement, whether or not the transaction contemplated hereby is consummated, including the fees and expenses of their counsel.

Section 4.7 Insurance: The Company will continue in force, until Time of Closing, its existing liability, fire and other casualty insurance, with respect to the Business. The Real Estate is fully and adequately insured against casualties.

Section 4.8 Use of Name: The Company hereby grants to Buyer at Time of Closing the right to use the name "Means" (but not "F. W. Means" or "Means Services") in conjunction with the accounts of the Business for a period of 3 years after Time of Closing. For a period of 10 years after Time of Closing neither the Company nor ARA will use the name "Means" in the geographic area in which the Company is currently conducting its Business, but this limitation shall not apply to national advertising by the Company or ARA's distribution of financial information or other uses of the name "Means Services" which is made to the public generally.

Article V

Additional Agreements of Buyer

Section 5.1 Expenses of Negotiation: Buyer will pay all expenses incurred by it in connection with the negotiation, execution and performance of this Agreement, whether or not the transaction contemplated hereby is consummated, including the fees and expenses of Buyer's counsel.

Section 5.2 Confidentiality: Buyer agrees that the information provided to Buyer relating to the Business and accounts of the Company is an important asset of the Company and unless and until the transaction contemplated by this Agreement is consummated, Buyer and its respective agents shall keep all such information and all documents relating to the Business confidential. If the transaction contemplated by this Agreement is not consummated for any reason, Buyer will return all such information and will not use or disclose any such information, documents or disclosures to the competitive disadvantage of the Company for a period of one year from the date hereof.

Section 5.3 Pension Plans: Buyer hereby agrees that notwithstanding the sale of certain assets and Business of the Company to Buyer hereunder, thereby constituting the Company's withdrawal from various multi-employer pension plans with respect to the Company's employees employed in the Business under the Multi-employer Pension Plan Amendments Act of 1980 (the "Act"), the Company and the Buyer intend that the Business shall be continued by Buyer and that such sale shall not cause or be deemed a "complete withdrawal" under Sections 4203 and 4204(a) (1) of the Act. Buyer hereby agrees that: (i) it hereby shall at Time of Closing assume all obligations of the Company with respect to all of the aforesaid multi-employer pension plans in which the Company has heretofore joined as a participating employer prior to the Time of Closing, so that Buyer will be responsible for all obligations, including but not necessarily limited to any obligations for unfunded

vested benefits, of the Company thereto arising during the five years following the Time of Closing (except for any payments that the Company has failed to make thereto prior to the Time of Closing pursuant to applicable collective bargaining agreements); (ii) Buyer will furnish a bond or escrow sufficient to reasonably cover such liability in accordance with Section 4204(a)(1) of the Act; and, (iii) Buyer will apply to the Pension Benefit Guaranty Corporation pursuant to Section 4204(c) of the Act for an exemption from the requirement to obtain such bond, and purusant to which the Company will join with Buyer and make every commercially reasonable effort with Buyer to obtain such exemption for the benefit of Buyer so that such bond will not be required. Notwithstanding the above, ARA and the Company shall indemnify and hold Buyer harmless for a period of 5 years after the Time of Closing for any unfunded liabilities as of the Time of Closing under any multi-employee pension fund to which the Company is a party and which obligation is assumed by Buyer hereunder, and to reimburse Buyer for the cost of a bond which may be required pursuant to Section 5.3(ii) hereof. For the period beginning with the fifth anniversary of the Time of Closing until the tenth anniversary of the Time of Closing ARA or the Company shall indemify and hold Buyer harmless for one half the amount of any unfunded multi-pension plan liability which was in existence at Time of Closing with respect to the Company's Plans at Time of Closing in the event Buyer is required under the Act to pay such unfunded liability during such period.

Section 5.4 Company's Obligation: Buyer shall after the Time of Closing assume and perform the Company's obligations under the contracts and agreements described in Section 1.1(b), under the leases for the Leased Property under the agreements and contracts described in Section 2.7 and under leases or conditional sales agreements for computer equipment and copy machines.

Article VI

Conditions of Obligation of the Company

The obligation of the Company to complete the sale of the assets, rights, and accounts in accordance with this Agreement is subject to the fulfillment at or prior to Time of Closing of each of the following conditions:

Section 6.1 Correctness of Representations and Warranties: All of the representations and warranties of Buyer contained in this Agreement or otherwise made in writing pursuant to this Agreement, shall be true and correct at and as of the Time of Closing, except for changes contemplated or permitted by this Agreement.

Section 6.2 Performance of Obligations: Buyer shall have performed and compiled with all of the obligations and conditions required by this Agreement to be performed or complied with by or at Time of Closing.

Section 6.3 Closing Certificate: Buyer shall have delivered to the Company its certificate dated the day on which the Time of Closing occurs, as to the fulfillment of the conditions set forth in the two preceding sections.

Section 6.4 Purchase of Company Shares: ARA shall have consumated the purchase or acquisition of at least 51% of the issued and outstanding common stock of the Company prior to the consumation of this transaction.

Article VII

Conditions of Obligation of Buyer

The obligation of Buyer to complete the purchase of the aforesaid assets, rights and accounts in accordance with this Agreement is subject to the fulfillment at or prior to Time of Closing of each of the following conditions:

Section 7.1 Correctness of Representations and Warranties: All of the representations and warranties of the Company and ARA contained in this Agreement or otherwise made in writing pursuant to this Agreement, shall be true and correct at and as of the Time of Closing, except for changes contemplated or permitted by this Agreement.

Section 7.2 Performance of Obligations: The Company and ARA shall have performed and complied with all of the obligations and conditions required by this Agreement to be performed or complied with by or at Time of Closing.

Section 7.3 Closing Certificate: The Company and ARA shall have delivered to Buyer their certificate dated the day on which the Time of Closing occurs, as to the fulfillment of the conditions set forth in the two preceding sections.

Section 7.4 No Material Changes: There shall have been no material breach of any representation or warranty contained in this Agreement, nor any material adverse change in the Business. There shall have been no material adverse change in the condition of the Real Estate from the condition of the Real Estate on the date hereof, reasonable wear and tear excepted, which would prevent the Buyer from regularly serving the customers of the Business.

Article VIII

Other Provisions

Section 8.1 Survival of Representations and Warranties: All of the respective representations and warranties of the Company, ARA and Buyer to this Agreement shall survive the consummation of the transaction contemplated herein until the applicable statute of limitations can be successfully pleaded and proven by the party asserting same as a defense.

Section 8.2 Entire Agreement of Parties: This Agreement represents the entire agreement of the parties; there are no other agreements of the parties except as contained herein, and all previous agreements or understandings of the parties are superseded by this Agreement.

Section 8.3 Notices: Any notice to a party hereto pursuant to this Agreement shall be given by registered or certified mail addressed, return receipt requested, if to the Company or ARA, to Means Services, Inc., 35 East Wacker Drive, Chicago, Illinois, Attention: Secretary, and to ARA Services, Inc., Independence Square West, 6th and Walnut Streets, Philadelphia, Pennsylvania, 19106, Attention: William J. O'Kane, Secretary, or if to Buyer, to Mid-West Towel & Linen Service, Inc., 601 E. Main St., Muncie, Indiana 47305, Attention: President, and shall be deemed delivered when placed in the mail so addressed, with postage prepaid, or at any other address designated in writing by a party hereto to the other parties.

Section 8.4 Extension or Waiver of Performance: The Company and ARA or Buyer may extend the time from or waive the performance of any of the obligations of the other, or waive compliance by the other with any of the covenants or conditions in this Agreement. Any such extension or waiver shall be in writing and signed by the President or a Vice President or the Treasurer of the Company and ARA or Buyer, as the case may be.

Section 8.5 Representations and Warranties: Each and every representation, warranty and covenant set forth in this Agreement is a material one (except as otherwise set forth therein) and is made by the party bound thereby for the purpose of inducing the other parties to enter into and to consummate the transaction contemplated by this Agreement.

Section 8.6 Succession and Assignment: This Agreement shall inure to the benefit of and be binding on and enforceable against the successors or assigns of Buyer, the Company and ARA. Any party hereto shall have the right to assign this Agreement to a wholly owned subsidiary, provided, however, that any such assignment shall not relieve such party from its obligations hereunder.

Section 8.7 Headings: The paragraph headings in this Agreement are for the convenience of reference only and shall not be deemed to constitute a part of the provisions hereof nor affect the meaning or construction of any provision, condition or covenant hereof.

In witness whereof, the parties hereto, intending to be legally bound hereby, have executed this Agreement as of the date first above written.

Means Services, Inc., By: Kenneth L. Koski, *Vice President.*

ARA Services, Inc., By: William J. O'Kane, *Vice President.*

Mid-West Towel & Linen Service, Inc., By: A. Jack Hertz, *President.*

U.S. District Court, Southern District of Ohio, Eastern Division

United States of America, Plaintiff v. *ARA Services, Inc. and Means Services, Inc.*, Defendants.

Civil No. C-2-82-436.

Filed: April 29, 1982.

Stipulation and Amended Order

Until the consummation of the sales of the assets of Means Services, Inc. ("Means") as described in an Agreement with United Services, Inc. dated April 23, 1982 and an Agreement with Mid-West Towel & Linen Service, Inc., dated April 26, 1982, ARA Services, Inc. ("ARA") and Means hereby agree that:

1. ARA shall not vote any shares of Means common stock except upon twenty (20) days written notice to the Antitrust Division and upon having obtained the prior approval of the Antitrust Division or, failing such

approval by the Antitrust Division, of the Court.

2. Except with respect to the current service on the Means Board of Directors by Robert Fried and James E. Stefoff, ARA and Means shall maintain persons on the Means Board of Directors who are all demonstrably independent of ARA's control. The directors will not be officers, directors or employees of ARA nor will they be relatives of any officers or have any other substantial business relationship with ARA. Such directors will be chosen on the basis of their business reputation and judgment. The Board of Directors will have the same authority and reponsibilities as the board of directors of any independent corporation.

3. ARA shall exercise no control over the conduct of Means' business except as otherwise provided in this Order. Each member of Means' Board of Directors and each officer of Means shall be given copies of this Order, and shall submit to plaintiff within fifteen (15) days of the entry of such Order affidavits that they will comply with the terms of this Order. In furtherance of these commitments, ARA will not (1) share personnel with Means; or (2) engage in financial or other transactions with Means except those already entered into in the ordinary course of Means' business.

4. ARA shall take all steps necessary to assure that Means will be maintained as a separate entity with its assets and operations separate and distinct from those of ARA and any of its other subsidiaries.

5. ARA shall take all steps necessary to continue the normal business operations of Means, and maintain its personnel, assets and working capital at a level commensurate with its business activity.

6. Means and/or ARA shall perform their obligations under the contracts for sale of the Akron, Ohio operations; Columbus, Ohio operations; and Huntington, West Virginia operations. Neither ARA nor Means shall dispose of any of the other assets of Means, except in the ordinary course of Means' business, without the prior approval of the Antitrust Division or, failing such approval by the Antitrust Division, of the Court.

7. ARA is ordered and directed not to influence or attempt to influence directly or indirectly any operational or financial decisions or actions of Means except as is necessary (a) to comply with federal, state, or local laws or regulations or (b) to act in accordance with the terms of this Order.

8. Neither ARA nor Means shall communicate to the other, directly or indirectly, trade secrets, customer lists, or other confidential competitive or proprietary information, except for information that is necessary for the other party (a) to comply with tax or reporting requirements or with federal, state or local laws or regulations, or (b) to act in accordance with the terms of this order.

9. ARA may apply to the Antitrust Division or to this Court at any time for permission to take action otherwise prohibited by this Order to prevent Means from materially altering its operations or materially encumbering its assets.

Stipulated and Agreed: Aherrae McVern, Counsel for ARA Services, Inc.; Sidney Sosin, Counsel for Means Services, Inc.

Date: April 29, 1982.

So Ordered: ————.

Date: ————.

John A. Weedon, Richard E. Reed, Donald S. Scherzer, Theresa M. Majkrzak, *Attorneys, Antitrust Division, Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199, (216) 522–4080.*

Joseph P. Kenneary, *U.S. District Judge.*

[FR Doc. 82-16897 Filed 6-22-82; 8:45 am]

BILLING CODE 4410-01-M

U.S. v. Ashland-Warren, Inc.

Pursuant to the Antitrust Procedures and Penalties Act 15 U.S.C. 16, the Antitrust Division publishes, as set forth below, a comment which it received on the proposed Final Judgment filed in the case of *United States v. Ashland-Warren, Inc.*, Civil Action No. 82–338 Civ.–5 (E.D.N.C. 1982). Also published is the Division's response to such comment.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

June 16, 1982.

James H. Bratton, Jr., Esquire
Gambrell & Russell, 400 First Atlanta Tower, Atlanta, Georgia 30383

Re: United States v. Ashland-Warren, Inc.
Civil Action No. 82–338–CIV–5 (E.D.N.C. 1982)

Dear Mr. Bratton: This will acknowledge your letter of June 7, 1982, in which you assert that the proposed Final Judgment in the above-captioned case is deficient in three areas and suggest certain modifications.

Your first comment states that the proposed judgment "provides no assistance to private plaintiffs or potential private plaintiffs who have been injured by Ashland-Warren, Inc.'s ('Ashland') antitrust violations." You note that plaintiffs have benefitted from government enforcement actions in the past, the Department of Justice has expended considerable resources to prosecute these bid-rigging conspiracies and that the legislative history of the Antitrust Penalties and Procedures Act encourages the assistance of private plaintiffs. You then seek public disclosure of all information and evidence obtained by the government in its investigation of Ashland's bid-rigging activity to assist private plaintiffs and potential private plaintiffs in the prosecution of their claims.

Due to your present involvement as Liaison Counsel for Plaintiffs in *City of Atlanta et al. v. Ashland-Warren, Inc., Ashland Oil, Inc. et al.*, Civil Action No. 81–106A (N.D. Ga.), you are undoubtedly aware that potential private plaintiffs who believe they have been injured in their business and property by antitrust violations have a legal remedy to redress that injury under Section 4 of the Clayton Act. This provision allows persons with the requisite standing to file private civil suits to prove alleged antitrust violations and, if successful, to recover treble damages for any injury sustained. *See Illinois Brick Co. v. Illinois et al.*, 431 U.S. 720 (1977).

Many private cases are filed pursuant to Section 4 of the Clayton Act after government enforcement actions. If the government enforcement cases are tried, private plaintiffs derive substantial assistance from the information disclosed during the public trials. But most government enforcement cases are not tried and as history records, until recently, most cases were concluded with pleas of *nolo contendere. See* Clabault, J. and Block, M., *Sherman Act Indictments 1955–1980,* Vol. 2, Part 5 (1981). In these untried cases, private plaintiffs have had to pursue traditional discovery to obtain most of their information. Nevertheless, most enforcement actions have had the salutary effect of pointing private plaintiffs in the right direction. When private plaintiffs have been stymied in their efforts to conduct discovery or to obtain relevant information, however, courts have been willing to order disclosure of certain evidence gathered during grand jury proceedings, on a limited basis, if private plaintiffs could show a particularized need for the information.

The proposed Final Judgment in this case imposes no legal barrier to any private plaintiff or potential private plaintiff who wishes to pursue any legal claim against Ashland. The Congressional remedy provided by Section 4 of the Clayton Act remains open; and access to grant jury evidence remains unimpaired, provided a plaintiff can demonstrate a particularized need for the information as defined by the Supreme Court of the United States. *See Douglas Oil Company of California et al. v. Petrol Stops Northwest,* 441 U.S. 211 (1979); *United States v. Procter & Gamble Co.*, 356 U.S. 677 (1958).

Unlike many other enforcement actions, the disposition of the companion criminal cases here [1] and and other prosecutions against Ashland and its employees have resulted in guilty pleas or convictions. Consequently, private plaintiffs and potential plaintiffs in North Carolina and other jurisdictions where Ashland or its employees have been convicted will have an easier time prosecuting their claims. This will be true because Section 5(a) of the Clayton Act, as amended, allows a court, in appropriate civil cases, to give collateral estoppel or prima facie effect to a guilty verdict or judgment arising out of a government enforcement action involving the same violations. The direct benefit of this provision can be illustrated here by the fact that the violations alleged in the civil complaint are identical to those which Ashland pleaded guilty to in the North Carolina criminal cases. Thus, private plaintiffs or potential plaintiffs will not be legally disadvantage because this civil complaint was settled by a consent decree.

Neither the Antitrust Procedures and Penalties Act, nor judicial precedent, authorize the "bill of particulars" that you seek. The Act is quite specific about the manner in which a court may determine whether a potential decree is in the public interest under section 2(f). The legislative

[1] United States v. Ashland-Warren, Inc., Crim. No. 82–10–CR (E.D.N.C. 1982); United States v. Ashland-Warren, Inc., Crim. No. 82–11–CR–5 (E.D.N.C. 1982); United States v. Ashland-Warren, Inc., Crim. No. 82–12–CR–5 (E.D.N.C. 1982).

history is equally clear in stating tha it was not Congress' intention to authorize courts to make this inquiry or determination by techniques not authorized by law, which your proposal suggests. *See* H.R. Rep. No. 93–1463, 93d Cong., 2d Sess. 9 (1974).

Finally, you have noted that no determinative materials or documents were filed concerning the formulation of the proposed Final Judgment. The three criminal prosecutions against Ashland in North Carolina were concluded on April 8, 1982. The civil complaint and the proposed Final Judgment were filed the same day. Both the complaint and the Final Judgment arose out of the plea agreement between the United States and Ashland by which Ashland agreed to plead guilty in North Carolina to certain counts of each indictment. Paragraph 6 of the plea agreement specificaly stated that Ashland agreed to enter into a civil consent decree to be filed in the Eastern District of North Carolina. This provision did not define the scope of the consent decree or its terms. Because this civil action followed the criminal prosecutions and the defendant was required to enter into a consent decree, no civil discovery was taken. This civil action was based upon evidence adduced during the grand jury investigation which led to the criminal indictments of Ashland, which is protected from disclosure under Rule 6(e) Fed. R. Crim. P. The injunctions to which Ashland has acquiesced are predicated upon the company's conduct to which it pleaded guilty in the criminal cases. Identical violations were simply realleged in the civil complaint.

The information which is protected from disclosure under Rule 6(e) is available to private plaintiffs and others who meet the legal requirements outlined above. We do not believe the legislative history of the Act authorizes the wholesale discovery of grand jury evidence as "determinative materials" where the net effect would be to supplant Rule 6(e). The legal procedures that exist for obtaining such evidence and the objectives the Act was designed to foster are not diminished by harmonizing Rule 6(e) and the provisions of the Act. If this were not the case, Congress would have amended Rule 6(e) to permit the kind of disclosure you seek or would have specifically included a provision in the Act superceding the secrecy provisions of Rule 6(e).

In summary, it is our belief that the proposed Final Judgment is in the public interest and is consistent with the spirit and letter of the Act. It preserves all legal remedies and procedures available to private plaintiffs and potential plaintiffs to prosecute their claims and still preserves grand jury secrecy.

Your second comment concerns Section VIII. of the proposed Final Judgment. This Section requires that an acquiring party of "all, or substantially all, of the stock or assets [2] of any *division* or *subsidiary* which has sold any form of construction material or performed paving or construction work * * *" of Ashland, be bound by the provisions of the Final Judgment (emphasis added). You contend that this section fails to impose the terms of the Final Judgment upon subsequent acquirers beyond the initial sale of Ashland stock or assets, as defined. In support of your view, you provide an example in which Ashland sells its paving and construction operations to another Ashland wholly-owned subsidiary, which in turn, sells to another separate, Ashland-owned corporation. The end result, you contend, is that the second transaction escapes the provisions of the Final Judgment.

We respectfully disagree. If Ashland sells all or substantially all of the stock or assets of any division or subsidiary subject to this Section to another Ashland subsidiary, in the first instance, the acquiring subsidiary would be bound by the Final Judgment not only by the language of Section VIII., but also because the acquiring subsidiary is within the definition of Ashland in Section II.B. of the Final Judgment. Independent of Section VIII., as long as the acquiring entity remains within the Ashland corporate family as defined in Section II., any division or subsidiary holding the stock or assets of another Ashland division or subsidiary that engaged in or was committed to the performance of paving or construction work, etc., would, by definition, remain subject to the Final Judgment. In other words, each acquiring division or subsidiary owned by Ashland, itself, becomes a division or subsidiary whose stock or assets make it subject to the provisions of Section VIII.

In your letter, you omitted critical language in your quote on page five which describes the nature of the division or subsidiary being sold as well as the definition of "assets." We are satisfied that when Sections VIII. and II. are read together, they address the issue raised by your hypothetical example. Nevertheless, if we have reason to believe that this or any other term of the Final Judgment is being deliberately disregarded or manipulated, we will not hesitate to take appropriate action under Section X. of the Final Judgment or to pursue other legal remedies that may be available, *e.g.*, a contempt action.

Your third comment concerns Section X. of the Final Judgment. It is your view that the Department will not be able to monitor the Final Judgment because of the extensive scope of Ashland's paving and construction work and because bid rigging is so pervasive. Therefore, you suggest that the Final Judgment be modified to permit "members of the public" to "apply to the Court for enforcement of the consent decree and to seek punishment for its violation."

Your suggested modification is unlikely to be as effective as the proposed Final Judgment. It will encourage circumvention of more traditional legal means to pursue violations of the Final Judgment and it has the potential for misuse of judicial resources.

The Antitrust Division has seven field offices throughout the United States which can monitor this Final Judgment as well as a Judgment Enforcement Section with the expertise to enforce it should violations occur. The Antitrust Division also has many attorneys in the field conducting investigations of the construction industry who are familiar with Ashland's prior conduct. We have every confidence that our own efforts aided by citizen complaints and the referral of complaints of illegal conduct from local U.S. Attorneys' Offices and other federal agencies, will enable us to monitor this Final Judgment more effectively than members of the public-at-large.

Your proposal also raises other potential problems. By allowing "members of the public" to apply to the Court to enforce the Final Judgment and to impose punishment for its violation, you are encouraging the circumvention of more appropriate legal remedies available to citizens who may be injured as a result of antitrust violations by Ashland. The potential result of your proposal is that the Court may be besieged by citizens with complaints that the Antitrust Division is in a better position to evaluate and screen, namely, complaints that give rise to private causes of action, but not a violation of the Final Judgment or requests to "impose punishment" which should be prosecuted as a contempt or enforcement action by the Department. Your proposal would require the Court to expend inordinate judicial resources to screen these "applications."

In addition, there is a substantial likelihood that your proposed modification will create a forum for the advancement of "private interests" by parties who could apply to the Court at any time for some vague relief whenever it seemed necessary or convenient. Such proceedings could be endless as long as they alleged a "judgment violation," yet would require the expenditure of substantial private and judicial resources to evaluate. Such litigation, in our view, would encourage misuse of the judicial process and allow allegedly aggrieved parties to air their dissatisfaction, but not pursue the traditional course of filing a lawsuit to vindicate their injuries. We believe any proposal which encourages these results is not in the public interest.

We have carefully considered your criticisms of and proposed modifications to the proposed Final Judgment. We appreciate your expression of concern and interest in this matter. For all of the foregoing reasons, however, we believe the proposed Final Judgment does provide comprehensive relief against future antitrust violations by Ashland and is in the public interest.

Very truly yours,

Robert E. Bloch,

Assistant Chief, Trial Section, Antitrust Division.

June 7, 1982.

By Hand

Mr. Anthony V. Nanni,
Chief, Trial Section, Department of Justice, Antitrust Division, 10th and Constitution Avenue, NW., Washington, D.C. 20530

RE: *United States of America v. Ashland-Warren, Inc.*, Case No. 82–338–CIV–5

Dear Sir: This is a public comment proposing some modifications to the proposed consent decree agreed to between the Justice Department and Ashland Oil Company and its subsidiaries engaged in

[2] "'Assets' shall mean assets committed to the performance of paving or construction work or the sale of construction materials." Section VIII. at 6.

either selling construction material or performing paving or construction work (hereinafter referred to as "Ashland").[1] [2]

The terms of the proposed judgment are inadequate and insufficient to protect the public interest. The proposed Final Judgment is fatally flawed in three fundamental respects:

(1) The proposed Final Judgment provides no assistance to private plantiffs or potential private plaintiffs who have been injured by Ashland's antitrust violations in connection with paving or construction work;

(2) The proposed Final Judgment does not adequately protect against the possibility that Ashland may circumvent the consent decree through corporate reorganizations; and

(3) The proposed Final Judgment does not provide that members of the public may apply to the court for enforcement of the consent decree.

Section 2(e) of The Antitrust Procedures and Penalties Act provides that "before entering any consent judgment proposed by the United States under this section, the court shall determine that the entry of such judgment is in the public interest." The public interest requires the Court to reject the proposed consent decree unless appropriate modifications are made. If the parties refuse to accept the proposed modifications, the Court should not enter the proposed Final Judgment and order a trial.

Historically private antitrust plaintiffs have benefitted from government enforcement of the antitrust laws. However, the proposed consent decree denies private plaintiffs any fruits of the investigation conducted by the Justice Department at great expense to the taxpayers. The Justice Department has expended enormous resources in an effort to expose and eliminate price-fixing and fraud from the bidding on major construction projects. The Justice Department's investigation has involved: "nearly 30 lawyers . . . working full time on the bid-rigging inquiry, aided by FBI agents and investigators from the Department of Transportation." [3] Mr. Sanford M. Litvack, former assistant attorney general in charge of the Justice Department's antitrust division, has stated: "I can't think of any other antitrust investigation with anything like those resources." [4]

However, the proposed Final Judgment states that: "No materials and documents of the type described in Section 2(b) of The Antitrust Procedures and Penalties Act, 25 U.S.C. § 16(b), were considered in formulating the proposed Final Judgment." (Proposed Judgment, page 9.)

The Justice Department, after expending such enormous resources, should not enter into a consent decree which denies private plaintiffs the benefit of the Justice Department's investigation. The legislative history of The Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) indicates that the Court may condition approval of a consent decree on the Justice Department making available to private plaintiffs, or potential private plaintiffs, information and evidence obtained by the government which will assist in the effective prosecution of their claims. (*See*, Senate Report #93–298 quoted with approval in House Report No. 93–1463 (U.S. Code Cong. and Admin. News 1974, 93 Cong. 2nd Sess., pp. 6538–39.))

In light of the fact that by entering into the consent decree the Justice Department is settling all actions against Ashland for bid-rigging on paving or construction projects throughout the United States,[5] the Court should require the public disclosure of the information and evidence obtained by the government in its investigation of Ashland's bid-rigging activity on paving or construction projects, as follows:

(1) The information and evidence which the government has gathered in connection with Ashland's conduct in regard to entering into any contract, agreement, understanding, plan, program, combination or conspiracy with any person to:

A. Raise, fix, establish, maintain, or adhere to a price, a discount or any other term or condition of sale of any form of construction material or of paving or construction work;

B. Refrain from bidding to supply any form of construction material or paving or construction work;

C. Submit a collusive, noncompetitive or rigged bid to supply any form of construction material or paving or construction work; or

D. Allocate a job or customer, or to divide a market or a territory, with respect to any form of construction material or paving or construction work.

(2) In particular, the Justice Department should set forth:

A. All of the paving or construction projects on which the Justice Department has evidence and information that Ashland submitted collusive, non-competitive and rigged bids or collusively withheld bids; and

B. The involvement of Ashland and the directors, officers, agents, servants, employees of any Ashland entity, and those persons in active concert or participation with them in the activities set forth in paragraph (1) above.

Furthermore, serious questions exist as to the effectiveness of limitations placed on Ashland's conduct under the proposed Final Judgment. The proposed Final Judgment states that Ashland "shall require, as a condition of the sale or other disposition of all, or substantially all, of the stock or assets of any division or subsidiary . . . that the acquiring party agree to be bound by the provisions of this Final Judgment." (Proposed Final Judgment, page 6.)

Ashland may be able to circumvent the intended effectiveness of the proposed consent order. The lack of any explicit provision that the consent decree applies to subsequent dispositions by acquiring parties poses an impediment to the effectiveness of the proposed judgment. For instance, Ashland could incorporate a wholly-owned subsidiary and sell its paving or construction operations to that corporation and then have that corporation make a disposition of the paving or construction operations to another corporation controlled by Ashland. The Justice Department and the Court should be aware of the fact that reorganization is a corporate way of life for Ashland's paving or construction operations. Thus, the proposed Final Judgment should be modified to apply to subsequent dispositions by acquiring parties.

The proposed Final Judgment also does not provide that anyone other than the parties may apply to the Court for enforcement of the consent decree. the proposed Final Judgment as drafted, in regard to enforcing compliance with its terms, reads as follows: "Jurisdiction is retained by this court for the purpose of enabling either of the parties to apply to this court . . . for the enforcement of compliance with (the proposed Final Judgment) or for the punishment of any violation of it." (Page 8 of proposed Final Judgment.)

The wide scope of Ashland's paving or construction work, coupled with the pervasiveness of bid-rigging in the paving construction industry, makes it unlikely that the Justice Department will be able adequately to monitor the consent decree. Therefore, the proposed Final Judgment should be modified to provide that members of the public may apply to the Court for enforcement of the consent decree and seek punishment for its violation. We propose that the words "any member of the public" be inserted after the phrase "either of the parties" quoted in the foregoing paragraph.

We respectfully urge the Department of Justice and the Court to consider the public interest factors set forth hereinabove, and to modify the proposed Final Judgment accordingly. The proposed Final Judgment, unless modified, will have an adverse effect on the public, which expects to be protected by adequate enforcement of the antitrust laws.

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[1] The proposed consent decree states that as used in the Final Judgment in this action " 'Ashland-Warren' means Ashland-Warren, Inc., and Ashland Oil, Inc., and each direct or indirect subsidiary, division and joint venture, which has sold any form of construction material or performed paving or construction work, and each predecessor, successor and assign to each of the foregoing." (Page 2 of proposed Final Judgment.) "Ashland" is used in this comment to include all such persons.

[2] The proposed Final Judgment defines paving or construction work as "the building, rebuilding, surfacing, resurfacing and maintenance or repair of roads, bridges, culverts, ramps, grade separation structures, interchanges, parking structures and lots, airports, transit facilities, power plants, water and waste treatment plants, flood and erosion facilities, underground utilities, excavation, drainage, stripping, soil stabilization, pile driving, foundation and other site preparation, base work, recycling and reclamation work, as well as all materials and services, rented or supplied, in connection with this work". (Page 2 of proposed Final Judgment.)

[3] "Highway Robbery: The War on Bid Riggers", U.S. News & World Report, February 16, 1981, page 49.

[4] *Id.*

[5] Department of Justice, April 8, 1982 news release (attached hereto as Appendix A) states that: "As part of the agreement the Justice Department has agreed not to criminally prosecute Ashland-Warren, Ashland Oil or their subsidiaries for any conduct which was part of any bid-rigging scheme in paving or construction work before the date of the agreement anywhere in the United States."

Respectfully,

Gambrell & Russell

By: James H. Bratton, Jr., Liaison Counsel for Plaintiffs in City of Atlanta *et al.* v. Ashland-Warren, Inc., Ashland Oil, Inc. *et al.* Civil Action File No. 81-106A (N.D. Ga.)

Appendix A

Department of Justice

Ashland-Warren, Inc., a highway construction company headquartered in Atlanta, Georgia, today pleaded guilty to six violations of the federal antitrust laws arising out of indictments of the company in North Carolina and Tennessee and was fined a total of $6 million. The fines were the largest ever imposed against a corporation for criminal violations of the federal antitrust laws.

Attorney General William French Smith said the six guilty pleas were entered in U.S. District Court in Raleigh, North Carolina. The remaining counts and indictments against Ashland-Warren, Inc., and Ashland Oil, Inc., were dismissed after the pleas were accepted by the court.

In addition a civil suit—together with a consent decree—was filed against Ashland-Warren covering the same allegations as the North Carolina indictments.

On February 24, 1982, Ashland-Warren, Inc., was charged in three indictments in Raleigh, with violations of Section 1 of the Sherman Act and mail fraud for several conspiracies to rig bids and allocate highway construction work in North Carolina. The company today pleaded guilty to four violations and was fined $1 million for each violation.

Between February 11 and February 19, 1981, Ashland-Warren, Inc., was indicted four times and its parent corporation, Ashland Oil, Inc., was indicted once, in Nashville, Tennessee, for several conspiracies to eliminate competition on various highway construction projects and for mail fraud violations. The company today pleaded guilty to two violations and was fined $1 million for each violation.

William F. Baxter, Assistant Attorney General in charge of the Antitrust Division, said that the disposition of the criminal cases was the result of plea agreements between Ashland-Warren, Inc., Ashland Oil, Inc., and the government. The plea agreements, once accepted by the court, terminated the criminal prosecution of Ashland-Warren, Inc., and Ashland Oil, Inc.

As part of the agreement the Justice Department has agreed not to criminally prosecute Ashland-Warren, *Ashland Oil or their subsidiaries* for any conduct which was part of any bid-rigging scheme in paving or construction work before the date of the agreement *anywhere in the United States.* That agreement does not cover tax or securities violations or any possible criminal charges of any kind against individuals.

The $6 million in fines brought the total amount of fines to be paid by Ashland-Warren, Inc., to $7,500,000. The company paid $1,500,000 in 1980, in connection with the company's prosecution for conspiring to rig bids on Byrd Airport in Richmond, Virginia, and other highway construction projects elsewhere in Virginia.

The four-count civil suit alleged that Ashland-Warren, Inc., through three North Carolina divisions, conspired to rig bids on highway construction projects in North Carolina in violation of Section 1 of the Sherman Act. It was filed in U.S. District Court in Raleigh.

After filing the civil antitrust suit, the Department filed a proposed consent decree that would terminate the suit against Ashland-Warren, Inc.

The proposed decree, which will become final upon approval by the court, would enjoin Ashland-Warren from fixing prices, rigging bids, or allocating customers or territories on contracts for paving and construction projects or the sale of construction materials.

In accordance with the Antitrust Procedures and Penalties Act of 1974, a competitive impact statement regarding the proposed final judgment has been filed with the court. Copies of this statement and of the proposed decree are available on request in the Legal Procedure Unit, Room 7416, Department of Justice, Washington, D.C. 20530. They are also available for inspection in the Office of the Clerk of the United States District Court for the Eastern District of North Carolina in Raleigh, North Carolina.

Comments to the Department and to the court regarding the decree are invited from members of the public within the statutory 60-day time period. They should be directed to Anthony V. Nanni, Chief, Trial Section, Room 3266, Antitrust Division, Department of Justice, Washington, D.C. 20530.

[FR Doc. 82-16902 Filed 6-22-82: 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 25, 1982, Sterling Drug, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Meperidine (9230).

Any other such applicant, and any person who is presently registered with DEA to manufacture such substance, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Acting Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than July 23, 1982.

Dated: June 17, 1982.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 82-16887 Filed 6-22-82: 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 29, 1982, M.D. Pharmaceutical, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manuacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Methylphenidate (1724)	II
Diphenoxylate (9170)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Acting Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than July 23, 1982.

Dated: June 17, 1982.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 82-16888 Filed 6-22-82: 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 4, 1982, Smith Kline & French Laboratories, Division of Smithkline Beckman Corporation, 1530 Spring Garden Street, Philadelphia, Pennsylvania 19101, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Amphetamine (1100)	II
Phenylacetone (8501)	II

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Acting Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than July 23, 1982.

Dated: June 17, 1982.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 82-16889 Filed 6-22-82; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (82-36)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission. The proposed forms under review are listed below. Two are new requirements and the other is a revision.

Copies of the proposed forms, the request for clearance (S.F. 83), supporting statement, instructions, transmittal letters, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by July 6, 1982. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Christine Cabell, NASA Agency Clearance Officer, Code NSM-12, NASA Headquarters, Washington, DC 20546.

Edward Clarke, Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Christine Cabell, NASA Agency Clearance Officer, (202) 755-3219 or Edward Clarke, OMB Reviewer, (202) 395-4814.

Reports

Title: Allotment for NASA Scientific and Technical Information
Products and Services
Type of Request: New
Frequency of Report: One time
Type of Respondent: NASA Contractors
Annual Responses: 150
Annual Reporting Hours: 75
Federal Cost: $2,000.00
Number of forms: One
Abstract-Needs/Uses: to try to simulate marketplace judgments, we are enlisting the assistance of NASA R&D contractors to evaluate NASA scientific and technical information products and services which they use to help NASA achieve its mission. The simple one-page list of questions require supplying only an estimated percentage number, and the numbers must add up to 100%

Title: Contract Settlement Cost Data
Type of Request: New
Frequency of Report: On occasion
Type of Respondent: NASA Contractors (Industrial)
Annual Responses: 53
Annual Reporting Hours: 27
Federal Cost: $24,500.00
Number of Forms: One
Abstract-Needs/Uses: Each agency contractor located on-site at a NASA facility at the conclusion of negotiations resulting in a new collective bargaining agreement, furnishes the agency a one page report governing the wage and fringe benefit economic costs. Such cost data assists in procurement budgeting and provides the basis to conduct contractor direct labor cost studies as well as to initiate agency legal action (Variance Hearings) under Service Contract provisions, if required.

Title: NASA Patent License Report
Type of Request: Revision
Frequency of Report: Annual
Type of Respondent: Business which manufacture products
Annual Responses: 600
Annual Reporting Hours: 300
Federal Cost: $22,000.00
Number of Forms: One
Abstract-Needs/Uses: NASA grants licenses to commercial firms for commercial use of NASA inventions. This report is obained annually from the licensee to determine what commercial use is being made of the inventions.

June 17, 1982.

Walter B. Olstad,

Associate Administrator for Management.

[FR Doc. 82-16871 Filed 6-22-82; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Forms Submitted to OMB for Review In Accordance With the Paperwork Reduction Act and OMB Guidelines, NSF Is Posting This Notice of Recordkeeping Requirements That Will Affect the Public

Agency Clearance Officer: Herman G. Fleming, (202) 357-7580.

OMB Officer: Gwendolyn Pla, (202) 395-6880.

I. Title: Nominations for Alan T. Waterman, National Medal of Science and Vannevar Bush Awards.

Affected Public: Individuals and institutions.

Number of responses: 600; Total number of hours: 1200.

The request is amended to include the Vannevar Bush Award. This award is presented to a person who, through public service and technology, has made an outstanding contribution toward the welfare of mankind and the nation.

II. Title: Industrial panel on Science and Technology.

Affected Public: Businesses or other institutions.

Number of responses: 700; Total number of hours: 700.

Information, especially of a qualitative nature, is needed to supplement and explain the quantitative data on science and technology employment and funding which is obtained from other Foundation sources. OMB, the Office of Science and Technology Policy and Congress, who are often unable to await the results of our annual surveys, use the immediate panel information to make decisions on science and technology policy.

Information from the Panel will be collected from July 1982 to June 1984.

Herman G. Fleming,

Clearance Officer.

[FR Doc. 82-16916 Filed 6-22-82; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Dockets Nos. 50-277 and 50-278]

Philadelphia Electric Company, et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 85 and 84 to Facility Operating Licenses Nos. DPR-44 and DPR-56, issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, which revised Technical Specifications (TSs) for operation of the Peach Bottom Atomic Power Station, Units Nos. 2 and 3 (the facility) located in York County, Pennsylvania. The amendments become effective within 3 months after the date of issuance.

These amendments make changes to the TSs related to the facility's Fire Protection Program to reflect improvements in the Program.

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 amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see: (1) The application for amendments dated February 18, 1982, (2) Amendment No. 85 to License No. DPR-44 and Amendment No. 84 to License No. DPR-56 and (3) the Commission's letter to Philadelphia Electric Company dated June 16, 1982. 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 Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania. 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 16th day of June 1982.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 82-17016 Filed 6-22-82; 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. 78 to Facility Operating License No. DPR-32 and Amendment No. 79 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 to limit control rod misalignment to no more than −12 steps indicated positions. This change is consistent with the Standard Technical Specifications for Westinghouse plants.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR 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 environment impact and that pursuant to 10 CFR 51.5(d)(4) and environment impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated May 10, 1982, (2) Amendment Nos. 78 and 79 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 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 17th day of June, 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 17015 Filed 6-22-82; 8:45 a.m.]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Meeting

The Small Business Investment Incentive Act of 1980 (Pub. L. No. 96-477 (October 21, 1980)) requires the Securities and Exchange Commission to conduct an annual Government-Business Forum to review the current status of problems and programs relating to small business capital formation. The Executive Committee, comprised of appointees from several federal agencies and private sector organizations, will hold its second meeting on June 28, 1982 at 10:00 a.m., for purposes of planning the Forum. The Forum is scheduled for September 1982. The meeting is to be held at the Securities and Exchange Commission, Room 776, 500 North Capitol Street, Washington, D.C. 20549 and will be open to the public.

For further information contact Daniel Abdun-Nabi at (202) 272-2644.

George A. Fitzsimmons,

Secretary.

June 17, 1982.

[FR Doc. 82-16879 Filed 6-22-82; 8:45 am]

BILLING CODE 8010-01-M

Cincinnati Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

June 16, 1982.

The above named national securities exchange has filed applications with the

Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Matsushita Electric Industrial Co., Ltd. American Depositary Receipts, 50 Yen Par Value (File No. 7-6232).

Hitachi, Ltd., American Depositary Receipts (File No. 7-6233).

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 8, 1982 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-16872 Filed 6-22-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18813; File No. Sr-OCC-82-9]

Filing and Order Granting Accelerated, Approval of Proposed Rule Change by Options Clearing Corporation

June 17, 1982.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 23, 1982, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would amend OCC's financial responsibility rules to conform to several of the recent amendments to SEC Rule 15c3-1 (17 CFR 240.15c3-1), the "Net Capital Rule," and SEC Rule 17a-11 (17 CFR 240.17a-11). Those rule amendments were announced by the Commission in Securities Exchange Act Release No. 18417 (January 13, 1982), 47 FR 3512 (January 25, 1982) and, in general, reduced the financial responsibility standards for certain registered broker-dealers. Briefly, the Commission's most significant revision was the reduction, from four percent to two percent, of the minimum net capital that broker-dealers are required to maintain under the alternative method of computing net capital (*see* Rule 15c3-1(f)). Moreover, the Commission amended its "early warning" rule, Rule 17a-11, to require broker-dealers to notify their designated examining authorities, the Commission and, in certain cases, the Commodities Futures Trading Commission, when the broker-dealers' net capital, as calculated under the alterantive method, falls below five percent. The Commission's previous level was six percent.

OCC's minimum net capital rule, Rule 302, currently prohibits OCC clearing members that operate under the alternative method from clearing opening options transactions if their net capital falls below the greater of $100,000 or four percent of their aggregate debit items computed in accordance with Schedule A of SEC Rule 15c3-3 (17 CFR 240.15c3-3). Pursuant to the proposed rule change and consistent with the Commission's amendments to Rule 15c3-1(f), those clearing members would be prohibited from clearing opening transactions if their net capital level falls below the greater of $100,000 or two percent of their aggregate debit items.

To reflect the two percent reduction in Rule 15c3-1(f) and to conform with the Commission's amendments to Rule 17a-11, OCC's early warning rule, Rule 303, would also be amended under the proposed rule change. First, it would be changed to require clearing members operating under the alternative method to notify OCC in the event that their net capital falls below the greater of $150,000 or five percent of their aggregate debit items. OCC Rule 303 currently requires OCC members to notify OCC if their net capital falls below the greater of $150,000 or seven percent of aggregate debit items. Second, OCC Rule 303 would be amended by adding new paragraph (c). That paragraph would conform Rule 303 to SEC Rule 15c3-1(c)(2)(v)(C) by granting a clearing member relief from complying with OCC's net capital rule if that clearing member is given an extension of time to resolve short securities positions by its examining authority.

In addition, pursuant to the proposed rule change, an interpretation under OCC Rule 305 would be amended. OCC Rule 305, in general, authorizes OCC, to impose certain restrictions on a clearing member if OCC, through its President or Chairman, determines that the clearing member is operationally or financially unsound.[1] Interpretation Two under the Rule is one of eight Interpretations that illustrate when Rule 305's prohibitions or limitations may be applicable. That Interpretation provides that restrictions may be imposed if a clearing member's net capital remains below six percent of its aggregate debit items for three consecutive months. Under the proposed rule change and consistent with the Commission's two percent reduction in minimum net capital under the alternative method, the percentage would be reduced to four percent.

Finally, OCC Rule 301, which requires higher net capital requirements for newly-registered or newly-admitted members that use the alterative method, would be amended in a manner consistent with the two percent reduction in SEC Rule 15c3-1(f). Pursuant to the proposed rule change, Rule 301 would require a clearing member operating under the alternative method of computing net capital to maintain net capital levels of the greater of $150,000 or five percent of the aggregate debit items. Previously, a clearing member was required to maintain net capital levels of the greater of $150,000 or seven percent.

OCC believes that the proposed rule change is consistent with section 17A(b)(3) of the Act because it enhances the ability of brokers and dealers to become and to remain participants in OCC by liberalizing OCC's financial responsibility standards in conformity with the Commission's amendments to Rules 15c3-1 and 17a-11. At the same time, OCC's financial responsibility standards, consistent with OCC's traditional net capital treatment continue to maintain protective cushions identical to, or greater than, those stated in the Commission's Rules.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change on or before July 14, 1982. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington,

[1] Under the Rule, OCC's President or Chairman is authorized, after determining that a clearing member's fiancial or operational condition threatens OCC's collective membership or the general public, to prohibit or to limit OCC from clearing that member's opening options transactions and to reduce or to eliminate the member's existing short positions for which securities have not been deposited with OCC.

D.C. 20549. Reference should be made to File No. SR–OCC–82–9.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L. Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to clearing agencies and, in particular, the requirements of section 17A of the Act and the rules and regulations thereunder.

The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. Approval of the proposed rule change will enable OCC to harmonize its financial responsibility rules with the Commission's requirements, thereby avoiding the unintended anomaly of imposing inconsistent regulatory policies on broker-dealer members of OCC.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–16875 Filed 6–22–82; 8:45 am]

BILLING CODE 8010–01–M

Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

June 16, 1982.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Bow Valley Industries Limited—Common Stock, No Par Value (File No. 7–6234)
Enstar Corporation—Common Stock, $1 Par Value (File No. 7–6235)
Informatics General Corporation—Common Stock, $.15 Par Value (File No. 7–6236)
Norfolk Southern Corporation—Common Stock, $1 Par Value (File No. 7–6237)
Regal International Incorporated—Common Stock, $.10 Par Value (File No. 7–6238)
Raychem Corporation—Common Stock, No Par Value (File No. 7–6239)
Whitehall Corporation—Common Stock, $.10 Par Value (File No. 7–6240)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 8, 1982 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–16873 Filed 6–22–82; 8:45 am]

BILLING CODE 8010–01–M

Philadelphia Stock Exchange, Inc., Applications for Unlisted Trading Privileges and of Opportunity for Hearing

June 17, 1982.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Informatics, Inc.—Common Stock, $.15 Par Value (File No. 7–6242)
Murphy Oil Corp.—Common Stock, $1 Par Value (File No. 7–6243)
Parker Drilling Company—Common Stock, $1 Par Value (File No. 7–6244)
Raychem Corp.—Common Stock, No Par Value (File No. 7–6245)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 9, 1982 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–16874 Filed 6–22–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 6410; (18–91)]

The Equitable Life Assurance Society of the United States and Separate Account No. 2A (Pooled) of the Equitable Life Assurance Society of the United States; Filing of Application

June 17, 1982.

Notice is hereby given that The Equitable Life Assurance Society of the United States ("Equitable"), 1285 Avenue of the Americas, New York, N.Y. 10019, a mutual life insurance company organized under the laws of the State of New York which is registered as an investment adviser under the Investment Advisers Act of 1940 and as a broker-dealer under the Securities Exchange Act of 1934, on July 24, 1981 filed an application for an order exempting from the registration requirements of the Securities Act of 1933 ("1933 Act"), certain interests in Equitable's proposed Separate Account No. 2A (Pooled) (the "Account") attributed to contributions derived under certain association sponsored plans designed to comply with the Self-Employed Individuals Tax Retirement Act of 1962, as amended ("H.R. 10"), as described below. All interested persons are referred to that application which is on file with the Commission for the facts

and representations contained therein, which are summarized below.

Background

The Account will be established and maintained by Equitable as a "pooled" separate account pursuant to section 227 of the New York Insurance Law. Amounts allocated to the Account will be derived under group annuity contracts issued by Equitable in connection with pension and profit-sharing plans qualified under section 401 of the Internal Revenue Code of 1954, as amended ("Code"), annuity plans meeting the requirements for deduction of the employer's contribution under section 404(a)(2) of the Code, and governmental plans as defined in section 414(d) of the Code and as specified in section 3(a)(2) of the 1933 Act. The portfolio of the Account will consist of high quality money market securities with remaining maturities of 60 days or less, including certificates of deposit, commercial paper, repurchase agreements, corporate notes and U.S. Government issues, principally Treasury bills and notes.

The Account will be made available to (a) Equitable's other separate accounts which are maintained without registration under the Investment Company Act of 1940 ("the 1940 Act") in reliance upon the exemption provided by section 3(c)(11) of the 1940 Act, and the interests of which are maintained without registration under the 1933 Act in reliance upon the exemption provided by section 3(a)(2) of that Act, (collectively, the "fully exempt separate accounts"), and (b) its Separate Account Nos. 4 and 100, which fund (i) H.R. 10 plans sponsored by various associations (collectively, the "association H.R. 10 plans"), and (ii) corporate plans under the exemptions provided by sections 3(a)(2) and 3(c)(11). While the interests in Separate Account Nos. 4 and 100 attributed to contributions under the association H.R. 10 plans are registered under the 1933 Act, Separate Account Nos. 4 and 100 themselves are exempt from 1940 Act registration under section 3(c)(11) of the 1940 Act. Under Equitable's proposal, the fully exempt separate accounts and Separate Account Nos. 4 and 100 (collectively, the "eligible separate accounts") will be able to allocate their respective cash positions to the Account for investment, on a pooled basis, in money market securities.

The eligible separate accounts will be credited with units of interest in the Account, which will be carried as assets on their respective financial statements. Their respective cash positions will be determined each business day and allocated to the Account in a manner consistent with each eligible Account's investment policy and objectives. Adjustments in the number of units of interest in the Account credited to an eligible separate account will be made to reflect subsequent allocations and withdrawals.

Under Equitable's proposal, there will be no investment management fee charged to the eligible separate accounts participating in the Account. Holders of contracts participating in the eligible separate accounts will be charged only the usual investment management fee and any other charges normally applicable to their eligible separate account. There will be no separate or additional fee or any other charge imposed on the units held in the Account. Thus, there will be no duplication of any fees as a result of the proposal.

Equitable proposes to amend the prospectuses of Separate Account Nos. 4 and 100 in order to revise the descriptions of their investment policies to disclose the use of the Account for the investment of cash assets. These prospectuses also will be amended to describe the investment policy of the Account, its management by Equitable, the type of securities held in the Account's portfolio, how interests in the Account are valued and use of the Account by Separate Account Nos. 4 and 100, as the case may be, for the particular association H.R. 10 plan. The statement of investments will include a single line item indicating the total number, cost and market value of the units of interest in the Account credited to Separate Account No. 4 and Separate Account No. 100, together with the effective yield. Any appropriate note disclosure will also be made in the related notes to financial statements.

Section 3(a)(2)

Section 3(a)(2) provides an exemption from registration under the 1933 Act for "any security arising out of a contract issued by an insurance company, which * * * security is issued in connection with * * * [a] pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the [Code] * * *," other than a plan (an H.R. 10 plan) which covers self-employed persons within the meaning of the Code.

Because the cash assets of Separate Account Nos. 4 and 100 attributable to contributions under association H.R. 10 plans would be derived by the Account, through intervening separate accounts (Nos. 4 and 100), from plans covering self-employed persons, the interests in the Account associated with those cash assets would fall within the H.R. 10 exclusion from the section 3(a)(2) exemption. However, the Commission has the authority pursuant to section 3(a)(2) of the 1933 Act, to exempt from the provisions of Section 5 of the 1933 Act any such interest, if and to the extent that it "determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of" that Act.

The legislative history of section 3(a)(2) of the 1933 Act indicates that when the Congress amended that section in 1970 to, among other things, exempt from the registration provisions of the 1933 Act interests in insurance company separate accounts funding Section 401 qualified pension and profit-sharing plans, it excluded from the exemption interests and participations in separate accounts used in connection with H.R. 10 plans "because of their fairly complex nature as an equity investment and because of the likelihood that they would be sold to self-employed persons, unsophisticated in the securities field. However, the amendment would grant the Commission authority, by rule, regulation, or order to exempt such interests or participations to the extent that the Commission shall determine this to be necessary or appropriate in the public interest." House Committee Report No. 91–1382 (1970), pp. 43–44. Equitable submits that none of the concerns of Congress in excluding H.R. 10 plans for the section 3(a)(2) exemption are present under its proposal.

Further, Equitable asserts that this proposal will permit a more efficient, and more effective, method of investing the cash positions of Separate Account Nos. 4 and 100 and the other eligible separate accounts at no additional cost to the contractholder or plan participant. Presently, the investment in money market securities of cash held by the eligible separate accounts is made separately for each account each business day. Equitable believes that by pooling the investment of the cash positions of the eligible separate accounts through the Account, a more efficient utilization of these funds will be achieved with a greater investment return to contractholders and plan participants.

Equitable notes that the portfolio of the Account will consist of the same type of money market securities as those that now are held by each of the eligible separate accounts. Also, Equitable's Securities Operations Area, which is

responsible for the continuing supervision and evaluation of all securities investments of the eligible separate accounts under Equitable's management, performs such responsibilities with respect to the investments of Separate Account Nos. 4 and 100 and will do so for investments of the Account. Additionally Equitable submits that with the use of the Account described in Equitable's prospectuses, as proposed, the relevant disclosures will be subject to the scrutiny of the Commission's staff and to the liabilities provided under the federal securities law.

Request for Order

Based on the foregoing, Equitable requests that the Commission issue an order pursuant to section 3(a)(2) of the 1933 Act exempting from the registration requirements of section 5 of the 1933 Act interests in Equitable's Separate Account No. 2A credited to its Separate Account Nos. 4 and 100 which are attributable to allocations to Separate Account Nos. 4 and 100 under association H.R. 10 plans.

Notice is further given that any interested persons may, not later than July 12, 1982 at 5:30 p.m., submit to the Commission a request for a hearing on the matter, accompanied by a statement of the nature of his or her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he or she may request to be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C ., 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the dase of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the matter will be issued as of course following July 12, 1982 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponement thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-17007 Filed 6-22-82; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Flight Transportation Corp.; Order of Suspension of Trading

June 18, 1982.

It appearing to the Securities and Exchange Commission that there are questions which have been raised concerning the accuracy and adequacy of Flight Transportation Corp.'s financial statements, the Commission is of the opinion that the public interest and the protection of investors require a summary suspension of trading in the securities of Flight Transportation Corporation.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on a national securities exchange or otherwise is suspended, for the period from 2:10 p.m. (EDT) on June 18, 1982, and terminating at midnight (EDT) on June 27, 1982.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

FR Doc. 82-17009 Filed 6-22-82; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2043]

Declaration of Disaster Loan Area; Alaska

The City of Fort Yukon, Fairbanks North Star Borough in the State of Alaska constitutes a disaster area as a result of damage caused by flooding which occurred on May 16-18, 1982. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on August 5, 1982, and for economic injury until the close of business on March 3, 1983, at the address below:

Small Business Administration, Federal Building & Court House, 101 12th Avenue, P.O. Box 14, Fairbanks, Alaska 99701.

or other locally announced locations.

Homeowners with credit available elsewhere—15⅜%.
Homeowners without credit available elsewhere—7⅞%.
Businesses with credit available elsewhere—16½%.
Businesses without credit available elsewhere—8%.
Businesses (EIDL) without credit available elsewhere—8%.
Other (non-profit organizations including charitable and religious organizations)—11½%.

It should be noted that assistance for agricultural enterprises is the primary responsibility of the Farmers Home Administration as specified in Pub. L. 96-302.

Information on recent statutory changes (Pub. L. 97-35, approved August 13, 1981) is available at the above-mentioned office.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: June 4, 1982.

James C. Sanders,

Administrator.

[FR Doc. 82-16868 Filed 6-22-82; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2047]

Declaration of Disaster Loan Area; Illinois

As a result of the President's major disaster declaration, I find that the county of Williamson and the Township of Road Districts 4 and 5-3 in Perry County, Illinois constitute a disaster loan area because of damage cause by severe storms and tornadoes beginning on May 29, 1982. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on August 5, 1982, and for economic injury until March 7, 1983, at:

U.S. Small Business Administration, Springfield Branch Office, Washington Building, Four North Old State Capital Plaza, Springfield, Illinois 62701.

or other locally announced locations.

Interest rates for applicants filing for assistance under this declaration are as follows:

Homeowners with credit available elsewhere—15⅜%.
Homeonwers without credit available elsewhere—7⅞%.
Businesses with credit available elsewhere—16%.
Businesses without credit available elsewhere—8%.
Businesses (EIDL) without credit available elsewhere—8%.
Other (non-profit organizations including charitable and religious organizations)—11½%.

It should be noted that assistance for agricultural enterprises is the primary responsibility of the Farmers Home Administration as specified in Pub. L. 96-302.

Information on recent statutory changes (Pub. L. 97-35, approved August 13, 1981) is available at the above-mentioned office.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: June 11, 1982.

James C. Sanders,

Administrator.

[FR Doc. 82-16867 Filed 6-22-82; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2041; Amdt. No 1]

Declaration of Disaster Loan Area; Massachusetts

The above numbered Declaration (see 47 FR 24010), is amended by correcting the formula interest rate for homeowners who are unable to obtain credit elsewhere from our previously published interest rate of 7⅝ percent. All other information remains the same.

Dated: June 11, 1982.

James C. Sanders,

Administrator.

[FR Doc. 82-16868 Filed 6-22-82; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2045]

Declaration of Disaster Loan Area; Oklahoma

Kingfisher County in the State of Oklahoma constitutes a disaster area as a result of damage caused by flooding which occurred on May 15-16, 1982. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on August 5, 1982, and for economic injury until the close of business on March 3, 1983, at the address below: Small Business Administration, Area 3 Disaster Office, 2306 Oak Lane, Grand Prairie, Texas 75051, or other locally announced locations.

Homeowners with credit available elsewhere—15⅝%
Homeowners without credit available elsewhere—7⅞%
Businesses with credit available elsewhere—16½%
Businesses without credit available elsewhere—8%
Businesses (EIDL) without credit available elsewhere—8%
Other (non-profit organizations including charitable and religious organizations)—11½%

It should be noted that assistance for agricultural enterprises is the primary responsibility of the Farmers Home Administration as specified in Pub. L. 96-302.

Information on recent statutory changes (Pub. L. 97-35, approved August 13, 1981) is available at the above-mentioned office.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: June 4, 1982.

James C. Sanders,

Administrator.

[FR Doc. 82-16869 Filed 6-22-82; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2044]

Declaration of Disaster Loan Area; Texas

Gaines County in the State of Texas constitutes a disaster area as a result of damage caused by a tornado which occurred on May 12, 1982. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on August 5, 1982, and for economic injury until the close of business on March 3, 1983, at the address below: Small Business Administration, Area 3 Disaster Office, 2306 Oak Lane, Grand Prairie, Texas 75051, or other locally announced locations.

Homeowners with credit available elsewhere—15⅝%
Homeowners without credit available elsewhere—7⅞%
Businesses with credit available elsewhere—16½%
Businesses without credit available elsewhere—8%
Businesses (EIDL) without credit available elsewhere—8%
Other (non-profit organizations including charitable and religious organizations)—11½%

It should be noted that assistance for agricultural enterprises is the primary responsibility of the Farmers Home Administration as specified in Pub. L. 96-302.

Information on recent statutory changes (Pub. L. 97-35, approved August 13, 1981) is available at the above-mentioned office.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: June 4, 1982.

James C. Sanders,

Administrator.

[FR Doc. 82-16870 Filed 6-22-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 811]

Certain Foreign Passports; Validity

"Antigua and Barbuda" and "St. Vincent and the Grenadines" are added to the list of countries which have entered into agreements with the Government of the United States whereby their passports are recognized as valid for the return of the bearer to the country of the foreign issuing authority for a period of at least six months beyond the expiration date specified in the passport.

This notice amended Public Notice 766 of August 4, 1981 (46 FR 39718).

Dated: June 11, 1982.

Diego C. Asencio,

Assistant Secretary for Consular Affairs.

[FR Doc. 82-16905 Filed 6-22-82; 8:45 am]

BILLING CODE 4701-06-M

[Public Notice 810]

Agency Forms Submitted for OMB Review

AGENCY: State Department.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department has submitted a proposed collection of information to the Office of Management and Budget for review.

PURPOSE: The Office of the Historian of the Department of States is proposing, for the first time, to survey actual readers of the *Foreign Relations of the United States* series. The survey findings will help decide the future shape of the series in terms of audience targeting, format, content, and feasibility of microfiche supplements

SUMMARY: The following summarizes the information collection proposal submitted to OMB:

(1) Type of request—new.

(2) Title of information collection—Questionnaire for Survey of Users of Foreign Relations of the United States.

(3) Originating Office—Office of the Historian, Bureau of Public Affairs.

(4) Frequency—Nonrecurring.

(5) Respondents—American historians who are members of the Society for Historians of American Foreign Relations and selected professional historians.

(6) Estimated number of responses—800.

(7) Estimated total number of hours needed to fill out form—400.

Section 3504(4) of Pub. L. 96–511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed form and supporting documents may be obtained from Gail J. Cook, Departmental Clearance Officer, (202) 632–3602. Comments and questions should be directed to (State) Bernard Roshco, (202) 632–0472 and (OMB) Phillip Balazs, (202) 395–4814.

Dated: June 10 1982.

Thomas M. Tracy,

Assistant Secretary for Administration.

[FR Doc. 82–16912 Filed 6–22–82: 8:45 am]

BILLING CODE 4710–24–M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 121
Wednesday, June 23, 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: 11 a.m., Friday, July 2, 1982.

PLACE: 2033 K Street NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6374.

[S–926–82 Filed 6–2–82; 3:30 pm]

BILLING CODE 6351–01–M

2

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 26733, Monday, June 21, 1982.

PLACE: Board room, sixth floor, 1700 G Street NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202–377–6679).

CHANGES IN THE MEETING: The Thursday, June 24, 1982, Bank Board Meeting scheduled for 10 a.m., has been changed to 9:30 a.m.

[No. 43, June 21, 1982]

[S–927–82 Filed 6–21–82; 3:48 pm]

BILLING CODE 6720–01–M

3

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENNT: (47 FR 26067) June 16, 1982.

STATUS: Closed/open meetings.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, June 11, 1982.

CHANGES IN THE MEETING: Additional/deletion items. The following items will be considered at a closed meeting scheduled for Tuesday, June 22, 1982, at 11:00 a.m.:

Amend institution of injuctive action. Litigation matter and report of investigation.

The following item will be considered at a closed meeting scheduled for Thursday, June 24, 1982, following the 10:00 a.m. open meeting:

Settlement of injunctive action.

The following item will be considered at an open meeting scheduled for Thursday, June 24, at 10:00 a.m.:

Consideration of whether to propose for comment Registration Statement Form S–20 and three rules concerning other disclosure documents related to standardized options. The proposals are intended to establish a new disclosure framework specifically tailored to the information needs of investors in standardized options. For further information, please contact Gregory H. Mathews at (202) 272–2589.

The following item will not be considered at an open meeting scheduled for Thursday, June 24, at 10:00 a.m.:

Consideration of a request for a "no-action" letter from savings and loan associations that propose to permit a registered broker-dealer, Savings Association Investment Securities, Inc. to offer brokerage services on their premises without registering as broker-dealers under Section 15 of the Securities Exchange Act of 1934. For further information, please contact Colleen C. Harvey at (202) 272–2826.

Chairman Shad and Commissioners Loomis and Evans determined by vote that Commission business required consideration of the former matters and non consideration of the latter matter and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact; Paul J. Siegelbaum at (202) 272–2468.

June 17, 1982.

[S–925–82 Filed 6–21–82; 1:11 pm]

BILLING CODE 8010–01–M

federal register

Wednesday
June 23, 1982

Part II

Environmental Protection Agency

Small Manufacturer Exemption Standards; Reporting and Recordkeeping Requirements

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 704

[OPTS-80011A; TSH-FRL 2079-5]

Small Manufacturer Exemption Standards; Reporting and Recordkeeping Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes general exemption standards for "small chemical manufacturers" under section 8(a) of the Toxic Substances Control Act. Manufacturers who qualify as "small" under these standards will be exempt from most section 8(a) reporting and recordkeeping rules. The proposed exemption standards have been designed to reduce the paperwork burden on small chemical manufacturers, while ensuring that EPA will receive a sufficient amount of chemical use, production, and exposure information to support assessment of chemical risks.

DATES: Written comments on this proposed rule must be mailed to the address given below on or before August 23, 1982. EPA will provide an opportunity for oral comments, if necessary, at an open meeting on August 23, 1982. Individuals seeking an opportunity for oral comment must submit a request for an open meeting at least 30 days prior to the end of the written comment period. See below, **SUPPLEMENTARY INFORMATION:** Unit VI, for details.

ADDRESS: Comments should be addressed to: Document Control Office, (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-401, 401 M St., SW., Washington, D.C. 20460.

Comments should bear the identifying notation OPTS-80011A. All comments received will be available for public inspection in Room E-107, at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Douglas Bannerman, Acting Director, Industry Assistance Office, (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-511B, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065). In Washington, D.C. (554-1404), Outside the USA: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Legal Authority

Section 8(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607(a), authorizes the Administrator of the Environmental Protection Agency to establish, by rule, reporting and recordkeeping requirements for chemical manufacturers and processors. TSCA section 8(a)(2) lists some of the types of data which the Administrator may require to be kept or reported, including information concerning the identity, production volume, and exposure potential of chemicals manufactured or processed.

By the terms of the statute, small manufacturers and processors are usually exempt from section 8(a) reporting and recordkeeping requirements. For purposes of this exemption, TSCA section 8(a)(3)(B) requires the Administrator to promulgate rules that "prescribe standards for determining the manufacturers and processors which qualify as small * * *" This rule prescribes such standards.

The Administrator has discretionary authority under section 8(a)(3)(A)(ii) to require even small manufacturers to report or keep records concerning a chemical substance or mixture that is subject to:

(1) A proposed or promulgated rule under TSCA section 4 (testing requirement), section 5(b)(4) (a list of chemicals which may present an unreasonable risk), or section 6 (control actions), or

(2) An order in effect under section 5(e) (new chemical information), or

(3) Relief granted as a result of civil action brought under section 5 or 7.

II. The Proposed Exemption Standards

The standards proposed here are for manufacturers. Standards for processors will be developed in future rulemaking. All data in this preamble represent only the manufacturing portion of the chemical industry.

There are two small manufacturer exemption standards. A company will qualify as "small" if it meets either standard.

By the first standard, a chemical manufacturer will qualify as small if the total annual sales of all sites owned or controlled by its foreign or domestic parent company are less than $30 million. However, if such a manufacturer annually produces over 45,400 kilograms (100,000 pounds) of a particular chemical at a particular plant site, that manufacturer will not qualify as small with regard to that chemical at that plant site.

Under this standard, a company meeting the sales criterion for small, but not meeting the volume criterion for all sites, will only be subject to reporting or recordkeeping for sites producing 45,400 kilograms or more of the chemical per year.

By the second standard, a chemical manufacturer will qualify as small if total annual sales of all sites owned or controlled by its foreign or domestic parent company are less than $3 million, regardless of the quantity of chemicals produced by that firm.

We expect that the use of these two standards together will result in the exemption of at least 36 percent of all chemical manufacturing firms. These firms represent approximately one percent of total industry production volume and 12.2 percent of the total number of manufacturing plant sites. The latter percentage is smaller than the percentage of firms exempted because many large firms in the chemical industry have a multiple number of plant sites. Likewise, many firms of relatively small size have only a single plant site.

For these standards, total annual sales means the total revenue generated by sale of all products, including non-chemical products, that are produced at all sites owned or controlled by the parent company. We will periodically adjust, as necessary, the sales values of both standards to allow for inflation after the promulgation of this rule.

Companies will use the corporate fiscal year as the twelve month period for which both annual sales and production volume are to be calculated. In the first standard, annual production volume means the total amount of a chemical substance or mixture produced or imported during the designated twelve month period.

A parent manufacturing company owns or controls another company if the parent owns 50 percent or more of the other company's voting stock or other equity rights, or has the power to control the management and policies of the other company. This definition is drawn from the United States Department of Commerce's 1977 Economic Census Report of Organization.

Plant site means a contiguous property unit which serves as the location for chemical manufacturing. There may be more than one manufacturing plant located on a particular site.

III. Agency Objectives

Reporting and recordkeeping are costly in terms of time, money, and personnel resources. These costs have particular impact on companies which

have limited financial and personnel resources. Such manufacturers tend to have fewer administrative personnel, and less capability for data compilation and recordkeeping than larger firms.

In enacting TSCA, Congress recognized a need "to protect small manufacturers from unreasonably burdensome reporting requirements" (Conf. Rep. No. 94–1679, 94th Cong., 2d Sess. 80 (1976)), and added the small business exemption requirement to section 8(a). However, the information collection authority of TSCA section 8(a) also reflects congressional recognition of EPA's need for sufficient data from the chemical industry to accurately assess the risk potential of individual chemicals. Thus, we have attempted to structure exemption standards to balance the need for risk-related information with the need to minimize the reporting and recordkeeping burden on small manufacturers.

The burden imposed on a chemical manufacturer by TSCA section 8(a) requirements is part of the total operating costs of that firm. Chemical firms with limited financial and personnel resources will be least able to bear the additional cost burden of reporting and recordkeeping requirements. The exemption standards should be able to identify small manufacturers through use of a parameter that measures a company's available resources.

Our information requirements are governed by the potential for exposure to chemicals that are produced. A greater exposure potential for an individual chemical may indicate a greater potential risk to human health and the environment. This potential risk in turn creates an Agency need for information to assess that risk. The exemption standards should also contain a parameter that measures chemical exposure potential, and thereby reflects EPA's information needs.

An additional Agency objective for the exemption standards is that they enable us to obtain information that is representative of firms of different sizes. Large and small firms may utilize different production processes, techniques, and equipment, which may present different potentials for exposure. These differences may be a result of the varying amounts of capital available to different segments of the chemical industry. The parameters of the exemption standards should therefore be structured to provide us with representative information.

A final requirement for the standards is that they be easily analyzed and applied by both industry and the Agency. That is, the parameters must represent data which are readily accessible. The data must enable identification of companies which would be likely to qualify for an exemption. The standards must also be easily enforced; the data must enable us to monitor compliance with the exemption.

IV. Agency Approach and Methodology

In developing the exemption standards proposed in this rule, we examined the utility of several possible criteria for "small" as possible measures of chemical exposure potential (our information needs) and the resources available to manufacturers.

We looked at criteria for "small" used by other agencies, and reexamined criteria used for past rules under section 8(a) of TSCA. We considered the possible utility of parameters that have not been used previously, such as market share and net profit. We also relied on the input of industry representatives who responded, both in writing and at meetings with EPA staff, to the notice concerning this proposed rule published in the **Federal Register** of October 6, 1980 (45 FR 66180).

In addition, we utilized an independent contractor's analysis of parameters and exemption values. The analysis focused on 1459 chemicals, which were selected to represent the types of chemicals that may be included in future section 8(a) rules. The data base for the analysis included publicly available production, sales, and employment data for 3044 plant sites that produce these chemicals. The data were drawn from the TSCA Chemical Substance Inventory and from Dun and Bradstreet reports. The full analysis is contained in the public record for this rulemaking.

No parameter or set of parameters can meet our objectives and requirements perfectly. The various types of parameters considered, and their possible values, are only approximations of company resources or our information needs. We relied on industry comments as well as the analysis in selecting standards which best meet our requirements as an average across the entire industry. The following section describes our evaluation of possible parameters and parameter values.

V. Evaluation of Alternative Size Criteria

A. Size Criteria Used in the Past by Other Agencies and EPA

In the size standards used in the past by other Federal agencies, as well as under TSCA, there is no single definition of a "small" business. The standards differ because they have been designed for differing purposes.

The size standards used by the Small Business Administration (SBA) illustrate this point. The purpose of the SBA small manufacturer standards is to identify companies that qualify for Federal Assistance programs. The standards are intended to reflect the degree of competition within individual industries, so that less competitive firms will qualify for assistance. Thus, the SBA size standards are a measure of dominance within each industry, rather than an absolute measure of company size. They vary by industry type to reflect the unique competitive characteristics of different industries. Although the SBA has stated that a typical small manufacturing firm may have 500 or fewer employees, the SBA uses several different employee number standards for different types of manufacturing companies, with the standards ranging from 250 employees to a proposed high of 2500 employees. Within the chemical industry, the values assigned to the employee number standards also vary considerably among different product groupings.

The Occupational Safety and Health Administration (OSHA) and the Bureau of the Census (Census) also utilize size standards based on employee number. OSHA defines a small business as having 10 employees or fewer. Census defines a small business as having fewer than 20 to 50 employees. The purpose of these small business standards is to identify companies whose paperwork burden can be lessened without substantial impact on the agencies' information bases.

EPA shares this purpose. Unlike the SBA, we do not seek to identify firms which are "large" in terms of market dominance. Rather, our primary goal is to balance a reduction in reporting burden with our information requirements. We seek to identify "small" manufacturers as those firms with fewer available resources *and* less potential for chemical exposure.

For previous rules under section 8(a) of TSCA, we have used a combination of sales revenue and chemical production volume parameters as small manufacturer exemption standards. We evaluated these and other possible parameters, including employee number, in developing this proposed rule.

B. Possible Parameters

We considered a number of possible parameters for the small manufacturer exemption standards, including: (1)

Total annual company profit, (2) total company assets, (3) total annual company sales, (4) annual chemical sales, (5) number of company employees, (6) annual production volume per chemical, and (7) market share. Some of these criteria were suggested by Congress in the House Committee Report on TSCA (H.R. Rep. No. 94–1341, 94th Cong. 2d Sess. 43 (1976)).

These possible parameters are described below, along with the reasons for and against using them according to the objectives discussed above.

1. *Total annual company profit.* Total annual company profit, the difference between sales revenue and operating costs, measures financial resources that may be available to a chemical manufacturer to comply with TSCA reporting and recordkeeping requirements. The most serious drawback to the use of this parameter is that profit data for small and closely held firms are usually very sensitive and confidential, and therefore may not be available, either for our analysis or for monitoring of industry compliance.

2. *Total company assets.* Although assets indicate a company's financeal resources, they may not accurately indicate the resources available for immediate use, because at any given time, a manufacturer may have substantial assets but limited liquidity or high operating costs.

Moreover, like the profit parameter, this parameter would be difficult to analyze. While the total value of assets for large, publicly-held firms is available (appearing on their balance sheets), such information can usually only be estimated for small, closely-held firms.

3. *Total annual company sales.* This parameter includes all sales revenues (measured in dollars) of a parent chemical company, including sales of non-chemical products. We believe that the sales parameter is directly related to total profit, cash flow, and financial resources.

Moreover, sales revenue is a measure of output. Manufacturers with limited sales revenues presumably also have limited output and limited available resources, and could be considered small for TSCA reporting and recordkeeping purposes.

Another advantage of using total annual sales in exemption standards is that we have access to sales data for most companies (both publicly and privately held) from publicly available sources such as Dun and Bradstreet and state directories.

However, in some individual cases sales may not reflect profit or cash flow. For example, when sales revenue comes from high selling prices that reflect high raw material costs, profit margins may be very small.

In addition, exemption standards based on a total sales parameter may require adjustment for inflation in order to maintain their long-term accuracy as measures of available financial resources. We propose to use the Bureau of Labor Statistics Producer Price Index for Chemical and Allied Products for this purpose. The Index is a measurement of producer price fluctuations for chemicals. It is published annually, and is the most conveniently applicable index available to the Agency. The use of this Index would ensure the continued accuracy of a total sales parameter.

4. *Annual chemical sales.* This parameter could be either total annual sales revenue for all chemicals produced, or annual sales per chemical. Neither alternative reflects a diversified firm's financial capabilities since chemical sales may be a large or small part of total company sales of all products.

A major problem with using annual chemical sales as a parameter is that unless chemical sales are a major part of a firm's business, chemical sales revenue is not usually reported as a separate line item in the company's financial statements. Alternatively, it would be extremely difficult, if not impossible, to divide chemical sales (where known) among the various chemicals in a firm's product line to derive individual chemical sales.

5. *Total number of company employees.* To the extent that the number of employees includes personnel available for administrative work, an employee number parameter may have value. One of the adverse impacts of paperwork burdens for a small company is the necessity of taking personnel away from production work to fill out reports or records. Logically, the larger a company is, the more likely it is to have personnel who specialize in administration. Several industry commenters have indicated to us that this is generally the case.

As with the data on total sales revenue, employee number data are publicly available to EPA from sources such as Dun and Bradstreet. In contrast with the total sales parameter, employee number would not require adjustment for inflation.

However, industry commenters have also indicated that the dividing line between small and large, in terms of employee number, may be hard to find. They suggest that different chemical manufacturing processes may require widely different numbers of production personnel. If this kind of variability in employee number is prevalent in the chemical industry, a particular total employee number figure may not always reflect a corresponding ability of a manufacturer to carry out reporting and recordkeeping requirements.

6. *Annual domestic production volume per chemical.* Chemicals produced in larger quantities may present a greater potential for human or environmental exposure. Since Agency concern increases when potential exposure increases, we should avoid exempting a manufacturer as "small" if that firm produces a significant quantity of a particular chemical.

A manufacturer's production of a particular chemical could be either: (1) total production volume for all of a company's plant sites, or (2) production volume per plant site. Plant site production data are more meaningful because such data generally reflect the exposure potential at individual plant sites. A total production volume parameter may not always indicate plant site exposure potential. The TSCA Chemical Substance Inventory, which contains production volume information by chemical plant site, also allows us to estimate the effects of exemptions based on production volume per site.

7. *Market share per chemical.* Market share in this sense is one company's production of a particular chemical as a percentage of the total industry production of that chemical. As with the production volume parameter, market share would approximate a company's overall contribution to exposure potential, and thus reflect the importance of that firm's reporting in meeting our information needs. A manufacturer with a dominant share of the market for a particular chemical presumably is in the best position to provide the Agency with information on the chemical.

The market share parameter would probably provide us with information about chemicals that are manufactured by only a few companies which qualify as "small" under other parameters. Thus, a market share parameter would be of particular value in providing us with data on specialty chemicals, which are manufactured by firms that often are small in terms of both production volume and total sales.

However, market share is a relative measure of exposure potential, rather than an absolute measure. It is possible that a firm with a large share of a small market for a particular chemical may present less potential for exposure than a firm that has a relatively small percentage of the total industry

production of a large volume chemical. In addition, we have no means of determining the relative market shares of manufacturers of a chemical. Most companies probably have good estimates of their market share, but not all companies do; therefore, a market share parameter may cause uncertainty, both to EPA and to some companies, as to who would be subject to a future rule.

Because of these significant drawbacks to the market share parameter, production volume is the preferred criterion for measuring exposure potential and our information needs.

C. Analysis of Selected Parameters

Based on our evaluation of the alternative parameters described in the preceding section, we selected three parameters for further analysis: total annual company sales, number of employees, and plant site production volume. These parameters are amenable to analysis and enforcement, and are the best available approximations of either a company's resources or our information needs.

The selected parameters were analyzed against the data base of production, sales, and employment data. The analysis focused on different combinations of parameters and parameter values, in terms of their effect on various cost-benefit variables, such as: (1) The number of firms exempted, (2) the number of plant sites exempted, (3) the number of reports received, (4) the number of chemicals on which no reports would be received, and (5) total reporting costs. The conclusions from the analysis are summarized below.

Structure of the two-parameter standard. We first concluded that, in order for the exemption standards to reflect our information needs, they should include an "information" parameter that would be sensitive to chemical exposure potential. Of the possible parameters, production volume best approximates exposure potential. We would not receive sufficient information for our regulatory purposes from a reporting rule with an exemption bases solely on sales or employee number, unless the value of the sales or employee number parameter was set at a level so low that some relatively small firms would fail to quality for an exemption. Industry representatives recognized EPA's need for information under TSCA section 8(a), and did not object to the proposal of a plant site production volume parameter as a means of ensuring that sufficient information would be received.

The analysis also indicates that an exemption standard which contains only a production volume parameter would be inadequate, because it may not be a sufficiently accurate indicator of the financial or personnel resources available to a manufacturer for reporting and recordkeeping purposes. It also may fail to provide us with necessary information on low volume specialty chemicals produced by larger firms. The Agency would have to set the single parameter at a more stringent low level in order to ensure the receipt of necessary information.

According to the analysis, the use of a second parameter (whether sales or employee number) in addition to production volume would ensure that we would receive sufficient information, at any given total cost to the chemical industry, while targeting the exemption toward those firms with the fewest available resources. The use of two parameters therefore would enable us to achieve the desired balance between our information needs and our desire to reduce the reporting burden on small manufacturers.

The analysis further indicates that we should require manufacturers to meet both parameters in order to qualify for an exemption from reporting requirements. Otherwise, the standards are no different than a single parameter standard, and would not result in an optimal balance between information maximization and cost reduction.

Selection of parameter values. In evaluating different parameter values, we have remained mindful of the fact that the exemption standards are essentially intended to define "small", in terms of company resources and Agency information needs. There are, then, certain logical upper and lower limits to the range of parameter values.

In determining an upper limit, we are particularly concerned about the number of chemicals for which we would receive no reports under a given exemption standard. The analysis indicates that, as parameter values are increased, the number of zero-report cases also increases gradually as an average across the data base of 1459 chemicals employed in the analysis. Moreover, the data base includes a disproportionate number of high volume chemicals, causing the potential information loss for low- or medium-volume chemicals to be greater than the results of the analysis indicated.

For this proposal we have selected parameter values such that no more than 10 percent of all chemicals would be zero-report chemicals. We are concerned about losing access to information altogether, and believe it is reasonable to propose that this loss be limited to 10 percent of the chemicals.

We also prefer standards that maximize the number of individual manufacturing sites required to report, rather than the total number of reports. If we maximize the number of reports received under an exemption standard, we will receive more information from firms that produce a large number of higher-volume chemicals. However, by maximizing the number of locations reporting under an exemption standard, we will receive information which is representative of firms of different sizes. The potential for chemical exposure may vary among different sized firms, because these firms may produce the same chemicals with different production processes and techniques. Thus, we may need representative information to monitor the variations in production processes.

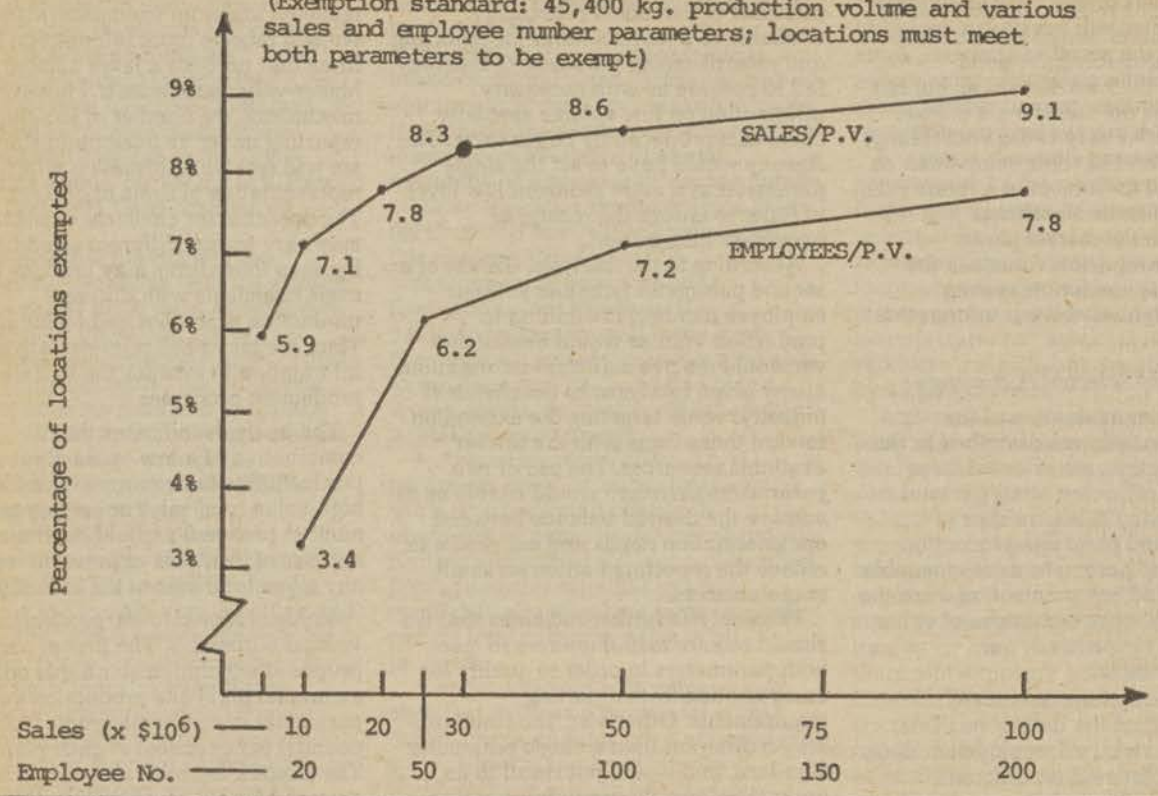
The analysis indicates that a combination of a low-value plant site production volume parameter and a high-value total sales or employee number parameter would maximize the number of locations required to report at any given total cost to the industry.

Value assigned to the production volume parameter. The first of our two proposed exemption standards contains an annual plant site production volume parameter of 45,400 kilograms (100,000 pounds) per chemical at each plant site. The 45,400 kilogram value would meet our need for exposure information, for two reasons. First 45,400 kilograms of a particular chemical is a significant amount to be handled at a single plant site. This level of production, and production quantities of greater than 45,400 kilograms, may result in a significant exposure potential. Second, 45,400 kilograms of production is a point at which the method of chemical manufacture may change from batch processing to a continuous process, the latter with a greater potential for increasing production volume.

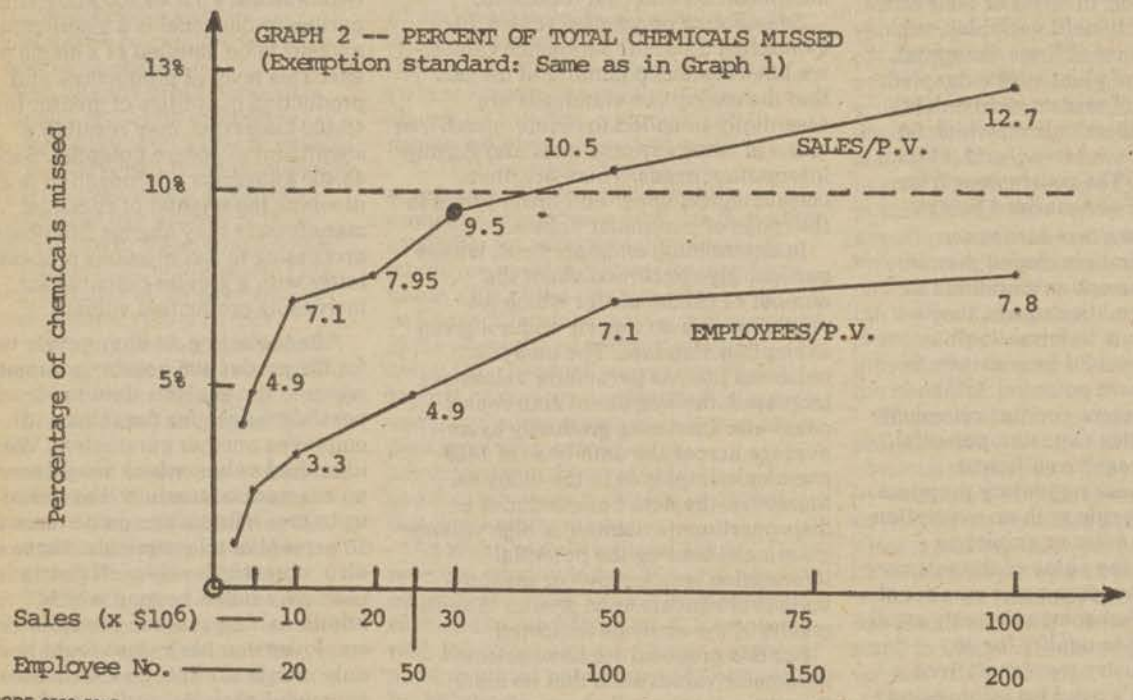
After selecting an appropriate value for the production volume parameter, we used the analysis data to identify possible values for the sales and employee number parameters. We identified values which would result in an exemption standard that would cause us to lose information on no more than 10 percent of all chemicals. These values also represent leveling-off points for each parameter, beyond which additional increases in the sales or employee number value would have only marginal effect on the number of exempted sites. According to the analysis, and as illustrated in Graphs 1 and 2, the leveling-off value for the sales parameter is approximately $30 million in total annual sales. The leveling-off point for the employee number parameter is approximately 100 employees.

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GRAPH 1 -- PERCENT OF TOTAL LOCATIONS NOT REQUIRED TO REPORT
(Exemption standard: 45,400 kg. production volume and various sales and employee number parameters; locations must meet both parameters to be exempt)



GRAPH 2 -- PERCENT OF TOTAL CHEMICALS MISSED
(Exemption standard: Same as in Graph 1)



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Sales preferred as second parameter. We have provisionally concluded that a sales parameter will best serve our purposes for the second parameter. A total annual sales parameter offers the primary advantage, previously described, of being the best publicly available approximation of a firm's financial resources on hand.

We recognize that employee number tends to reflect available personnel resources for reporting purposes, and that employee number does not share the sales parameter's requirement of periodic indexing to account for inflation. Nevertheless, both the analysis and industry comments have led us to conclude that employee number is a less accurate indicator of firm size than sales.

The analysis indicates that an exemption standard with employee number and production volume criteria would be less effective than one with sales and production volume parameters, in terms of the number of locations exempted. As demonstrated in Graph 1, the curve representing an employee number/production volume standard (with a production value of 45,400 kilograms) levels off at about 100 employees. Above this level, increases in the employee number value will have only marginal effect. However, when compared with the point at which the sales/production volume curve levels off, a standard with a 100 employee parameter would exempt fewer sites. We would have to assign a relatively high value to the employee number parameter (from 200 to 500 employees) to have a standard which exempts the same number of locations as the sales standard.

Moreover, an employee number parameter would not accurately identify "small" chemical firms, regardless of the value assigned to it, because there is a large degree of variability of employee number among chemical firms which have comparable financial resources available for reporting and recordkeeping. The analysis indicates that, within the chemical industry, employee number does not correlate well with sales revenue as a measure of company size. In addition, industry representatives have estimated that the personnel resources of firms with $30 million in total sales may range from 50 to over 300 employees.

The designation of a single average employee value to represent "small" chemical manufacturing firms would actually represent an extremely wide range of financial and personnel resources across the industry; some firms with substantial resources may qualify for an exemption, while other firms with limited resources may not. This variability severely reduces the value of employee number as an accurate measure of the resources available for reporting and recordkeeping.

Therefore, we are proposing exemption standards that include sales and production volume parameters, although the use of employee number, and the possible values for that parameter, remain alternatives on which we invite comment.

$30 million sales parameter. The combination of a $30 million sales parameter and a 45,400 kilogram production volume parameter, both of which must be met for a plant site to be exempt from reporting on a particular chemical, would exempt about 8.3 percent of the total number of plant sites. An increase in the sales value to $100 million would exempt only 0.8 percent more locations. Similarly, the analysis indicates that we would have 9.5 percent zero-report chemicals with a $30 million sales parameter, while a 100 million value would raise the percentage of chemicals missed to 12.74 percent, above the desired 10 percent level.

We are not relying solely on our analysis for the proposed sales parameter value. Industry representatives have noted, during meetings with EPA staff, that firms with sales of less than $30 million are generally viewed within the industry as "small"; firms with greater than $30 million in sales revenue were said to have different characteristics than smaller firms, in terms of management practices, the number of chemicals produced, and the capability of handling reporting and recordkeeping requirements.

Although we are proposing specific values for the sales and production volume parameters of the first exemption standard, we invite comment on alternative values for these two parameters, as well as employee number. These alternative values, and their effect on the number of zero-report chemicals, are listed in Table A below.

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TABLE A -- ALTERNATIVE PARAMETER VALUES

Exemption standards with 45,400 kilogram (100,000 pound) production volume parameter and various sales and employee number values:

SALES	PERCENT OF CHEMICALS MISSED	EMPLOYEE NUMBER	PERCENT OF CHEMICALS MISSED
$10 million	7.14%	20	3.26%
$30 million	9.5%	50	4.92%
$50 million	10.52%	100	7.14%
$100 million	12.74%	200	7.95%

Exemption standards with 454,000 kilogram (one million pound) production volume parameter and various sales and employee number values:

SALES	PERCENT OF CHEMICALS MISSED	EMPLOYEE NUMBER	PERCENT OF CHEMICALS MISSED
$10 million	7.75%	20	3.43%
$30 million	10.52%	50	5.4%
$50 million	11.72%	100	7.75%
-----	----	200	8.76%

Source: ICF Incorporated, Analysis of TSCA section 8(a) Small Manufacturer Exemption, May 1981.

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$3 million sales standard. We are also proposing the use of a second standard, independent of the one described above. The purpose of this additional standard is simply to ensure that there will be no burden on those manufacturers who are the smallest in terms of financial and personnel resources. We are proposing a sales parameter for this standard.

In selecting the value to be assigned to the second standard, we examined the approximately reporting costs for various sized firms, measured as a percentage of their net after-tax profits. In conducting this analysis, we estimated that the average cost per chemical report would be between $500 and $1500. We also made certain assumptions concerning profit as a percentage of sales revenue, and the average tax burden on manufacturing firms. We designated 0.5 percent of net after-tax profit as the maximum amount we would require firms to spend on a single report.

Using this analytical framework, we then determined that a firm with total annual sales revenue of $3 million would spend approximately 0.43 percent of its after-tax profit to produce a $1500 chemical report. This cost burden is below the designated maximum cost per report. We therefore propose that the second standard exempt all manufacturers with total annual sales of less than $3 million, regardless of the volume of the chemicals produced. We expect that larger manufacturers will provide representative information on most of the chemicals produced by firms with less than $3 million in sales.

Impact of the two exemption standards. Our analysis indicates that the combination of the $3 million sales standard and the two-parameter standard would exempt at least 36 percent of all firms that manufacture chemicals. The two standards would exempt 12.2 percent of the total number of manufacturing sites from reporting and recordkeeping requirements. The total reporting and recordkeeping cost to the chemical industry would be reduced by approximately 15 percent.

The proposed standards would enable us to achieve our purpose of defining "small" within the constraints of our information requirements. In addition to the fact that 100 percent of all firms with less than $3 million in sales would be exempt, our analysis indicates that 84 percent of firms with less than $5 million in sales would be exempt. The standards would also exempt over 62 percent of firms with less than $30 million in sales. Moreover, according to the analysis the manufacturing plant sites exempted would be concentrated among smaller firms, and the chemicals we would lose are primarily in the low- and mid-production volume range.

With regard to the potential information loss, the analysis indicates that the standards would result in our not receiving reports on approximately 10 percent of all chemicals in our sample data base of 1459 chemicals. The potential information loss may be significant when one considers the bias of the sample toward large volume chemicals.

In addition, we would not receive about 15 percent of the total number of reports we would have received had there been no exemption. However, the percentage of reports lost represents less than one percent of total industry production; while relatively large chemical firms do not account for all types of chemicals produced, they do represent 99 percent of total industry production volume.

We also examined the impact of the two standards using the public Inventory data (48,523 chemicals), and found that we would not receive reports on 15 to 20 percent or more of the total number of Inventory chemicals. These figures are only approximations, but they demonstrate that the proposed exemption values are at the upper limit of acceptable information loss.

VI. Public Comments

The Proposed Rule-Related Notice for this rule, published on October 6, 1980, (45 FR 66180), requested public comment concerning the form and contents of the small manufacturer exemption standards. We have received information from interested parties, and have met with industry representatives. Comments received, and minutes of meetings with industry representatives, are available in the public record of this rulemaking proceeding.

EPA solicits comments on the parameters and exemption values proposed in this rule. We will consider suggestions for alternative approaches or values for the exemptions. We also solicit information bearing on the use of an employee number parameter. In addition, we welcome the contribution by commenters of information about the general characteristics of the chemical industry as they pertain to the alternative parameters we have considered.

Requests for time to make oral comments must be made by telephone to the Industry Assistance Office, at the telephone number listed, above, at least 30 days prior to the end of the written comment period. The opportunity to submit oral comment will occur on August 23, 1982 at EPA Headquarters in Washington, D.C. For the exact time and location, call the Industry Assistance Office. The meeting will be open to the public, but participation will be limited to EPA personnel and those who make a request for oral comment.

If no one has requested time to make an oral presentation within the required time period, there will be meeting. Interested persons are advised to call the Industry Assistance Office to ascertain the status of the meeting.

VII. Other Statutory Requirements

A. Regulatory Flexibility Act

EPA has developed this rule in accordance with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The Act requires the Administrator to establish efficient, flexible regulatory procedures which have a minimal significant economic impact on small businesses. This rule, while imposing no direct economic burden on small businesses, will reduce the impact to TSCA section 8(a) reporting and recordkeeping rules on small chemical manufacturers by enabling identification of manufacturers who qualify for a section 8(a) exemption.

This preamble and its underlying analysis should be viewed in combination as a Regulatory Flexibility Analysis within the meaning of the Regulatory Flexibility Act. The preamble contains as a discussion of the legal basis, purpose, and content of this rule. The preamble also contains a discussion of relevant issues and comments received, as well as a summary of our analysis of alternative parameters and exemption values. The contractor analysis compared the impacts of various alternative exemption standards.

As required by the Regulatory Flexibility Act, EPA is requesting and considering the comments and suggestions of all interested persons. EPA has requested comments on this rule from the Chief Counsel for advocacy of the Small Business Administration.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., authorizes the Director of the Office of Management and Budget to review certain information requests by Federal agencies. The small manufacturer exemption standard, while associated with the information collection requirements of TSCA section 8(a), is not itself a requirement for the collection of information. This proposed rule is

therefore not subject to the requirements of the Paperwork Reduction Act. It will, however, accomplish the objectives of the Act. The exemption will reduce the regulatory burden on small businesses to a minimum level which is consistent with our information needs.

VIII. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. This regulation is not a Major rule.

This rule contains exemption standards, and is intended to reduce regulatory compliance costs to small chemical manufacturers under future rules. We will analyze the impact of the reporting and recordkeeping rules that contain these standards as each of those rules is proposed. The exemption standards by their nature will not adversely affect employment, investment, productivity, or innovation, and will not have a significant adverse effect on competition.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments will be available for public inspection at Room E-107, 401 M St., SW., Washington, D.C. 20460 (docket number OPTS-80011A).

IX. Rulemaking Record

The following documents constitute the administrative record for this rule (docket number OPTS-8011A). All documents are available to the public in the OPTS Reading Room, 8:00 a.m. to 4:00 p.m. weekdays (Room E-107, 401 M St., SW., Washington, D.C. 20460). This record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record includes the following categories of information:

(1) The Proposed Rule-Related Notice (45 FR 66180 (1980)).

(2) Written comments received in response to the Proposed Rule-Related Notice.

(3) Minutes of all meetings between EPA personnel and persons outside the Agency pertaining to the development of this rule.

(4) Records of all communications between EPA personnel and persons outside the Agency pertaining to the development of this rule.

(5) Inter- and intra-agency memoranda and communications which are specifically noted in the index of the record for this rule.

(6) Comments received on this notice.

(7) The Independent Contractor Analysis of the TSCA Section 8(a) Small Manufacturer Exemption.

EPA will identify the complete rulemaking record on or before the date of promulgation of this rule, as prescribed by section 19(a)(3) of TSCA, and will accept additional material for inclusion in the record at any time between the date of this notice and that designation. The final rule will also permit persons to identify errors or omissions in the record.

List of Subjects in 40 CFR Part 704

Environmental protection, Imports, Hazardous materials, Recordkeeping and reporting requirements.

(Sec. 8(a)(3)(B), Pub. L. 94-469, 90 Stat. 2027, 15 U.S.C. 2607(a)(3)(B))

Dated: June 14, 1982.

Anne M. Gorsuch,

Administrator.

Therefore, it is proposed that Part 704 of Chapter I of 40 CFR be amended by adding Subpart D consisting at this time of § 704.65 to read as follows:

PART 704—REPORTING AND RECORDKEEPING REQUIREMENTS

Subparts A-C—[Reserved]

Subpart D—Exemptions

Sec.
704.65 Persons who are small manufacturers.

Authority: Section 8(a)(3)(B), Toxic Substances Control Act, Pub. L. 94-469 (90 Stat. 2027, 15 U.S.C. 2607(a)(3)(B)).

Subparts A-C [Reserved]

Subpart D—Exemptions

§ 704.65 Persons who are small manufacturers.

(a) *Scope.* (1) Under the authority of section 8(a)(3)(B) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607(a)(3)(B), this rule sets forth standards identifying small manufacturers (including importers) of chemical substances or mixtures. Except as stated in paragraph (a)(2) of this section, the manufacturers who qualify as "small" under the standards contained in paragraph (c) of this section are exempt from rules promulgated under the authority of section 8(a) after June 23, 1982.

(2) Notwithstanding this exemption, the Administrator may, for any rule promulgated under section 8(a), require reporting or recordkeeping from any small manufacturer of a chemical substance or mixture that is subject to a rule proposed or promulgated under TSCA sections 4, 5(b)(4), or 6, or is subject to an order in effect under TSCA section 5(e), or is the subject of relief that has been granted under a civil action brought under TSCA section 5 or 7.

(b) *Definitions.* The definitions in section 3 of TSCA apply for this part. In addition, the following definitions apply.

(1) "Annual" means the corporate fiscal year.

(2) "Domestic" means within the geographic boundaries of the United States, and including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

(3) "Importer" means anyone who imports a chemical substance, in pure form or as part of a mixture or article, into the customs territory of the U.S., and includes:

(i) The person liable for the payment of any duties on the merchandise, or

(ii) An authorized agent on his behalf. Importer also includes, as appropriate:

(A) The consignee.

(B) The importer of record.

(C) The actual owner if an actual owner's declaration and superseding bond has been filed in accordance with 19 CFR 141.20.

(D) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred in accordance with Subpart C of 19 CFR Part 144. For the purpose of this definition, the customs territory of the U.S. consists of the 50 states, Puerto Rico, and the District of Columbia.

(4) "Manufacturer" means a person who imports, produces or manufactures a chemical substance or mixture. A manufacturer may own or control one or more manufacturing sites. A manufacturer may be owned or controlled by a foreign or domestic parent company.

(5) "Own or control" means ownership of 50 percent or more of a company's voting stock or other equity rights, or the power to control the management and policies of that company.

(6) "Parent company" is a company that owns or controls another company.

(7) "Person" means any natural person, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or other business entity.

(8) "Production volume" means the quantity of a chemical substance or mixture which is produced by a manufacturer, as measured in kilograms or pounds.

(9) "Site" means a contiguous property unit. Property divided only by a right-of-way shall be considered one site. There may be more than one manufacturing plant on a single site.

(10) "Total annual sales" means the total annual revenue (in dollars) generated by the sale of all products of a manufacturer. Total annual sales must include the total annual sales revenue of all sites owned or controlled by that manufacturer, and the total annual sales revenue of that manufacturer's foreign or domestic parent company, if any.

(11) "TSCA" means the Toxic Substance Control Act.

(c) *Standards for small manufacturer definition.* A manufacturer must meet either of the following standards to qualify as a small manufacturer under TSCA section 8(a):

(1) *First standard.* A manufacturer is small if its total annual sales, when combined with those of its parent company (if any), are less than $30 million. However, if the annual production volume of a particular chemical substance or mixture at any individual site owned or controlled by the manufacturer is greater than 45,400 kilograms (100,000 pounds), the manufacturer shall not qualify as small for purposes of reporting on the production of that chemical substance or mixture at that site, unless the manufacturer qualifies as small under paragraph (c)(2) of this section.

(2) *Second standard.* A manufacturer is small if its total annual sales, when combined with those of its parent company (if any), are less than $3 million, regardless of the quantity of chemicals produced by that manufacturer.

[FR Doc. 82-16794 Filed 6-21-82; 8:45 am]

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federal register

Wednesday
June 23, 1982

Part III

Department of Justice

Bureau of Prisons

Control, Custody, Care, Treatment and Instruction of Inmates; Final Rules

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 549

Control, Custody, Care, Treatment and Instruction of Inmates; Suicide Prevention Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document the Bureau of Prisons is publishing a final rule on its Suicide Prevention Program. This rule gives guidelines for Bureau of Prisons' management of potentially suicidal inmates. Each institution is to have a full-time staff member who will serve as Program Coordinator for the institution's suicide prevention program. This program is intended to help the Bureau of Prisons fulfull its responsibility for monitoring the health and welfare of individual inmates, and for ensuring that procedures are pursued to help preserve life.

EFFECTIVE DATE: July 26, 1982.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street, NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724/3062.

SUPPLEMENTARY INFORMATION: In this document the Bureau of Prisons is publishing its final rule on the Suicide Prevention Program. This subject was previously published as a proposed rule January 26, 1982 (at 47 FR 3755). Interested persons were invited to submit comments concerning the proposed rule. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered, but receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rulemaking since the rule involves agency management. After review of the law and the regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Summary of Changes/Other Comments

1. Section 549.70—Section 549.70 is rewritten although its basic intent is unchanged. The rule requires that the Warden designate in writing a full-time staff member to serve as Program Coordinator for the institution suicide prevention program. Internal staff instructions state that the Program Coordinator is ordinarily the chief psychiatrist or chief psychologist. If the institution does not have a full-time psychiatrist or psychologist the program responsibility is assigned to the Hospital Administrative Office or to a full-time physician with consultation obtained from a contract psychiatrist or psychologist.

2. Section 549.71—Section 549.71(c) is revised to require that the Program Coordinator, at a minimum, use the techniques listed in § 549.71(c)(1)–(3). Section 549.71(d), Coordinator's assessment, is new. This section states procedures for the Program Coordinator to follow after meeting with the referred inmate. If the Program Coordinator determines that the inmate is not potentially suicidal, this conclusion and the basis for it is to be placed in writing and attached to the initial referral. If the Program Coordinator believes that a potential for suicide exists, the maintenance procedures given in final § 549.71(e), formerly proposed § 549.71(d), are to be initiated immediately. New § 549.71(e) substitutes the phrase "immediate reassignment of housing" for "temporary reassignment of housing" to better identify the intent of this maintenance technique. Proposed § 549.71(e)–(f) become final § 549.71(f)–(g). Section 549.71(g) substitutes the phrase "companions" for "suicide prevention aides." Persons selected as "companions" are not considered, as suggested by a commenter, "inmate hospital workers." Companions are persons trained by psychology services staff. The companion's role is to monitor potentially suicidal inmates at such times when sufficient staff are unavailable. The companion will have visual and verbal interaction, and a means to contact staff immediately. The companion will not have physical contact with the potentially suicidal inmate.

In response to public comment, internal implementing instructions to this rule recognize that a suicide prevention program is of particular importance in facilities housing pretrail inmates.

List of Subjects in 28 CFR Part 549

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director of the Bureau of Prisons in 28 CFR 0.96(q), 28 CFR Chapter V, is amended by adding Part 549, Subpart F.

Dated: June 15, 1982.

Norman A. Carlson,

Director, Bureau of Prisons.

In Part 549, add Subpart F to read as follows:

PART 549—MEDICAL SERVICES

* * * * *

Subpart F—Suicide Prevention Program

Sec.

549.70 Purpose and scope.
549.71 Suicide prevention program.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4005, 4042, 4081, 4082, 4161–4166, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart F—Suicide Prevention Program

§ 549.70 Purpose and scope.

The Bureau of Prisons provides guidelines for the management of potentially suicidal inmates. While such occurrences as suicide attempts cannot be totally eliminated, the Bureau of Prisons is responsible for monitoring the health and welfare of individual inmates, and for ensuring that procedures are pursued to help preserve life. Towards fulfillment of this objective, each Warden shall designate in writing a full-time staff member to serve as Program Coordinator for an institution suicide prevention program.

§ 549.71 Suicide prevention program.

The Program Coordinator shall ensure that the institution's suicide prevention program contains the following elements:

(a) *Identification.* Staff at each institution shall be trained (ordinarily by psychology services personnel) to recognize those signs exhibited by an inmate that may be indicative of a potential suicide.

(b) *Referral.* Staff shall immediately refer to the Program Coordinator any inmate who exhibits behavior indicative of a potential suicide. Documentation of the referral shall be placed in the inmate's medical file.

(c) *Crisis Intervention.* Upon receipt of a referral, the Suicide Prevention Program Coordinator is to immediately initiate appropriate crisis intervention techniques. These techniques shall include, but are not limited to, the following:

(1) Meeting with the inmate;

(2) Demonstrating a caring concern; and

(3) Not leaving the inmate unattended.

(d) *Coordinator's assessment.* If the Program Coordinator determines after

meeting with the inmate that the inmate is not potentially suicidal, the Program Coordinator shall state in writing the basis for this conclusion. This document is attached to the initial referral and placed in the inmate's medical file.

If the Program Coordinator determines that there is a potential for suicide, the maintenance procedures given in paragraph (e) of this section will be initiated immediately.

(e) *Maintenance.* The Program Coordinator shall arrange for the inmate identified as a potential suicide to be maintained under frequent observation. The Program Coordinator shall also utilize other appropriate maintenance techniques. Examples of such techniques include, but are not limited to, immediate reassignment of housing, increased contact with those staff members with whom the inmate has developed a positive relationship, and the provision of treatment services.

(f) *Documentation.* Staff shall document in the inmate's medical file all efforts made on behalf of the potentially suicidal inmate.

(g) *Training.* The Program Coordinator shall ensure that both staff and selected inmates are provided training in suicide prevention techniques. Staff shall receive this training as part of their annual refresher training. Selected inmates shall be trained as "companions", to perform specified functions in helping to monitor suicide-prone inmates. Inmates selected as "companions" shall receive compensation for time spent monitoring a potentially suicidal inmate.

[FR Doc. 82-16929 Filed 6-22-82; 8:45 am]
BILLING CODE 4410-05-M

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28 CFR Part 552

Control, Custody, Care, Treatment and Instruction of Inmates; Use of Force and Application of Restraints on Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: This document contains the Bureau of Prisons final rule on Use of Force and Application of Restraints on Inmates. The rule describes Bureau of Prisons policy in respect to the use of restraints, chemical agents, and force. The rule authorizes the use of physical restraints on an inmate who becomes violent or displays signs of imminent violence. The use of chemical agents is authorized when the inmate is armed and/or barricaded, or cannot be approached without danger to self or others, and where a delay in controlling the situation would constitute a serious hazard to the inmate or others, or result in a major disturbance or major property damage. The rule also states that staff may use only the amount of force necessary to ensure the safety of the inmate, staff, and others, and to protect government property.

EFFECTIVE DATE: July 26, 1982.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street, NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724/3062.

SUPPLEMENTARY INFORMATION: In this document the Bureau of Prisons is publishing its final rule on Use of Force and Application of Restraints on Inmates. This subject was published in the **Federal Register** as a proposed rule January 12, 1979 (at 44 FR 2988).

Interested person were invited to submit comments on the proposed rule. Members of the public may submit further comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no further response in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this set of rulemaking since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Summary of Changes/Comments

1. *Section 552.20*—The phrase "a cell in" is added to § 552.20 to clarify the example given. A commenter to § 552.20 expresses concern that the term "imminent violence" is not defined. The commenter suggests that the Bureau list applicable situations to guide staff on the use of physical restraints. This guidance already exists. Section 552.21(a)(1)-(a)(4) givens four situations warranting the use of restraints. Section 552.21(a)(5) allows the use of restraints when the inmate displays signs that such violence (as indicated in § 552.21(a)(1)-(a)(4)) may be imminent.

2. *Section 552.21*—This section is retitled "Use of restraints." For clarity, § 552.21(a) substitutes the phrase "may authorize and will ordinarily supervise" for "may apply or supervise." The scope of § 552.21(a)(2) is clarified to specifically authorize the use of restraints to prevent an inmate from destroying government property (for example, a commode or sink in the inmate's cell). Section 552.21(b) is expanded. The phrase "in a cell" is added to indicate the intent of this section. Another revision authorizes the Warden's designee (was "duty officer" in the proposed rule) to act on behalf of the Warden. A third revision to § 552.21(b) allows staff to temporarily apply restraints to an inmate when immediate action is necessary to prevent the inmate from hurting self, staff, or others, and/or to prevent the destruction of government property. After taking this immediate action, staff are to notify the Warden or designee for a decision on the continued use of restraints. Except where the immediate use of restraints is required, the Warden or designee must give prior approval to the use of restraints while an inmate is in a cell in administrative detention or disciplinary segregation.

A commenter to § 552.21(c) and (d) suggested that inasmuch as "acting out" is more a mental health than medical problem, the emphasis in these sections should be placed on mental health, not medical staff. This emphasis is not considered necessary. The rule requires that staff seek the assistance of mental health or medical staff. In some situations, it is possible that mental health and medical staff will jointly attempt to resolve the situation. The specific assistance requested, however, will depend on the given situation. To reflect this fact, § 552.21(d) now states that when an inmate appears to require continuing care (as opposed to "mental health care" in the proposed rule), the deciding staff (mental health or medical staff) shall assume responsibility for the inmate. This section recognizes that such care may require the inmate's admission to the institution hospital.

Section 552.21(e) is rewritten. A commenter states that when it is necessary to restrain an inmate for an excessive period of time (referring to the proposed rule's "longer than 24 hours"), the Bureau should take immediate steps to transfer the inmate to a hospital or to have trained medical staff apply the restraints and supervise the inmate. Another commenter believed the proposed rule allowed "potentially harmful treatment". This commenter suggested that medical surveillance every 30 minutes should begin immediately and that both the Warden's permission and a physician's permission be required for the continued use of restraints beyond 30 minutes.

We do not agree that permission of the Warden and physician should be

required for the use of restraints beyond 30 minutes. The rule identifies when restraints may be used. Internal staff instructions to the rule state that restraints should remain on the inmate until self-control is regained, and suggest that mental health and medical staff may be consulted as to the appropriate time to remove the restraints. These guidelines clearly set a framework on the use, and removal, of restraints.

The final rule addresses other concerns of commenters. The time frame in § 552.21(e) has been reduced from 24 hours to 8 hours. While we do not expect that it will often be necessary to use restraints on an inmate for even as much as eight hours, the intent of § 552.21(e) is to ensure medical involvement if this does occur. Prior to that time, other staff are quite capable of both applying restraints to, and supervising the inmate. While the rule allows for the inmate to be transferred to a hospital, this approach is not always realistic. A hospital room may not be available. The inmate's behavior may require housing in a location more secure than a hospital. A commenter seems to address this point in stating that a person who remains violent after a short period of time should be placed temporarily in a cell where the individual can't do any serious damage. Placement in a more secure location might also reduce the need for the use of restraints. Because the institution hospital may not be the appropriate setting for the inmate, the final rule deletes the requirement that restraints be attached to a hospital bed. Where necessary, the inmate may be restrained to an appropriate bed, approved by medical staff. The final rule retains the requirement that restraints be checked at least every 30 minutes, both to check the general welfare of the inmate and to ensure that the restraints are not hampering circulation. When an inmate is restrained to a bed, staff are to periodically rotate the inmate's position to avoid soreness or stiffness.

Because § 552.21(e) allows an inmate to be restrained to an appropriate bed, approved by medical staff, § 552.21(f) adds the qualifying phrase, "Except as stated in paragraph (e) above". The final rule gives grill work as another example of a "fixed object".

A commenter to §§ 552.20 and 552.21 states that these two sections do not describe or define the type of physical restraints nor indicate which restraints are appropriate for different situations. It is not considered feasible to include this information in the rule. The type of restraints may include handcuffs, leg irons, etc., with staff expected to use only those restraints necessary to gain control of the inmate. Internal staff instructions specifically address other concerns of the commenter by stating (1) that restraints may not be applied as punishment, (2) that restraints should be used only when other effective means of control have failed or are impractical, and (3) that restraints should remain on the inmate only until self-control is regained. We do not agree with a comment that the Warden should approve the use of restraints. The correctional supervisor in charge of the shift is qualified to decide, within the limits of this rule, when restraints should be applied. In support of their position that the Warden should approve the use of restraints, the commenter cited the Commission on Accreditation for Corrections (CAC) Standards for Adult Correctional Institutions (Standard 4189). Since publication of the proposed rule a second edition of CAC Standards has been published. The Bureau of Prisons rule is consistent with Standard 2–4185 which allows the Warden or designee to approve the use of restraints.

3. *Section 552.22*—Section 552.22, "Use of force", is new. The new language expands information contained in § 552.20 and allows staff to apply restraints (for example, handcuffs) to an inmate who continues to resist after staff achieves physical control of the inmate. The rule also recognizes that staff may physically lift and move to another area an inmate who refuses to move on his own accord.

4. *Section 552.23*—Proposed § 552.22 becomes final § 552.23. The term "chemical agents" is substituted for "chemical restraints" in the first sentence of §552.23. Section 552.23(a) states that chemical agents may be used when an inmate is either armed or barricaded, rather than armed and barricaded, provided that a delay in controlling the situation would constitute a serious hazard to the inmate, others, or result in a major disturbance or major property damage. Section 552.23 substitutes the phrase "self or others" for "personnel or to self". Internal Bureau directives are responsive to the concerns of commenters that chemical agents should be used only by individuals trained in its use, and that measures be taken to protect those inmates not involved in the disruptive action. Comments that the use of chemical agents should only occur when no other methods are sufficient are addressed in § 552.23. This section clearly identifies when chemical agents may be used.

5. *Section 552.24*—Proposed § 552.23 becomes final § 552.24. The final rule is expanded to state that a report is to be prepared when chemical agents are used. We do not believe it necessary to adopt a comment that all uses of restraints be accompanied by an affidavit. The required report will ensure that documentation is available.

List of Subjects in 28 CFR Part 552

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR Chapter V is amended as set forth below:

In Subchapter C, Part 552, Subpart C is added.

Dated: June 15, 1982.

Norman A. Carlson,

Director, Bureau of Prisons.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

In Subchapter C, Part 552, Subpart C is added to read as follows:

PART 552—CUSTODY

* * * * *

Subpart C—Use of Force and Application of Physical Restraints on Inmates

Sec.

552.20 Purpose and scope.
552.21 Use of restraints.
552.22 Use of force.
552.23 Use of chemical agents.
552.24 Documentation.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart C—Use of Force and Application of Physical Restraints on Inmates

§ 552.20 Purpose and scope.

The Bureau of Prisons authorizes application of physical restraints on an inmate who becomes violent or displays signs of imminent violence. When an inmate behaves violently or displays signs of imminently becoming violent, staff shall use only that amount of force necessary to ensure the safety of the inmate, staff, and others, and to protect government property. This rule does not restrict the use of restraints in situations requiring precautionary retraints, particularly in the movement or transfer of inmates, e.g., the use of handcuffs in moving inmates to and from a cell in detention.

§ 552.21 Use of restraints.

(a) The correctional supervisor in charge of the shift may authorize and will ordinarily supervise the application of restraints necessary to gain control of an inmate who appears to be dangerous because:

(1) The inmate assaults any person;

(2) The inmate destroys government property;

(3) The inmate attempts suicide;

(4) The inmate inflicts wounds upon self; or

(5) The inmate displays signs that such violence may be imminent.

(b) Except where the immediate use of restraints is required for control of the inmate, staff may apply restraints to, or continue the use of restraints on, an inmate while in a cell in administrative detention or disciplinary segregation only with approval of the Warden or designee. Where immediate use of restraints is indicated, staff may temporarily apply such restraints to an inmate to prevent that inmate from hurting self, staff, or others, and/or to prevent the destruction of government property. When the temporary application of restraints is determined necessary, the Warden or designee is to be notified immediately for a decision on whether the use of restraints should continue.

(c) Staff shall seek the assistance of mental health or medical staff upon gaining physical control of the inmate. Where possible, staff shall seek such assistance at the onset of the violent behavior.

(d) Where mental health or medical staff determine that an inmate requires continuing care, the deciding staff shall assume responsibility for care of the inmate, to include possible admission to the institution hospital.

(e) When it is necessary to restrain an inmate for longer than 8 hours, staff shall apply to the inmate medically acceptable restraints (ordinarily leather). The restraints may be attached to an appropriate bed, approved by medical staff. Staff shall check the inmate at least every 30 minutes, both to ensure that the restraints are not hampering circulation and for the general welfare of the inmate. When an inmate is restrained to a bed, staff shall periodically rotate the inmate's position to avoid soreness or stiffness.

(f) Except as stated in paragraph (e) of this section, staff may not secure an inmate to a fixed object, such as a cell door or grill work.

§ 552.22 Use of force.

Staff shall use only that force necessary to gain control of the inmate. Staff shall apply restraints (for example, handcuffs) to the inmate who continues to resist after staff achieve physical control of that inmate. If, after being controlled or restrained, the inmate refuses to move to another area on his own, staff may physically move that inmate by lifting and carrying the inmate to the appropriate destination.

§ 552.23 Use of chemical agents.

The Warden may authorize the use of chemical agents only when the situation is such that the:

(a) Inmate is armed and/or barricaded; or

(b) Cannot be approached without danger to self or others; and

(c) It is determined that a delay in bringing the situation under control would constitute a serious hazard to the inmate, others, or result in a major disturbance or major property damage.

§ 552.24 Documentation.

Staff shall document in writing all incidents involving the use of force or chemical agents. Staff shall also document in writing the use of restraints on an inmate who becomes violent or displays signs of imminent violence. A copy of the report shall be placed in the inmate's central file.

[FR Doc. 82-16930 Filed 6-22-82; 8:45 am]

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Part IV

Department of Health and Human Services

Office of Child Support Enforcement

Child Support Enforcement Research Demonstration Grants; Notice of Availability of FY 1982 Funds

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

Child Support Enforcement Research Demonstration Grants; Notice of Availability of Fiscal Year 1982 Funds

The Director of the Office of Child Support Enforcement gives notice of the availability of fiscal year 1982 funds for child support enforcement research and demonstration (R&D) grants. Funding for grants is authorized under Section 1110 of the Social Security Act.

The closing date for fiscal year 1982 request for grants will be Friday, August 13, 1982.

Program Purpose

Grants funded by OCSE are for research or demonstration projects which will add to existing knowledge and improvements of new methods and techniques for the planning, management, coordination and delivery of child support enforcement activities related to the eligible population.

Program Goals

In general, the Office of Child Support Enforcement (OCSE) intends to support the following types of projects:

(1) Those which develop and demonstrate new performance assessment mechanisms, administrative procedures, and technological innovations for improving the effectiveness and efficiency of child support enforcement programs at the State and local levels.

(2) Those which develop more knowledge on the characteristics and financial needs of a target group.

(3) Those which develop and implement analytical models for comparing the relative merits of alternative methods for carrying out the child support enforcement programs.

(4) Those which develop and demonstrate more effective linkages between child support enforcement programs and related programs such as medical assistance, unemployment compensation, etc.

Program Priorities for Research and Demonstration Funding

Research and demonstration projects will be directed toward priorities derived from State administration and program issues. OCSE has identified certain specific priority projects which reflect these administrative program issues, and they are listed below.

Applicants may also submit proposals for projects not specifically identified in this announcement but which are relevant to the SSA and OCSE program goals. These proposals will be designated as nonpriority but will also be subject to the panel review process. A limited number of projects may be approved pending available funds and will compete with other nonpriority projects.

Priority Projects

Fiscal Year 1982 Projects

Study of IV-A/IV-D Referral Feedback Process—OCSE-82-1. Currently AFDC applications are handled by the IV-A (AFDC) agency and those cases with absent parents are referred to the IV-D (Child Support Enforcement) agency to attempt to secure child support payments. It is crucial for effective program operation that IV-A workers refer cases to IV-D workers, and that IV-D workers provide feedback about those cases to IV-A workers. In addition, the AFDC agencies must inform CSE agencies about changes coming to the attention of the AFDC agency on a continuous basis. Little has been studied about the two-way communication process, the forms that it takes, the extent of its effectiveness, the best ways to organize it, or any Federal, State, or local impediments to an effective referral/feedback process both initially and on a continuing basis.

The process needs to be reviewed from a legal point of view (to see what is intended to be done in this area), from a systemic point of view (a description of all levels of the system from Federal to State to County to Local Office to determine what IV-D/IV-A officials have designed), and followed up with the analysis of a sample of cases (to see what is actually being done in the referral/feedback process). Descriptions of five representative State systems should be accomplished with a case analysis in one site per State. The study should conclude with a set of concrete recommendations, based on firm data and observations, about how the referral/feedback process can be improved at every level for both the initial referral process and the update process.

It is anticipated that one grant in Section 1110 funds will be awarded for one year for up to $100,000.

The Costs of Benefits of Paternity Establishment—OCSE-82-2. Based on recent census data, the number of children living with unwed mothers tripled between 1970 and 1978. In addition, the unwed mother is ten times less likely to receive child support payments from the father as is a divorced mother. With the enactment of child support and establishment of paternity legislation in 1974, each State is required to identify the natural fathers and to seek support orders. The procedures followed to establish paternity vary considerably from jurisdiction to jurisdiction and meet with varying degrees of success.

The intent of this grant is to look at how to lower the cost of the paternity establishment process and to quantify the benefits, over time, of establishing paternity early on and then, if necessary, following up in later years to collect support when there is an ability to pay on the part of the father.

The activities of this project will include cataloging and describing a wide range of current scientific techniques used in establishing paternity, innovative administrative procedures, and legal decisions. Also, a cost/benefit analysis will be conducted taking into account a wide variety of benefits on a long-term basis as well as the costs of establishing paternity. A cost/benefit model of paternity establishment would then be applied in two sites using different approaches to the establishment of paternity. The results will be analyzed in order to (1) lower the cost of the paternity establishment process and (2) through quantification, establish an awareness of a broader view of benefits.

The funding level available is $150,000 in Section 1110 funds. The grantee should contribute at least 5 percent of the total project costs. The project will have a one year duration.

IV-A/IV-D Eligibility Extension—OCSE-82-3. This project involves a determination of the degree to which an extension of the eligibility of AFDC recipients until child support payments equal or exceed the AFDC grant for three consecutive months (or more at the option of the applicant) could: (1) Alter caseload participation and termination rates; (2) increase or decrease net AFDC benefit costs; (3) increase net "medically needy" and "categorically needy" (Medicaid) cost; (4) lower IV-A and IV-D administrative costs and burden, and/or result in any IV-A or IV-D cost avoidance; (5) reduce the number of recipients placed in economic hardship due to the irregularity of child support payments and the termination of AFDC benefits because of irregular child support payments; and, (6) increase or decrease retained child support collections.

The project will require waivers of the following provisions of the Social Security Act (SSA) and the Code of Federal Regulations (CFR):

1. Section 402(a)(1)—SSA—Statewideness;

2. Section 402(a)(5)—SSA—Methods of Administration, and 45 CFR 232.20(a)(1)—Notification of Title IV–A Agency by Title IV–D Agency of Child Support Collection Amount and Redetermination of AFDC Eligibility; and,

3. Section 402(a)(7)—SSA—Income and Resources.

It is anticipated that one grant will be awarded for two years not to exceed $25,000 per year. The initial award will be for a 12-month period and a subsequent grant will be awarded for an additional 12 months depending upon satisfactory performance and the availability of funds.

Since Section 1115 waivers are required for this project, applications for this project will be accepted only from State IV–A agencies.

Improving Interstate Child Support Collections—OCSE–82–4. Although the Child Support Enforcement program may be cost-effective in some States at the present time, an analysis of recent data indicates that expenditures have increased at a much faster rate than collections. If this current trend continues unchecked, total program costs will outstrip total collections in a few years. Broader application of proven management techniques and beneficial State practices already in use in many States need to be encouraged and stimulated. One area of potential improvement is the strengthening of interstate enforcement activities through alterations in the crediting of interstate collections.

At present, available data makes it difficult to locate and account for interstate funds. The grantee will examine the flow of interstate child support collections, with special attention to cost allocation between requesting and responding States in from two to five States and three to seven jurisdictions, for both AFDC and NAFDC cases. The grantee will also identify, describe, and study both persisting and emergent problems in securing, accounting for, and counting interstate collections. Emphasis will be on developing measures that strengthen the data collection and accountability within and between States for interstate collections. No data are publicly available on volume of collections by State for States' use in collection efforts. The grantee must be able to offer evidence that a preponderance of jurisdictions selected for study have been successful in making interstate collections. Both success factors and barriers to collection and accountability for collection will be identified through study of programs in the sample jurisdictions. Both jurisdictions using administrative methods and those employing a Uniform Reciprocal Enforcement Support Act (URESA) approach will be studied.

It is anticipated that one grant in Section 1110 funds will be awarded for one year for up to $250,000.

Eligible Applicants

Section 1110 Grants. Any State, public, or nonprofit organization or agency may apply for a grant under the Section 1110 authority. Only State IV–A agencies may apply for support under project OCSE–82–3.

Availability of Funds

It is anticipated that approximately 4 new grant awards will be made pursuant to this announcement in FY '82. Anticipated amounts are:

Fiscal year 1982 Projects

OCSE–82–1 (Study of IV–A/IV–D Referral Feedback Process). It is anticipated that one grant of up to one year for up to $100,000 will be awarded.

OCSE–82–2 (The Cost and Benefits of Paternity Establishment). It is anticipated that one grant of up to one year for up to $150,000 will be awarded.

OCSE–82–3 (IV–A/IV–D Eligibility Extension). It is anticipated that one grant will be awarded for two years not to exceed $25,000 per year. The initial award will be for a 12-month period and a subsequent grant will be awarded for an additional 12 months depending upon satisfactory performance and availability of funds.

OCSE–82–4 (Improving Interstate Child Support Collections). It is anticipated that one grant of up to one year for up to $250,000 will be awarded.

Recipient Share of the Project Costs

Applicants for grants are expected to contribute some portion of the total cost of the activity in order to receive consideration for funding. Generally 5 percent of the total cost of the project is considered acceptable. No grant will be awarded which will cover 100 percent of project costs.

The Application Process

1. *Availability of application forms.* Application Kits which contain the prescribed application forms and supplemental descriptive information on the priority projects of the Office of Child Support Enforcement are available from: Social Security Administration, Division of Contracts and Grants Management, OMBP, Grants Management Branch, First Floor, Dogwood West Building, 1848 Gwynn Oak Avenue, Baltimore, Maryland 21207, Telephone: (301) 594–0284, Lawrence H. Pullen, Chief, Grants Management Branch.

2. *Application submission.* To be considered for a grant award, all applications must be submitted on standard forms provided by the Division of Contracts and Grants Management. The application shall be executed by an individual authorized to act for the applicant agency or organization and to assume for the agency or organization the obligations imposed by the terms and conditions of the grant.

As part of the project title (page 1 of the application Form SSA–96, item 7) the applicant must clearly indicate whether the application submitted is in response to a priority project identified in this announcement and must reference the unique project identifier (OCSE–82–1, etc.) for which the application is to compete.

3. *Application consideration.* Applications are initially screened for relevance to the interests of OCSE. Irrelevant applications are returned to the applicant. Relevant applications are reviewed and evaluated by a review panel of not less than three experts. Written assessment of each application is made.

4. *Application approval.* Following approval of the applications selected for funding, financial assistance awards will be issued within limits of Federal funds available. The FY '82 grant awards will be issued in September 1982. The official award document is the Notice of Grant Award. It provides the amount of funds awarded, the purpose of the award, the budget period for which support is given, the total project period for which support is contemplated, and the total grantee participation.

Criteria for Review and Evaluation of Applications

Competing applications will be reviewed and evaluated against the following criteria.

1. *Research or Demonstration Design.* Understanding the scope of the work statement and the proposed technical approach to the requirement. This includes clarity of goals and objectives. (30 points)

2. *Knowledge.* Knowledge of the field, literature, and background presentation material. Assurance of timely and acceptable performance. (10 points)

3. *Reasonableness.* Reasonableness of the proposal. Does it make sense? Can it be done? Is the work-hour effort and types of workerpower to complete the

project reasonable? (15 points)

4. *Experience.* Prior experience and/or new approaches or ideas in the branch of the technology or field involved. (10 points)

5. *Relevance.* Relevance of proposal to HHS priorities and goals; and to the purposes of these grants. (25 points)

6. *Personnel, Budget, and Facilities.* Availability and competence of specific kinds and numbers of experienced personnel. (5 points)

Specificity and adequacy of the budget for these projects. Are costs reasonable and adequately described considering the anticipated results?

Availability of necessary facilities, equipment, convenient location, etc.

7. *Utilization.* Quality of evaluation effort. Probability of implementation possibilities (national, State, etc.). (5 points)

Closing Dates and Times

For fiscal year 1982 projects, the closing date will be Friday, August 13, 1982.

Applications may be mailed or hand delivered to: Social Security Administration, Division of Contracts and Grants Management, OMBP, Grants Management Branch, First Floor, Dogwood West Building, 1848 Gwynn Oak Avenue, Baltimore, Maryland 21207.

Applications must be received by the Division of Contracts and Grants Management, Grants Management Branch, by the above closing date. Hand delivered applications are accepted during normal working hours of 8:30 a.m. to 5:00 p.m., Monday through Friday.

An application will be considered to be received, on time, if sent by first class mail (express, registered, or certified) not later than the closing date, as evidenced by a legible U.S. Postal Service postmark. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any other means except by mailing first class through the U.S. Postal Service shall be considered as acceptable only if physically received at the above address before close of business on or before the deadline date.

Applications which are not received on time will not be considered for funding.

A–95 *Notification Process.* This program is not covered by the requirements of OMB Circular A–95.

(Catalog of Federal Domestic Assistance Program No. 13.812—Assistance Payments—Research)

Dated: June 17, 1982.

John A. Svahn,

Director, Office of Child Support Enforcement.

[FR Doc. 82-17017 Filed 6-22-82; 8:45 am]

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Part V

Department of Commerce

National Oceanic and Atmospheric Administration

Fishery Management Plans; Guidelines

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 602

Guidelines for Fishery Management Plans

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA proposes to revise the national standard guidelines for fishery conservation and management issued in July 1977 under the Magnuson Fishery Conservation and Management Act (the Act). The seven national standards of the Act represent statutory criteria and principles with which all fishery management plans (FMPs) must be judged consistent by the Secretary of Commerce. The Act requires the Secretary to issue guidelines based on the national standards to assist in the development and review of FMPs, their amendments, and regulations. Review and revision of the 1977 guidelines was needed to update and codify them to reflect current Secretarial interpretations and several years of operational experience in resolving fishery management issues. The proposed guidelines are designed to improve the quality of FMPs by providing clearer, more comprehensive guidance and to result in a more uniform understanding of the Secretary's basis for FMP review and implementation.

DATE: Comments must be submitted on or before August 23, 1982.

ADDRESS: Comments should be addressed to the Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service, Washington, D.C. 20235. Please write "National Standards Comments" on the envelope.

FOR FURTHER INFORMATION CONTACT: Daphne White, Office of Resource Conservation and Management, NMFS, 3300 Whitehaven Street, NW., Washington, D.C. 20235, Telephone: (202) 634–7218.

SUPPLEMENTARY INFORMATION:

Background

The guidelines NOAA proposes to revise are currently found at 50 CFR 602.2, published on July 5, 1977, at 42 FR 34458. The Environmental Defense Fund (EDF) petitioned the National Marine Fisheries Service (NMFS) in October 1979 to initiate review and revision of all of Part 602. On February 8, 1980, NMFS granted the petition, in part, and issued an Advance Notice of Proposed Rulemaking (ANPR). The ANPR solicited comments on only those portions of the petition related to the national standards (§ 602.2), and on certain other national standard issues not addressed in the petition for which public comment was also deemed advisable. The ANPR was published at 45 FR 8686.

Granting the petition and undertaking the review and revision were based on the following considerations: (1) The need to update the national standard guidelines to reflect and codify current policy interpretations; (2) the need to clarify meanings and simplify language; (3) the need to bring the perspective of several years of experience to bear on fishery management issues unforeseen when the 1977 guidelines were published; (4) the need to respond to changes occurring in the Nation's priorities and economic circumstances, and, in particular, to the forces for change within the fishing industry; and (5) the need to improve the quality of FMPs by providing clearer and more comprehensive guidance.

Early in 1981, action on the proposed guidelines was suspended for six months when the regulatory calendar was frozen. Work on the guidelines resumed in August; a series of four regional workshops was held in September 1981 with Council and agency personnel, to examine guideline feasibility and to discuss rationale directly with those to be affected. The proposed guidelines therefore also address the concerns expressed at the workshops and in the written followup comments.

Overview of Issues and Rationale

The major issues identified by the 45 commenters on the ANPR as needing policy clarification include establishment of fishery management objectives and consideration of short vs. long-term effects of management regimes, and arise from the full range of the national standards, as follows:

Standard 1: definition of overfishing and determination of optimum yield;

Standard 2: identification of available data and research needs;

Standard 3: management throughout the range of individual stock(s);

Standard 4: allocation of fishing privileges;

Standard 5: definition of efficiency and its application;

Standard 6: habitat protection and identification of ecological relationships; biological, ecological, economic, and social contingencies, and the use of a buffer or a reserve; and

Standard 7: cost/benefit application to management regimes.

Thirty-two comments were received from outside NOAA: seven Regional Fishery Management Councils (Councils), six commercial fishing interest associations, three recreational fishing interest organizations, two environmental groups, five Federal agencies, seven State Marine Resource divisions, and two individuals.

Responses from each category were not uniform, although certain cautious generalizations can be made about approach. Many commenters addressed the substance of the EDF proposals rather than the existing guidelines. From an institutional perspective, the evolving policy of NOAA has been to give Councils the greatest degree of flexibility possible within the law, and in accordance with Congressional intent. Industry generally supports this flexibility and policy of decentralizing fishery management decisions. Environmentalists, on the other hand, tend to push for firmer, more centralized direction, as a protection from special interest domination of management decisions; some commented that membership of the Councils appeared disproportionately weighted towards an exploitative point of view. From a resource perspective, commercial fishing interests emphasize the economic and social factors used in setting OY to justify "full utilization" of the fishery stock. Recreational fishing interests and environmentalists support "ecological reserve" concepts inferred from the words "prevent overfishing." NOAA has tried to balance the points of view between both perspectives.

The proposed guidelines allow for innovative policy evolution in response to new social or economic circumstances, and set out as clearly as possible the benchmarks of current fishery management policy under the Act.

With responsible management of a valued national resource as the goal, NOAA believes the guidelines must also supply the Councils, as fishery management planners, a better yardstick to assess their own work in developing and documenting their decisions. To that end, sections of the guidelines specifically address requirements and options for contents of an FMP, supplementing and drawing into sharper focus provisions of § 602.3, currently in effect. This type of section is usually signaled by the paragraph heading "analysis," within which is given more detailed guidance as to the kind of discussion and examination on FMP should contain to demonstrate consistency with the standard in question. Words within these sections

were carefully chosen to convey levels of effort and information commensurate with need, e.g., "consider," "take into account," "explain," "discuss," "examine," "analyze," "identify."

Fishery management choices affect the fishing industry, the government, and the individual taxpayer/consumer. Members of industry, citizens, and those responsible for implementing a management regime all need to know the reasons for decisions that affect them, particularly if controversial. Thus it is important that certain issues undergo enough examination and discussion to illuminate the options, demonstrate the rationales, and justify the final choices. That principle of accountability corresponds with the Secretary's statutory responsibility to make informed judgments regarding an FMP's consistency with the national standards. The principle coincidentally parallels the philosophies of the National Environmental Policy Act (NEPA), the Regulatory Flexibility Act, and E.O. 12291, which seek accountability in regulatory action.

To make these consistency judgments the Secretary must have enough information; without it the review process is delayed or stopped. That is why the guidelines are directed more to the adequacy of rationale than to the substance of a decision. NOAA is aware that the Councils and their advisory groups, staffs, and drafting teams have labored and debated management alternatives at length in developing FMPs; all too often, however, this fact is not adequately reflected in the FMP document itself. The analysis sections pinpoint what kind and level of information are particularly important to include in presenting the supporting rationales.

EDF premised its proposals on assertions that the existing guidelines fail to give Councils adequate guidance on establishing fishery management objectives, identifying long-range strategies for rebuilding and maintaining fish stocks, and more specifically, on Standards 1, 2, 3, and 6. The EDF petition did not propose changes in Standards 4, 5, and 7, perhaps because these standards do not directly address environmental concerns. However, the creative tension established by the human versus resource needs has been a continuing consideration in the revision of the guidelines.

NOAA carefully considered each of the EDF proposals, added a new section on management objectives, provided more explicit guidance with regard to overfishing that encompasses discussion of rebuilding and maintaining stocks, defined factors underlying "best available information," refined the description of scope and composition of a management unit, suggested specific methods of allowing for variations and contingencies, and revised and reorganized the guidelines for every standard. Specific NOAA responses to EDF proposals and other ANPR issues and the rationale for the proposed revisions are presented below in the discussion of guidelines for each standard.

Section 602.2 includes a style guide, which explains the use of specific words to distinguish the advisory, explanatory, or obligatory nature of the guideline language. Section 602.10 makes it clear that FMPs in substantial compliance with the guidelines, the Act, and other applicable law must be approved. The guidelines are meant as a protection for everyone in the FMP system. They are an aggregation of policies developed through creative Council responses to regional fishery management problems—a way of sharing the empirical knowledge gained over the life of the Act. Their acceptance and use are a matter of practical utility for the Councils and of public commitment of the agency to consistent application of the policies stated.

The statutory language of each standard is presented as paragraph (a) under the appropriate section of the proposed guidelines.

ANPR Issues and Rationale for Each Standard

Standard 1—Overfishing

1. *ANPR Issues.* EDF proposed to amend the definition of overfishing to read as follows: "Overfishing is a level of fishing that results in (i) a reduction in the capacity of the management unit to produce maximum biological yield on a sustained basis of specified *reasonably foreseeable* habitat and environmental conditions or (ii) *significant adverse impacts on other species or stocks not included in the management unit.*"

NOAA felt that "reasonably foreseeable" was not a useful addition to the definition, and that the thought is already covered under Section 303(a)(3) of the Act. However, the revised definition substitutes the word "prevailing" for "specified," which suggests the longer perspective sought by the petitioner. NOAA rejected the EDF language regarding adverse impacts on species not in the management unit as being impracticable in the overfishing context. While these considerations are listed as examples of ecological factors in specifying OY and in Standard 6, the data and sophisticated techniques needed for ecosystem management are probably not yet at the stage of practical application.

2. *Rationale.* Overfishing is a relative term; it cannot be defined in isolation from its biological, economic, or ecological consequences, nor from its relationship to given management objectives. NOAA believes that Standard 1's phrase "shall prevent overfishing" is the strongest protectionist statement in the Act; it is supported by the language in the Findings, Purposes, and Policy section of the Act, and in the legislative history. The prevention of overfishing has as its goal the protection of a stock's general reproductive capacity and its productivity in terms of maintaining an adequate supply of catchable fish.

The guidelines state that significant downward trends in spawning stock size and in average annual recruitment to the fishery may signal that overfishing is occurring. Ascertaining when these downward trends have been established is a judgment based on information gained over time from scientific stock assessment, from harvesters and processors (through logbooks, catch samples, interviews, weigh-out slips, etc.), and from other sources such as aerial surveys or hydroacoustic data.

NOAA recognizes that a decline in stock size or abundance may occur independent of fishing pressure and that adverse changes in essential habitat may increase the risk that fishing effort will contribute to a stock collapse. The more effective management response under the Act is to reduce fishing mortality. Management measures must be applied so that there is a reduction in numbers of fish caught. Controls might include, for example, establishment of catch quotas, closed seasons, closed areas, limits on mesh size, limited vessel days, and limits on vessels entering the fishery.

The guidelines specify that an FMP should explain how its conservation and management measures will prevent overfishing, including a program for rebuilding the stock if it has been diminished below a desired level. FMPs containing measures that are designed specifically to prevent overfishing include the northern anchovy, stone crab, and the two salmon FMPs. In the northern anchovy fishery, abundance varies substantially from year to year due to natural fluctuations in the survival of juveniles and in recruitment year class strength. The FMP relates the harvest directly to the size of the spawning biomass. Under the stone crab FMP, productivity is protected by seasons that prevent harvest until

spawning has occurred. Salmon FMPs have always included spawning escapement objectives that relate to rebuilding the strength of the stocks.

The relationship of OY to overfishing is stated at both § 602.11(b) and (f). Overfishing is a limitation on the OY specification, which is itself a target or goal. Exceeding OY does not necessarily constitute overfishing. Other types of "overfishing" are mentioned to acknowledge that fishing can produce a variety of effects on local and stockwide abundance, availability, size, and composition without causing irreversible harm. Conservation and management measures may be adopted to prevent or permit these conditions, if rationally related to FMP objectives.

As management regimes become more comprehensive, the interrelationships of fishing pressure on target and nontarget (both major and minor) species will have to be addressed. NOAA believes that rational management of any multispecies fishery includes acknowledging the fact that overharvesting minor subcomponents may be unavoidable. For example, in a groundfish fishery, minor components of the stocks may have to be consciously overfished in order to harvest the major components or target species at an optimum level. A Council may decide to permit this type of overharvest if the benefits are adequately identified, and if the Council's action will not cause any stock component to require protection under the Endangered Species Act (ESA). Guideline § 602.11(d)(1) was designed to balance the requirements of the ESA—and concern for individual populations within a management unit—with the inevitable results of biomass management.

Whether to allow *any* type of overfishing will continue to be argued among economists, biologists, industry representatives, and environmentalists. The policy question centers on whether the primary responsibility under the Act is to the resource or to the users of the resource, on the "wise use"/preservation dichotomy inherent in the word "conservation," and on the tension between risk and predictability. NOAA believes that the proposed sections regarding overfishing are responsive to the findings of the Act and the protectionist thrust of the EDF petition, particularly when read in conjunction with the standard 6 guideline provisions for buffers, reserves, and framework plan flexibility. They demonstrate a reasoned exercise of responsibility in that they are resilient enough to allow "wide use" and precise enough to permit preservation of the stocks "before overfishing has caused irreversible harm."

Optimum Yield

1. *ANPR Issues.* The EDF petition proposed a lengthy and major change in the definition of the term MSY without suggesting any specific changes in the OY section, although the overall tenor of the petition text makes it clear that EDF favors long-term stability and conservative decisions when scientific understanding is uncertain.

NOAA has concluded that the specific EDF proposals on MSY are unacceptable. The minimum population argument is similar in concept to that underlying the Marine Mammal Protection Act (MMPA), but it is clear that the Magnuson Act's emphasis on achieving OY precludes the exclusively protectionist view that forms the basis of the MMPA. The choice of OY is dependent on the level of knowledge concerning the resource, and on economic, social, and ecological factors as well as on the condition of the resource. NOAA believes that the new definition of overfishing, supported by more specific guidance under standards 3 and 6, is responsive to the petitioner's point and to the approach advocated by the petitioner's supporters.

2. *Rationale.* Past controversy concerning MSY has related to its adequacy as a goal to be achieved by management. As used in the Act, MSY is a baseline tool in the determination of OY. In recognizing that MSY represents the underlying biological rationale upon which most determinations of OY rest, the proposed guidelines set forth a more flexible framework for its specification. Recognition of the need for flexibility in approaching MSY and OY has come as a result of plan review experience and Council innovation in adapting these concepts to the characteristics of different fisheries.

The proposed guidelines permit adjustment of MSY prior to determining OY under certain conditions, provided that the adjustment is fully justified in terms of environmental, ecological, or biological data available for the management unit under consideration. One type of adjustment is best illustrated by the concept of Acceptable Biological Catch (ABC), used by the North Pacific Council and others. Following from the guideline definition of MSY as a longterm average, ABC is an *annually* determined catch that may differ from MSY for biological reasons—lower or higher in some years for species with fluctuating recruitment. It may be set lower than MSY to rebuild overfished stocks, or to compensate for lack of stock assessment data. For example, in the Gulf of Alaska groundfish FMP, two of the eleven species supporting the fishery were found to be incapable of producing MSY at the time. OY for these species was accordingly based on an ABC lower than MSY to avoid risk of overexploitation, and to allow for rebuilding.

Other types of adjustment to MSY have been made to allow for the influence of environmental factors. The Gulf of Mexico shrimp MSY is adjusted through the use of an environmental calculation involving water flow and temperature characteristics. This fishery also illustrates that the biological resiliency and high fecundity of some stocks may allow OY to become a descriptive statement, equivalent—for all practical purposes—to MSY. OY in the Gulf shrimp FMP is equal to everything harvested under the FMP's management measures. Another instance where stock characteristics influence the determination of OY directly (making a numerical calculation of MSY nearly irrelevant) is the stone crab FMP, in which OY is all the stone crab caught with a minimum claw size. (Descriptive OYs must, however, be capable of numerical estimation for purposes of deriving TALFF, and for other reasons.) In cases where specification of MSY may not be possible because of lack of assessment data—such as might occur in an unutilized resource for which a fishery suddenly develops or in species that are minor components of mixed species fisheries—the OY still must be derived from biological information, as for example, the proportional abundance of associated species.

The Act does require the MSY specification; every attempt should therefore be made to specify it. The proposed guidelines acknowledge that MSY may be derived from a number of formulas or models (depending on the level and type of information available), that the use of a range for MSY is satisfactory and that in some fisheries a numerical MSY is not always essential in establishing an appropriate underlying biological basis for OY. NOAA believes that Congressional intent is served if OY rests, even in these cases, on the best directly relevant biological information available.

The two values specified in paragraph (A) of the Act's definition of OY are not discussed in the existing guidelines. This omission was an unfortunate oversight; consideration of these values highlights national interest in consumer concerns and the export of fishery products, and acknowledges the contribution of

recreational fishing to the national, regional, and local economies.

The proposed revision also encompasses a number of additional aspects of OY determination and expression that have evolved since 1977 as a result of the Councils' and NOAA's experience in implementing the Act, and passage of the two amendments. These include: (1) The concept that specification of OY in an FMP is not a quota, per se; (2) the recognition that OY amalgamates management objectives and instructs the management measures; (3) the exception to annual achievement of OY allowed through deferring until the following year the allocation to foreign fishing of some or all of the "surplus" not harvested by vessels of the U.S.; (4) the establishment of a reserve within OY for reallocation to foreign fishing to allow for uncertainties in estimates of domestic harvest and full utilization of OY; and (5) the provision that permits transfer at sea of the surplus of domestic harvest exceeding domestic processing capacity to foreign processor vessels.

Standard 2

1. *ANPR Issue.* Based on its concern that the present national standard guidelines fail to address the operative consequences of serious inadequacies in the biological data base, and fail to specify a minimum quantum of information upon which an approvable plan must rest, EDF proposed that FMPs incorporate measures designed to generate the information needed to assure an improved scientific basis for the plans, and that a suitable buffer in favor of conservation should be provided. In addition, EDF proposed that Councils should identify all significant information gaps and should indicate the manner in which such additional information should be acquired.

NOAA feels that it would be reasonable, and consistent with current practice, to expect Councils to prepare a management strategy to compensate for weaknesses in the information base; however, to require a plan to specify the manner of acquisition is unnecessary and inappropriate since this responsibility falls to the Secretary (Section 304(e) of the Act). The buffer concept is implicit in the concept of adjusting MSY (as in the ABC example), and is, in addition, retained as a provision under standard 6 to compensate for possible variations and contingencies.

2. *Rationale.* Application of this standard affects the operation of all the other standards. The level of information influences the establishment of MSY, OY, and management unit composition; it underlies determinations of allocations, judgments of efficiency, adjustments for variations and contingencies, and evaluations of costs and benefits. The proposed revision strengthens the language regarding the needed information base, and is cross-referenced to two other standards.

The proposed guidelines retain the idea expressed in the current guideline that lack of complete data concerning a fishery does not prevent the preparation and implementation of an FMP. The language has been modified to acknowledge that "complete" scientific information is not attainable in the absolute sense. NOAA believes that, although collection of data about a fishery is a legitimate FMP objective, the need to collect information is not, *by itself,* adequate justification for preparation of a plan, and so states in the standard 7 guidelines. The standard 3 guidelines permit a management unit to contain related species or stocks of fish for which there are inadequate data to specify MSY or determine OY, and to gather data on those species or stocks under the FMP.

The proposed revision directly addresses the question of timeliness, opposing bodies of opinion, and practical utility of the information specified. It emphasizes the continuing need for information for monitoring and in-season adjustment decisions. A voluntary system of data collection is permissible, but requires a justification under the Paperwork Reduction Act, and is not covered under the Act's confidentiality provision. (Under the NOAA data security system, all individually collected fisheries data are treated internally with the same degree of protection.) It is all right to collect data within State boundaries when needed for proper implementation of an FMP. There will always be a dregree of controversy regarding the qualitative word "best," in "best scientific information available." Successful data collection depends on the protection of confidential data, the public trust in that protection, and the public perception of the valid uses of those data. The validity of the entire process may hinge on the cooperative attitudes of constituents, the research community, and the relevant governmental institutions.

Standard 3

1. *ANPR Issues.* EDF cites failure of the guidelines to explain the relationship between the standard 3 directive to manage a fish stock throughout its range and the Act's provisions relating to jurisdiction within territorial waters as the basis for the following proposed language: "Where management units cross Federal-State boundaries, Councils shall identify those conservation and management measures most appropriate for the conservation and management of the entire resource and shall include all such measures in their fishery management plans, leaving to the Secretary the determination whether actions of relevant State authorities substantially and adversely affect the carrying out of such plans." Another proposal that dealt with recommendations concerning habitat is discussed under Standard 6.

NOAA supports EDF's comprehensive approach but believes the EDF solution to be inappropriate. Councils are already analyzing relevant State regulations, soliciting State cooperation, or incorporating State regulations as appropriate.

2. *Rationale.* Standard 3's principle of comprehensive management works well with standard 7's principle of avoiding duplication. The emphasis in the proposed revision is on the scope, composition, and unity of the management unit, and on coordination and cooperation rather than on potential jurisdictional tension.

The proposed revision strengthens guidance on how to handle FMPs for stocks ranging across international and State-FCZ boundaries. NOAA believes that range-wide planning should encourage active State participation in the planning process, and that such planning will provide clear direction to the States as to what is needed to implement the proposed management regime effectively. This is consistent with Council practice and compatible with the comprehensive approach sought by the petitioner. The result should be greater compatibility between Federal and State management measures. Ongoing cooperative arrangements should not be disturbed by the proposed revision.

Because the potential for incompatibility does exist, however, the guidelines require an FMP to discuss the interrelationship between State management activities and the proposed Federal regime. Federal regulations supersede any conflicting State regulations of FCZ fishing (*F/V American Eagle* v. *Alaska,* No. 2227 (Alaska, Nov. 21, 1980)). State landing laws and other forms of indirect regulation of FCZ fishing may be affected by implementing an FMP. The required analysis focuses attention on these impacts and on the effect of inconsistent State action on attaining the objectives of the FMP. This latter discussion will assist in determining

Secretarial responsibilities under section 306(b) of the Act.

Standard 3 calls for management of a "stock" thoughout its range. NOAA feels that the use of the words "stock," "fishery," and "management unit" is significant, and has endeavored to use the appropriate term in the guidelines. A stock may be larger than the fishery, as is the case when only a portion of the stock is actively fished. A fishery may be larger than a stock, when more than one stock is fished together. The management unit may ignore a portion of a fishery or stock when it includes a transboundary fishery or when a minor portion of the unit is fished within the jurisdiction of another Council. The guidelines define "management unit" as a fishery or that portion of a fishery identified in an FMP as relevant to the FMP's management objectives. Examples are given of the perspectives around which a management unit may be organized.

Standard 4

1. *ANPR Issues.* The ANPR question related to standard 4 was designed to give NOAA some understanding of how the term "allocation" is perceived, and how "fair and equitable" fits into the perception. NOAA was seeking assistance in addressing the definitions not elucidated by the existing guidelines.

Commenters were conscious of the need for public involvement in resolving allocation questions. Many urged flexibility, and pointed out that allocation schemes must follow from the objectives of a given plan and that problems of allocation are peculiar to each fishery. The following factors affecting allocation decisions were mentioned: consumer costs, community structure, income produced, jobs created, needs of subsistence fishermen, traditional harvest levels of each group, potential for expansion, economic efficiency of gear, incidental catch risks, economic dislocation caused by new fishing patterns, and opportunities in other fisheries.

2. *Rationale.* The proposed revision provides a more precise expression of agency policy and legal interpretation than was attempted or possible in 1977. To assist Councils in making what are usually the most controversial decisions within an FMP, NOAA has tried to confront the human issues surrounding fishery management directly, consistent with its increased concern for the economic and social consequences of regulation.

The guidelines address the "discrimination among residents of different States" issue as an extension of the Federal "privilege and immunities" clause of the U.S. Constitution, which means that Councils may not rely on, nor incorporate within an FMP, a State law that discriminates against residents of a different State. The guidelines also acknowledgte that management measures may have different effects on persons in different locations without discriminating among residents of different States.

These questions were at issue in the Gulf of Mexico shrimp FMP, which proposed to extend a Texas law by closing the FCZ off Texas to shrimping for a 45-day period to allow for growth that would increase the weight and value of the harvest. Fishermen in four public hearings in Louisiana expressed their fear that additional out-of-State vessels would fish off Louisiana during the Texas closure, which would result in greater competition for shrimp and shore facilities; they argued discrimination. The agency found the FMP consistent with standard 4, however, because "the measure does not allocate or assign fishing privileges to residents of any State. Even if one could consider the Texas closure to be an allocation of fishing privileges, residents of both Texas and Louisiana as well as other States are equally prohibited from fishing in the FCZ off Texas during the closure and have equal opportunity under the FMP to fish in the FCZ after the closure ends. The operator of a small vessel has fewer opportunities to fish than the operator of a large vessel, regardless of the State of residence. The large mobile shrimp vessels traditionally seek shrimp fishing opportunities off coasts of other States or even off foreign countries. Thus, mobility or lack of mobility is a function of each vessel rather than the proposed regulatory measure. The Texas closure will enhance the overall utilization of the resources by allowing for a larger harvest."

Resource management is essentially a series of allocations among present users, between present and future users, between public and private interests. The guidelines define "allocation" for purposes of the standards as a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete groups of fishermen. Because only measures that meet the definition will be judged against the standard, this is a critical and sensitive delineation.

Many management measures may have an *incidental* effect on the fishing privileges enjoyed by different groups of U.S. fishermen. Any quota has a distributive effect on present and future users through its impact on stock maintenance or rebuilding. Area closures may cause practical difficulties for smaller vessels or those located far from open areas. Seasonal quotas create difficulties for those whose economics of operation do not permit a long period of inactivity.

Direct allocations, by contrast, have been made by the several Councils in a variety of FMPs: quotas by classes of vessels (Atlantic groundfish), quotas for commercial and recreational fishermen (Atlantic mackerel), different fishing seasons for recreational and commercial fishermen (salmon), assignment of ocean areas to different gears (stone crab), and limiting permits to present users (surf clam). These direct allocations were approved under standard 4 because the Councils complied with the three statutory criteria of the standard in constructing their allocation schemes.

The guideline's definition is an attempted middle ground between all measures affecting fishing practices and measures designated as allocations in a plan. The distribution must be direct and deliberate, but a Council could not disclaim an intent to allocate through a measure that had obvious and inevitable allocative effects.

NOAA believes that the required analysis of allocations and alternative schemes considered—including the status quo—will help to focus attention on the existing distribution of privileges and the alteration of that distribution that Federal management will impose. Each FMP should contain the Council's judgment on fairness and equity, conservation aspects, and possible monopolistic effects of the proposed allocations. NOAA feels that the analysis poses no extra burden in that it is similar to the sort of analysis necessary under E.O. 12291.

The guidelines link "fairness" with FMP objectives and OY and acknowledge that fishing rights of treaty Indians and aboriginal Americans should be factored into Council judgments. Rational use of the resource (as in the case of the Gulf of Mexico shrimp) is suggested as one way an allocation scheme may promote conservation. A more visible conservation purpose is illustrated by the moratorium on entry of new vessels into the surf clam fishery, initiated to mitigate a resource crisis in some stocks.

The guideline lists examples of other factors to consider in making allocations, when they are relevant to FMP objectives.

Standard 5

1. *ANPR Issues.* Response was not heavy to the ANPR question regarding

factors to consider in promoting efficiency for full utilization of fishery resources. However, it demonstrated that efficiency like overfishing, is a concept that cannot be defined or applied in absolute terms—in isolation from its biological, economic, and ecological consequences and its relationship to given management objectives. Without specifying whether the comments pertained to commercial or recreational fishing, commenters appeared to define efficiency as either (1) the attainment of the greatest benefits through the least cost to society, or (2) the attainment of the greatest benefits through the least cost to the individual fisherman. The first approach assumes that the most efficient way to achieve a desired goal is by using the fewest resources; the second, that the most efficient way to attain a goal or objective is by imposing the minimum amount of burdens on individuals or industry.

2. *Rationale.* NOAA believes that, for purposes of standard 5, efficiency can be defined as the ability to produce a desired effect or product (or achieve an objective) with a minimum of effort, cost, or misuse of valuable biological and economic resources. In other words, Councils should choose management measures that achieve the FMP's objectives with minimum cost and burdens on society—in effect, additional practical application of judgments necessary under standards 4 and 7, E.O. 12291, the Paperwork Reduction Act, and the Regulatory Flexibility Act. The guidelines also recognize the difficulty inherent in reconciling particular economic and social needs of industry participants and consumers with this goal of efficiency. For example, maximizing employment opportunities by allowing continued overcapitalization instead of reducing effort might be considered inefficient in terms of an economic goal, but not necessarily in terms of a social goal. Or, when it is necessary to preserve a subsistence way of life or enjoyment of recreational fishing, application of the efficiency standard may not be appropriate. Councils thus may have to choose between—or rank—competing objectives.

NOAA believes that an FMP should not restrict the use of productive and cost-effective techniques of harvesting, processing, or marketing, unless such restriction is necessary to achieve the conservation or social objectives of the FMP. For example, the Pacific salmon FMP provides for use of a barbless hook to decrease mortality of sublegal coho and chinook. The high seas salmon FMP requires "heads on" landing for fin-clipped coho and chinook to insure recovery of coded wire tags used to establish a needed distribution data base. In both cases, reduction in efficiency was outweighed by the conservation benefit.

Administrative efficiency can be a factor in choosing between alternatives within management regimes, as well. The Gulf of Mexico shrimp FMP's cooperative Texas closure, for example, increased the effectiveness and efficiency of enforcement.

NOAA chose to address the questions surrounding "limited access" in the context of standard 5 rather than in standard 4, even though limited access, by its nature, is an allocative measure. In fact, the guidelines caution that any limited access system must be consistent with section 303(b)(6) of the Act and the standard 4 guidelines. NOAA believes that placement within standard 5 puts the emphasis more appropriately on concepts of economic efficiency in achieving OY rather than on the contentious issues of right of entry, or limit on effort, per se. The placement of limited access under the aegis of standard 5 does not imply, however, that efficiency is always attained by limited access, nor that it is the most desirable method. It is one tool among many.

Economic waste occurs because individual fishermen have little incentive to take account of the effects of their fishing activities on present or future fishing yields, due to the "common property" nature of the resource. One method of combating this is to reduce units of effort. The guideline enumerates different forms of limited access. The guideline accepts the view of most legal analysts that section 304(d) of the Act prohibits imposition of any sort of fee designed to recover economic rent from U.S. fishermen.

Another purpose of limited access may be to encourage development of an unutilized or under-utilized fishery, in furtherance of the goal of developing these fisheries.

NOAA believes that an FMP should include a discussion of the extent to which overcapitalization, congestion, economic waste, and technically inefficient techniques in the fishery reduce the net benefits derived from the management unit and prevent the attainment and appropriate allocation of OY. If during FMP development the Council considered imposing a limited entry system, its decision to recommend or reject limited access should be discussed. Analysis is needed because efficiency is an increasingly important way of measuring benefits to the Nation; it should be considered and balanced in a manner that allows comparison with the other ways of measuring benefits available under the other standards.

Standard 6

1. *ANPR Issues.* EDF expressed concern that the existing standard 6 guidelines "do little to translate this standard into pure scientific directives," and called for greater specificity to ensure compliance. It proposed to expand the "buffer" concept to require a buffer "whenever information on potential variations is unavailable." In addition, it proposed to require FMPs to include "mechanisms for the automatic adjustment of the conservation and management measures * * *"

NOAA does not believe that the "specificity" called for by the petitioner is necessary, nor any guarantee that the purpose of the standard will be accomplished. The proposal itself does not illuminate the buffer concept. NOAA has retained the original "suitable buffer in favor of conservation" language, but without EDF's additional cautionary requirement. It should be noted that EDF's concern on this point has been, in fact, addressed under standard 1 through the provision allowing for the adjustment of MSY prior to determining OY.

NOAA, which has long sought and supported mechanisms to increase administrative flexibility, recognizes the need for adapting the regulatory process to the everchanging conditions in a fishery. Such mechanisms have been developed and have been in practice for some time through collaborative Council/NOAA efforts. The guidelines reflect a range of administrative options; Councils may respond to the relative volatility of the resource in a variety of ways that appear to fall within the purpose of the petitioner's proposal.

2. *Rationale.* NOAA recognizes that each fishery exhibits unique uncertainties, and that the unpredictable nature of the fishery resource caused by vulnerability to changing conditions and unforeseeable events makes long-term planning difficult. Long-term objectives are more easily attainable in the more stable fisheries. The proposed guidelines clarify that it is possible to compensate for variations by establishing buffers; protection against contingencies is urged through use of flexibility in the regulatory process.

The current guidelines speak of variations in terms of biology, environment, and fishing practices. NOAA believes that economic and social variations have an equally

important effect; the proposed guidelines expand the coverage of variations appropriately. The reserve concept, developed since publication of the present guidelines, allows for establishment of buffers to alleviate these variations. The reserve concept is incorporated in the proposed guidelines under both standards 1 and 6, and is exemplified by the Gulf of Alaska groundfish FMP wherein a reserve is used to compensate for uncertainties in estimating DAH.

The tanner crab FMP also illustrates the principle of administrative flexibility, in that resource-related criteria trigger authority for mid-season adjustments of opening and closing dates. Similar provisions can be found in the two salmon FMPs.

The proposed guidelines remove the comparatively weak reference to habitat protection in the existing guidelines under standard 3, and place an expanded section under standard 6 where it has greater strength.

NOAA believes that the proposed standard 6 guidelines illustrate "wise use" management to achieve a conservation purpose.

Standard 7

1. *ANPR Issues.* There was no specific question in the ANPR addressed to "costs and benefits" or duplication, per se. However, issues of cost and benefit permeate application of all the standards.

2. *Rationale.* The principles of standard 7 coincide with many earnest and recently intense efforts of NOAA and the Councils to streamline the FMP process—an effort touched on, in part, under standard 6. As more and more FMPs have come on line, the costs of enforcement and of collecting data for monitoring, while reduced per FMP, have increased in total. The rising costs of fishing, due to dependence on petroleum-based products, has intensified the need to consider the impact of potentially burdensome regulations. Thus, it has become necessary to be more precise in evaluating the costs to industry and to government, to support comprehensive management, and to work toward a flexible regulatory structure.

NOAA believes that the requirements of E.O. 12291 focus attention quite appropriately on the threshold question of the actual need for management. Even when a Council believes there is an advantage to managing a fishery, growing public concern over excessive Federal regulation of private activities and over the need to reduce the cost of government emphasizes the responsibility to ensure that FMPs are developed only for those fisheries where the need for Federal regulation can be clearly demonstrated. For these reasons, the guidelines propose criteria to assist in making these threshold decisions.

NOAA recognizes that the wide diversity of fisheries and of management objectives increases the difficulties of devising a quantitative cost/benefit analysis for fishery management measures. However, under the proposed guidelines, the types of analyses suggested under standards 4 and 5 would be the first steps in evaluating relative distribution of gains and burdens produced by each alternative set of management measures. While weight of intangibles such as recreational enjoyment, habitat protection, or social dislocation often cannot be expressed in dollar terms, NOAA believes they should be considered and described as explicitly as possible.

The guidelines do not prescribe that the lowest cost alternative be selected. NOAA urges, however, that selection be assisted by an anlalysis of costs relative to the value attributed to achievement of FMP objectives and OY, as prescribed by E.O. 12291.

Classification

The amendments to the national standard guidelines are issued in conformity with E.O. 12291. Because they produce no direct regulatory impact on the public, the Department of Commerce Office of General Counsel has certified that the proposed guidelines will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. The proposed guidelines impose no information collection requests nor paperwork burden on the public under the Paperwork Reduction Act.

Environmental Impact Statement

The term "significance" under the National Environmental Policy Act relates to impact on the human environment. Section 1508.14 of the Council on Environmental Quality regulations interprets "human environment" to include "the natural and physical environment and the relationship of people with that environment. This means that economic and social effects are not intended by themselves to require preparation of an environmental impact statement." Amendments to the national standard guidelines do not in themselves affect the human environment. The effect of the guideline amendments on the contents of FMPs is addressed through the requirement for environmental impact statements (EISs) for new FMPs and supplemental EISs for significant amendments. The consequences of specific management measures are addressed in those documents. For these reasons, NOAA determined on July 7, 1980, that an environmental assessment or an EIS is not required for the proposed revision of the national standard guidelines.

Explanation of Restructuring

NOAA proposes to restructure Part 602 by designating subparts to differentiate the subject matter of the guidelines and by renumbering the sections to make them easier to follow. The first phase of this restructuring is a part of this amendment.

List of Subjects in 50 CFR Part 602

Fish, Fisheries, Fishing.

Date: June 9, 1982.

William H. Stevenson,

Deputy Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 602 is proposed to be amended as follows:

1. The authority citation for Part 602 reads as follows:

Authority.—16 U.S.C. 1851 and 1855.

2. The Part heading for Part 602 is revised; §§ 602.1–602.6 are designated as Subpart A; §§ 602.1 and 602.2 are revised; Subpart B (§§ 602.10–602.17) is added, as set forth below:

PART 602—GUIDELINES FOR FISHERY MANAGEMENT PLANS

Subpart A—General

Sec.

602.1 Purpose and scope.
602.2 Style guide.
* * * * *

Subpart B—National Standards

602.10 General.
602.11 National Standard 1—Overfishing and OY.
602.12 National Standard 2—Scientific Information.
602.13 National Standard 3—Management Units.
602.14 National Standard 4—Allocations.
602.15 National Standard 5—Efficiency.
602.16 National Standard 6—Variations and Contingencies.
602.17 National Standard 7—Costs and Benefits.

Subpart A—General

§ 602.1 Purpose and scope.

The Act requires that any fishery management plan or amendment prepared by either the Regional Fishery Management Councils or the Secretary

of Commerce, and any regulations issued to implement a fishery management plan or amendment, shall be consistent with seven national standards, the other provisions of the Act, and any other applicable law. Part 602 implements those portions of the Act that pertain to the development, content, submission, amendment, review, and implementation of fishery management plans, and establishes guidelines to assist in achieving the required consistency.

§ 602.2 Style guide.

(a) *Definitions.* The terms used in these guidelines have the meanings that are prescribed in section 3 of the Act. In addition, the following definitions apply:

The Act—the Magnuson Fishery Conservation and Management Act, as amended (U.S.C. 1801 *et seq.*), also known as the FCMA, or the Magnuson Act.

Council—Regional Fishery Management Council, as established by the Act.

Secretary—Secretary of Commerce.

(b) *Abbreviations.*

ABC—acceptable biological catch.

DAH—estimated domestic annual harvest.

DAP—estimated domestic annual processing.

EY—equilibrium yield.

FCZ—fishery conservation zone.

FMP—fishery management plan.

JVP—joint venture processing.

MSY—maximum sustainable yield.

OY—optimum yield.

PMP—preliminary fishery management plan.

TAC—total allowable catch.

TALFF—total allowable level of foreign fishing.

(c) *Word usage—Must* is used to denote an obligation to act; it is used primarily when referring to requirements of the Act, the logical extension thereof, or of other applicable law or national policy.

Should is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Act, and is a factor reviewers will look for in evaluating an FMP.

May used in a permissive sense.

May not is proscriptive; it has the same force as *must not.*

Will is used descriptively.

Shall is not used at all, except when quoting the statutory language of each standard. "Must" is used instead of "shall" to avoid confusion with the future tense.

Could is used when giving examples, in a hypothetical, permissive sense.

Can is used to mean "is able to," as distinguished from "may."

Examples are given by way of illustration and further explanation. They are not inclusive lists; they do not limit options.

Analysis, as a paragraph heading, signals more detailed guidance as to the type of discussion and examination an FMP should contain to demonstrate compliance with the standard in question.

Determine is used when referring to OY.

Adjust is used when establishing a deviation from MSY for biological reasons, such as in establishing ABC, TAC, or EY.

Modify is used when the deviation from MSY is for the purpose of determining OY, in accord with relevant economic, social, or ecological factors.

* * * * *

Subpart B—National Standards

§ 602.10 General.

(a) *Purpose.* (1) This subpart establishes guidelines, based on the national standards, to assist in the development and review of FMPs, amendments, and regulations prepared by the Councils and the Secretary.

(2) In developing FMPs, the Councils have the initial authority to ascertain factual circumstances, to establish management objectives, and to propose management measures that will achieve the objectives. The Secretary will determine whether the proposed management objectives and measures are consistent with the national standards, other provisions of the Act, and other applicable law. The Secretary has an obligation under section 301(b) of the Act to inform the Councils of the Secretary's interpretation of the national standards so that they will have an understanding of the basis on which FMPs will be reviewed.

(3) The national standards are statutory principles that must be followed in any FMP. The guidelines summarize Secretarial interpretations that have been, and will be, applied under these principles. The guidelines are intended as aids to decisionmaking; FMPs formulated according to the guidelines will have a better chance for expeditious Secretarial review, approval, and implementation. FMPs that are in substantial compliance with the guidelines, the Act, and other applicable law must be approved.

(b) *Fishery management objectives.* (1) Each FMP, whether prepared by a Council or by the Secretary, should identify what the FMP is designed to accomplish, i.e. the management objectives to be attained in regulating the fishery under consideration. In establishing objectives, Councils balance biological imperatives with human needs, reconcile present and future costs and benefits, and integrate the diversity of public and private interests. If objectives are in conflict, priorities should be established among them.

(2) How objectives are defined is important to the management process. Objectives should address the problems of a particular fishery. The objectives should be clearly stated, practicably attainable, framed in terms of definable events and measurable benefits, and based upon a comprehensive rather than a fragmentary approach to the problems addressed. An FMP should make a clear distinction between objectives and the management measures chosen to achieve them. The objectives of each FMP provide the context within which the Secretary will judge the consistency of an FMP's conservation and management measures with the national standards.

§ 602.11 National Standard 1—Optimum Yield.

(a) *Standard 1.* Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.

(b) *General.* The determination of OY is a decisional mechanism for resolving the Act's multiple purposes and policies, for implementing an FMP's objectives, and for balancing the various interests that comprise the national welfare. OY is based on MSY, or on MSY as it may be adjusted under paragraph (c)(4) of this section. The most important limitation on the specification of OY is that the choice of OY—and the conservation and management measures proposed to achieve it—must prevent overfishing.

(c) *MSY.* (1) MSY, a theoretical concept, is the largest average annual catch or yield that can be taken over a period of time from a stock under prevailing ecological and environmental conditions. It may be presented as a range of values. Since MSY is a long-term average, it need not be specified annually.

(2) In an unexploited stock of fish, the natural mortality rate is balanced by growth and recruitment rates on average. Once fishing pressure is applied, the balance of mortality, growth, and recruitment is altered, and the average value of these rates and the average population size changes. As the population size changes, a new balance

of rates is achieved. The interrelationship between these rates and population size provides the basis for specifying the MSY of a stock. Techniques for estimating MSY depend on the scientific information available. The MSY may be derived from average past catches, stock production models, yield per recruit or dynamic pool models, spawner/recruit relationships, total biomass estimates and estimates of natural mortality, biomass estimates from ecosystem models, or other valid methods.

(3) The detemination of OY requires a specification of MSY. However, where sufficient scientific data as to the biological characteristics of the stock do not exist, or the period of exploitation or investigation has not been long enough for adequate understanding of stock dynamics, or where frequent large-scale fluctuations in stock size make this concept of limited value, the OY should be based not on a fabricated MSY but on the best scientific information available.

(4) MSY may be only the starting point in providing a realistic biological description of allowable fishery removals. MSY may need to be adjusted because of environmental factors, stock peculiarities, or other biological variables, prior to the determination of OY. Examples are ABC, TAC, and EY. Such adjustments are valid, provided that they are explained and justified.

(d) *Overfishing.* (1) Overfishing is a level of fishing mortality that jeopardizes the capacity of a stock(s) to maintain or recover to a level at which it can produce maximum biological yield or economic value on a long-term basis under prevailing biological and environmental conditions. An FMP must prevent overfishing, except in certain situations. For example, harvesting the major component of a mixed fishery at its optimum level may result in the overharvest of a minor (smaller or less valuable) stock component. In another case, solving a particular problem may necessitate pruning larger fish from the population. A Council may decide to permit this type of overharvest if the analysis (paragraph (e)(5) of this section) identifies the benefits from such overfishing, and if the Council's action will not cause any stock component to require protection under the Endangered Species Act.

(2) Significant downward trends in spawning stock sizes and in average annual recruitment over a period of several years may signal that overfishing is occurring. These downward trends usually are preceded or accompanied by increased variability in annual recruitment and by major shifts to younger fish and fewer year classes in the spawning stock. If fishing continues at a rate that perpetuates the downward trends, the spawning stock eventually may be incapable of significant reproduction and may be irreversibly damaged.

(3) Declines in stock size may occur independent of fishing pressure, caused by a combination of factors such as natural fluctuations in the environment and man-made changes in essential habitat. Significant adverse alterations in the environment increase the possibility that fishing effort will contribute to a stock collapse. Decisions about the allowable level of fishing mortality will vary according to the conditions of the fishery and the amount of risk associated with different harvest rates.

(4) Since changes in environment/habitat conditions can produce the appearance of overfishing (as can new fishing pressure on an underutilized stock), care should be taken to identify the cause of the downward trends. Whether the trends in spawning stock size and in average recruitment are caused by environmental changes or by fishing effort, the most effective management response under the Act is to propose management measures to reduce fishing mortality. Unless it can be shown that reduced fishing pressure would not alleviate the problem, the FMP must include measures to reduce fishing mortality. If environmental changes are the primary cause of the downward trends, Councils may recommend restoration of habitat and other ameliorative programs.

(5) Fishing can produce a variety of effects on local and stockwide abundance, availability, size, and composition. Some of these effects have been called "overfishing"—with or without qualifiers such as growth, localized, pulse, and economic. These effects are not "overfishing" under standard 1, a Council may recommend conservation and management measures to prevent or permit these effects, depending on the objectives of a particular FMP.

(e) *Specification of OY.*—(1) *OY and management objectives.* Ideally, the process of determining OY and the resulting specification integrate the various objectives of the FMP. Relative weighting of the elements of the OY determination will be influenced both by regional objectives and by national considerations. Rarely will a fishery be managed to meet a single objective. Objectives may conflict. Consequently, priority decisions should be made in developing objectives, the timing of their achievement, and the management measures to achieve them. (See § 602.10.)

(2) *Values in determining OY.* In determining the greatest benefit to the Nation, two values that should be weighed are food production and recreational opportunities (section 3(18)(A) of the Act). They should receive attention as measures of benefit when considering the economic, ecological, or social factors used in modifying MSY to obtain OY.

(i) "Food production" encompasses the goals of providing seafood to U.S. consumers at reasonable prices, maintaining an economically viable fishery and utilizing the capacity of U.S. fishery resources to meet world-wide nutritional needs.

(ii) "Recreational opportunities" includes recognition of the importance of the quality of the recreational fishing experience, and of the contribution of recreational fishing to the national, regional, and local economies and food supplies.

(3) *Factors relevant to OY.* The Act's definition of OY identifies three categories of factors to be used in modifying MSY to arrive at OY: economic, social, and ecological (section 3(18)(B)). Examples are given below. Not every factor will be relevant in every fishery; for instance, there may be no Indian treaty rights. For some fisheries, insufficient information may be available with respect to some factors to provide a basis for corresponding modifications to MSY.

(i) *Economic factors.* Examples are promotion of domestic fishing, development of unutilized or underutilized fisheries, satisfaction of consumer and recreational needs, encouragement of domestic and export markets for U.S. harvested fish, and improvement in the U.S. balance of trade. Some other factors that may be considered are the value of industrial fisheries, the level of capitalization, alternate employment opportunities, and economies of coastal areas.

(ii) *Social factors.* Examples are enjoyment gained from recreational fishing, avoidance of gear conflicts and resulting disputes, preservation of a way of life for fishermen and their families, and dependence of local communities on a fishery. Among other factors that may be considered are the cultural place of subsistence fishing, obligations under Indian treaties, and world-wide nutritional needs.

(iii) *Ecological factors.* Examples are the nature of a mixed-species fishery, predator-prey relationships, and dependence of marine mammals and birds or endangered species on a stock

of fish. Equally important are environmental conditions that stress marine organisms, such as natural and man-made changes in wetlands or nursery grounds, and effects on habitat of pollutants.

(4) *Form of OY specification.* (i) The "amount of fish" that constitutes the OY need not be expressed in terms of numbers or weight of fish. The economic, social, or ecological modifications to MSY may be expressed by describing fish having common characteristics, the harvest of which provides the greatest overall benefit to the Nation. For instance, OY may be expressed as a formula that converts periodic stock assessments into quotas or guideline harvest levels for recreational, commercial, and other fishing. OY may be defined in terms of an annual harvest of fish or shellfish having a minimum weight, length, or other measurement. OY may also be expressed as an amount of fish taken only in certain areas, or in certain seasons, or with particular gear, or by a specified amount of fishing effort, or, in the case of incidental species, as a function of the directed catch.

(ii) If a numerical OY is chosen, a range or average may be specified.

(iii) In a fishery where there is a significant discard component, the OY may either include or exclude discards.

(iv) The OY specification, however, must be capable of conversion into an annual numerical estimate that can be used to establish the TALFF and to analyze impacts of the management regime. There should be a mechanism in a multi-year plan for periodic reassessment of the OY specification, so that it is responsive to changing circumstances in the fishery.

(5) *Analysis.* An FMP must contain an analysis of how its OY specification was determined (section 303(a)(3) of the Act). It should relate the explanation of overfishing in paragraph (d) of this section to conditions in the particular fishery, and explain how its choice of OY and conservation and management measures will prevent overfishing in that fishery. If overfishing is allowed (see paragraph (d)(1) of this section), the analysis must contain a justification in terms of overall benefits and the likelihood of the species reaching a "threatened" or "endangered" status. If the stock has been diminished below a desired level, the analysis should include a program for rebuilding the stock. A Council must identify those economic, social, and ecological factors relevant to management of a particular fishery, then evaluate and weigh them to arrive at the modification (if any) of MSY. The choice of a particular OY must be carefully defined and documentated to show that the OY selected will produce the greatest benefit to the Nation.

(f) *OY as a target.* (1) The specification of OY in an FMP is not automatically a quota or ceiling, although quotas may be derived from the OY where appropriate. OY is a target or goal; an FMP must contain conservation and management measures, and provisions for information collection, that are designed to achieve it. These measures should allow for practical and effective implementation and enforcement of the management regime, so that the harvest is allowed to reach but not to exceed OY by a substantial amount. The Secretary then has the obligation to implement and enforce the FMP so that OY is achieved. If management measures prove unenforceable—or too restrictive or not rigorous enough to realize OY—they should be modified; an alternative is to reexamine the adequacy of the OY specification.

(2) Exceeding OY does not necessarily constitute overfishing, although they might coincide. Even if no overfishing resulted, continual harvest at a level above a fixed-value OY would violate national standard 1 because OY was exceeded (not achieved) on a continuing basis.

(g) *OY and foreign fishing.* Section 201(d) of the Act provides that fishing by foreign nations is limited to that portion of the OY that will not be harvested by vessels of the United States. The achievement of OY under national standard 1 requires that foreign fishing vessels be given reasonable opportunity to harvest such "surplus." The exception is where an annual fishing level is certified under section 201(d)(2)(B). The annual fishing level amount is allocated to foreign fishing, as is the remainder of the "surplus" (OY minus DAH); if the determinations under section 201(d)(4) are made, however, allocation of all or part of that remainder may be deferred until the next harvesting season.

(1) *DAH.* Councils must consider the capacity of, and the extent to which, U.S. vessels will harvest the OY on an annual basis. Estimating the amount that U.S. fishing vessels will actually harvest is required to determine the surplus.

(2) *Reserves.* Part of the OY may be held as a reserve to allow for uncertainties in estimates of stock size and of DAH. If an OY reserve is established, an adequate mechanism should be included in the FMP to permit timely release of the reserve to foreign fishermen, if necessary, so that full utilization of the OY may be achieved. An FMP may also provide for a direct transfer of a portion of DAH to TALFF.

(3) *DAP.* (i) Each FMP must identify the capacity of U.S. processors and also the amount of domestic annual processed fish (DAP). DAP is the sum of two estimates:

(A) The amount of U.S. harvest that domestic processors will process. This estimate may be based on historical performance and on surveys of the expressed intention of manufacturers to process, supported by evidence of contracts, plant expansion, or other relevant information; and

(B) The amount of fish that will be harvested but not processed (e.g., marketed as fresh whole fish, used for private consumption, or used for bait).

(ii) When DAH exceeds DAP, the surplus should be designated as available for JVP. JVP is a part of DAH.

§ 602.12 National Standard 2—Scientific Information.

(a) *Standard 2.* Conservation and management measures shall be based upon the best scientific information available.

(b) *FMP development.* The fact that scientific information concerning a fishery is incomplete does not prevent the preparation and implementation of an FMP (see related §§ 602.13(d)(2) and 602.17(b)).

(1) Scientific information includes, but is not limited to, information of a biological, ecological, economic, or social nature. Successful fishery management depends, in part, on the timely availability, quality, and quantity of scientific information, as well as on the thorough analysis of this information, and the extent to which the information is applied. If there are conflicting facts or opinions relevant to a particular point, a Council may choose among them, but must justify the choice.

(2) FMPs must take into account the best scientific information available at the time of preparation. Between the initial drafting of an FMP and its submission for final review, new information often becomes available. This new information should be incorporated into the final FMP where practicable; but it is unnecessary to start the FMP process over again unless the information indicates that drastic changes have occurred in the fishery that might require revision of the management objectives or measures.

(c) *FMP implementation.* (1) An FMP must specify whatever information fishermen and processors will be required or requested to submit to the Secretary. Information about harvest within State boundaries, as well as in

the FCZ, may be collected if it is needed for proper implementation of the FMP. The FMP should explain the practical utility of the information specified in monitoring the fishery, in facilitating inseason management decisions, and in judging the performance of the management regime; it should also consider the effort, cost, or social impact of obtaining it.

(2) An FMP should identify scientific information needed from other sources to improve understanding and management of the resource and the fishery.

(3) The information submitted by various data suppliers about the stock(s) throughout its range or about the fishery should be comparable and compatible, to the maximum extent possible.

(d) *FMP amendment.* FMPs should be amended on a timely basis, as new information indicates the necessity for change in objectives or management measures.

§ 602.13 National Standard 3—Management Units.

(a) *Standard 3.* To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(b) *General.* The purpose of this standard is to encourage a comprehensive approach to fishery management. The geographic scope of the fishery, for planning purposes, should cover the entire range of the stock(s) of fish, and not be overly constrained by political boundaries. Wherever practicable, an FMP should seek to manage interrelated stocks of fish.

(c) *Unity of management.* Coopertion and understanding among entities concerned with the fishery (e.g., Councils, States, Federal government, foreign nations) are vital to effective management. Where management of a fishery involves multiple jurisdictions, coordination among the several entities should be sought in the development of an FMP. Where a range overlaps Council areas, one FMP to cover the entire range is preferred. The Secretary designates which Council or Councils will prepare the FMP, under section 304(f) of the Act.

(d) *Management unit.* The term "management unit" means a fishery or that portion of a fishery identified in an FMP as relevant to the FMP's management objectives.

(1) *Basis.* The choice of a management unit depends on the focus of the FMP's objectives, and may be organized around biological, geographic, economic, technical, social, or ecological perspectives. For example:

(i) *Biological*—could be based on a stock(s) throughout its range.

(ii) *Geographic*—could be an area.

(iii) *Economic*—could be based on a fishery supplying specific product forms.

(iv) *Technical*—could be based on a fishery utilizing a specific gear type or similar fishing practices.

(v) *Social*—could be based on fishermen as the unifying element, such as when the fishermen pursue different species in a regular pattern throughout the year.

(vi) *Ecological*—could be based on species that are associated in the ecosystem or are dependent on a particular habitat.

(2) *Conservation and management measures.* FMPs should include conservation and management measures for that part of the management unit within U.S. waters, although the Secretary can ordinarily implement them only within the FCZ. The measures need not be identical for each geographic area within the management units, if the FMP justifies the differences. A management unit may contain, in addition to regulated species, stocks of fish for which there is not enough information available to specify MSY and OY or to establish management measures, so that data on these species may be collected under the FMP.

(e) *Analysis.* To document that an FMP is as comprehensive as practicable, it should include discussions of the following:

(1) The range and distribution of the stocks, as well as the patterns of fishing effort and harvest.

(2) Alternative management units and reasons for selecting a particular one. A less-than-comprehensive management unit may be justified if, for example, complementary management exists or is planned for a separate geographic area or for a distinct use of the stocks, or if the unmanaged portion of the resource is immaterial to proper management.

(3) Management activities and habitat programs of adjacent States and their effects on the FMP's objectives and management measures. Where State action is necessary to implement measures within territorial and internal waters to achieve FMP objectives, the FMP should identify what State action is necessary, discuss the consequences of State inaction or contrary action, and make appropriate recommendations. The FMP should also discuss the impact that Federal regulations will have on State management activities.

(4) Management activities of other countries having an impact on the fishery, and how the FMP's management measures are designed to take into account these impacts. International boundaries may be dealt with in several ways.

For example:

(i) By limiting the management unit's scope to that portion of the stock found in U.S. waters;

(ii) By estimating MSY for the entire stock and then basing the determination of OY for the U.S. fishery on the portion of the stock within U.S. waters; or

(iii) By referring to treaties or cooperative agreements.

§ 602.14 National Standard 4—Allocations.

(a) *Standard 4.* Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (1) fair and equitable to all such fishermen; (2) reasonably calculated to promote conservation; and (3) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(b) *Discrimination among residents of different States.* An FMP may not differentiate among U.S. citizens, nationals, resident aliens, or corporations on the basis of their State of residence. An FMP may not incorporate or rely on a State statute or regulation that discriminates against residents of another State. Conservation and management measures that have different effects on persons in various geographic locations are permissible, if they satisfy the other guidelines under standard 4. Examples are:

(1) An FMP that restricted fishing in the FCZ to those holding a permit from State X would violate standard 4 if State X issued permits only to its own citizens.

(2) An FMP that closed a spawning ground might disadvantage fishermen living in the State closest to it, because they would have to travel farther to an open area, but the closure could be justified under standard 4 as a conservation measure with no discriminatory intent.

(c) *Allocation of fishing privileges.* An FMP may contain management measures that allocate fishing privileges if such measures are necessary or helpful in furthering legitimate objectives or in achieving the OY, and if the measures conform with paragraph (c)(3)(i) through (iii) of this section.

(1) *Definition.* An "allocation" or "assignment" of fishing privileges is a direct and deliberate distribution of the opportunity to participate in a fishery

among identifiable, discrete user groups or individuals. Any management measure (or lack of management) has incidental allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of standard 4. Adoption of an FMP that merely perpetuates existing fishing practices may result in an allocation, if those practices directly distribute the opportunity to participate in the fishery. Allocations of fishing privileges include, for example, per-vessel catch limits, quotas by vessel class and gear type, different quotas or fishing seasons for recreational and commercial fishermen, assignment of ocean areas to different gear users, and limitation of permits to a certain number of vessels or fishermen.

(2) *Analysis of allocations.* Each FMP must contain a description and analysis of the allocations existing in the fishery and of those made in the FMP. The effects of eliminating an existing allocation system should be examined. Allocation schemes considered but rejected by the Council should be included in the discussion. The analysis should relate the recommended allocations to the FMP's objectives and OY specification, and discuss the factors listed in paragraph (c)(3) of this section.

(3) *Factors in making allocations.* An allocation of fishing privileges must be fair and equitable, must be reasonably calculated to promote conservation, and must avoid excessive shares. These tests are explained in paragraphs (c)(3)(i) through (iii) of this section:

(i) *Fairness and equity.* (A) An allocation of fishing privileges must be rationally connected with the achievement or OY or with the furtherance of a legitimate FMP objective. Inherent in an allocation is the advantaging of one group to the detriment of another. The motive for making a particular allocation must be justified in terms of the objectives of the FMP; otherwise, the disadvantaged user groups or individuals would suffer without cause. For instance, an FMP objective to preserve the economic status quo cannot be achieved by excluding a group of long-time participants in the fishery. On the other hand, there is a rational connection between an objective of harvesting shrimp at their maximum size and closing a nursery area to trawling.

(B) An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the status quo in the fishery to qualify as "fair and equitable," if a restructuring of fishing privileges would maximize overall benefits. The Council should make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo. Where relevant, judicial guidance and government policy concerning the rights of treaty Indians and aboriginal Americans must be considered in determining whether an allocation is fair and equitable.

(ii) *Promotion of conservation.* An allocation of fishing privileges is considered a "conservation and management measure" under section 303(b) of the Act. An allocation scheme may promote conservation by encouraging a rational, more easily managed use of the resource. Or it may promote conservation (in the sense of wise use) by optimizing the yield, in terms of size, value, market mix, price, or economic or social benefit of the product.

(iii) *Avoidance of excessive shares.* An allocation scheme must be designed to deter any person or other entity from acquiring an excessive share of fishing privileges and to avoid creating conditions under which a single buyer or seller will be able to acquire a markedly disproportionate control of the fishery.

(iv) *Other factors.* In designing an allocation scheme, a Council should consider other factors relevant to the FMP's objectives. Examples are economic and social consequences of the scheme, food production, consumer interests, dependence on the fishery by present participants and coastal communities, efficiency of various types of gear used in the fishery, transferability of effort to and impact on other fisheries, opportunity for new participants to enter the fishery, and enhancement of opportunities for recreational fishing.

§ 602.15 National Standard 5—Efficiency.

(a) *Standard 5.* Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(b) *Efficiency in the utilization of resources.*—(1) *General.* The term "utilization" encompasses harvesting, processing, and marketing, since management decisions affect all three sectors of the industry. The goal of promoting efficient utilization of fishery resources may conflict with other legitimate social or biological objectives of fishery management. In encouraging efficient utilization of fishery resources, this standard highlights one way that a fishery can contribute to the Nation's benefit with the least cost to society: given a set of objectives for the fishery, an FMP should contain management measures that result in as efficient a fishery as is practicable.

(2) *Efficiency.* In theory, an efficient fishery sould harvest the OY with the minimum use of economic inputs such as labor, capital, interest, and fuel. Efficiency in terms of aggregate costs then becomes a conservation objective, where "conservation" constitutes wise use of all resources involved in the fishery, not just fish stocks.

(i) In an FMP, management measures may be proposed that allocate fish among different groups of individuals or establish a system of property rights. Alternative measures examined in searching for an efficient outcome will result in different distributions of gains and burdens among identifiable user groups. An FMP should demonstrate that management measures aimed at efficiency do not simply redistribute gains and burdens without an increase in efficiency.

(ii) Management regimes that allow a fishery to operate at the lowest possible cost (e.g., fishing effort, administration, and enforcement) for a particular level of catch and initial stock size are considered efficient. Restrictive measures that unnecessarily raise any of those costs move the regime toward inefficiency. Unless the use of inefficient techniques or the creation of redundant fishing capacity contributes to the attainment of other social or biological objectives, an FMP may not contain management measures that impede the use of cost-effective techniques of harvesting, processing, or marketing, and should avoid creating strong incentives for excessive investment in private sector fishing capital and labor.

(c) *Limited access.* A "system for limiting access," which is an optional measure under section 303(b) of the Act, is a type of allocation of fishing privileges that may be used to promote economic efficiency. For example, limited access may be used to combat overfishing, overcrowding, or overcapitalization in a fishery to achieve OY. In an unutilized or underutilized fishery, it may be used to reduce the chance that these conditions will adversely affect the fishery in the future, or to provide adequate economic return to pioneers in a new fishery.

(1) *Definition.* Limited access (or limited entry) is a management technique that attempts to limit units of effort in a fishery, usually for the purpose of reducing economic waste, improving net economic return to the

fishermen, or capturing economic rent for the benefit of the taxpayer or the consumer. Common forms of limited access are licensing of vessels, gear, or fishermen to reduce the number of units of effort, and dividing the total allowable catch into fishermen's quotas (a stock-certificate system). Two forms (e.g., taxation, Federal sale of licenses) are not permitted under the Act.

(2) *Factors to consider.* The Act ties the use of limited access to the achievement of optimum yield. An FMP that proposes a limited access system must consider the factors listed in section 303(b)(6) of the Act in § 602.14(c)(3) of these guidelines. In addition, it should consider the criteria for qualifying for a permit, the nature of the interest created, whether to make the permit transferable, and the Act's limitation on returning economic rent to the public under section 304(d)(1). The FMP should also discuss the costs of achieving an appropriate distribution of fishing privileges.

(d) *Analysis.* An FMP should discuss the extent to which overcapitalization, congestion, economic waste, and inefficient techniques in the fishery reduce the net benefits derived from the management unit and prevent the attainment and appropriate allocation of OY. It should also explain in terms of the FMP's objectives any restriction placed on the use of efficient techniques of harvesting, processing, or marketing. If during FMP development the Council considered imposing a limited-entry system, the FMP should analyze the Council's decision to recommend or reject limited access as a technique to achieve efficient utilization of the resources of the fishing industry.

(e) *Economic allocation.* This standard prohibits only those measures that distribute fishery resources among U.S. fishermen on the basis of economic factors alone, and that have economic allocation as their only purpose. Where conservation and management measures are recommended that would change the economic structure of the industry or the economic conditions under which the industry operates, the need for such measures must be justified in light of the biological, ecological, and social objectives of the FMP as well as the economic objectives.

§ 602.16 National Standard 6—Variations and Contingencies.

(a) *Standard 6.* Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(b) *Conservation and management.* Each fishery exhibits unique uncertainties. The phrase "conservation and management" implies the wise use of fishery resources through a management regime that includes some protection against these uncertainties. The particular regime chosen must be flexible enough to allow timely responses to resource, industry, and other national and regional needs. Continual data acquisition and analysis will help the development of management measures to compensate for variations and to reduce the need for substantial buffers. Flexibility in the management regime and the regulatory process will aid in responding to contingencies.

(c) *Variations.* (1) In fishery management terms, variations arise from biological, social, and economic occurrences, as well as from fishing practices. Biological uncertainties and lack of knowledge can hamper attempts to estimate stock size and strength, stock location in time and space, environmental/habitat changes, and ecological interactions. Economic uncertainty may involve changes in foreign or domestic market conditions, changes in operating costs, drifts toward overcapitalization, and economic perturbations caused by changed fishing patterns. Changes in fishing practices, such as the introduction of new gear, rapid increases or decreases in harvest effort, new fishing strategies, and the effects of new management techniques, may also create uncertainties. Social changes could involve increases or decreases in recreational fishing, or the movement of people into or out of fishing activities due to such factors as age or educational opportunities.

(2) Every effort should be made to develop FMPs that discuss and take into account these vicissitudes. To the extent practicable, FMPs should provide a suitable buffer in favor of conservation. Allowances for uncertainties may be factored into the various elements of an FMP. Examples are:

(i) Reduce OY. Lack of scientific knowledge about the condition of a stock(s) could be a reason to reduce OY.

(ii) Establish a reserve. Creation of a reserve may compensate for uncertainties in estimating domestic harvest, stock conditions, or environmental factors.

(iii) Adjust management techniques. In the absence of adequate data to predict the effects of a new regime, and to avoid creating unwanted variations, a Council could guard against producing drastic changes in fishing patterns, allocations, or practices.

(iv) Highlight habitat conditions. FMPs may address the impact of pollution and the effects of wetland and estuarine degradation on the stocks of fish; identify causes of pollution and habitat degradation and the authorities having jurisdiction to regulate or influence such activities; propose recommendations that the Secretary will convey to those authorities to alleviate such problems; and state the views of the Council on unresolved or anticipated issues.

(d) *Contingencies.* Unpredictable events—such as unexpected resources surges or failures, fishing effort greater than anticipated, disruptive gear conflicts, climatic conditions, or environmental catastrophes—are best handled by establishing a flexible management regime that contains a range of management options through which it is possible to act quickly without amending the FMP or even its regulations.

(1) FMPs should include criteria for the selection of management measures, directions for their application, and mechanisms for timely adjustment of management measures comprising the regime. For example, an FMP could include criteria that allow the Secretary to open and close seasons, close fishing grounds, or make other adjustments in management measures.

(2) Amendment of a flexible FMP would be necessary when circumstances in the fishery change substantially, or when a Council adopts a different management philosophy and objectives.

§ 602.17 National Standard 7—Costs and Benefits.

(a) *Standard 7.* Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(b) *Necessity of Federal management.*—(1) *General.* The principle that not every fishery needs regulation is implicit in this standard. The Act does not require Councils to prepare FMPs for each and every fishery—only for those where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs. For example, the need to collect data about a fishery is not, by itself, adequate justification for preparation of an FMP, since there are less costly ways to gather the data (see Section 602.13(d)(2)). In some cases, the FMP preparation process itself, even if it does not culminate in a document approved by the Secretary, can be useful in supplying a basis for management by one or more coastal States.

(2) *Criteria.* In deciding whether a fishery needs management through regulations implementing an FMP, the

following general factors should be considered, among others:

(i) The importance of the fishery to the Nation and to the regional economy.

(ii) The condition of the stock or stocks of fish and whether an FMP can improve or maintain that condition.

(iii) The extent to which the fishery could be or is already adequately managed by States, by State/Federal programs, by Federal regulations pursuant to PMPs or international commissions, or by industry self-regulation, consistent with the policies and standards of the Act.

(iv) The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution.

(v) The economic condition of a fishery and whether an FMP can produce more efficient utilization.

(vi) The needs of a developing fishery, and whether an FMP can foster orderly growth.

(vii) The costs associated with an FMP, balanced against the benefits (see paragraph (d) of this section as a guide).

(c) *Alternative management measures.* Management measures should not impose unnecessary burdens on the economy on individuals, on private or public organizations, or on Federal, State, or local governments. Factors such as fuel costs, enforcement costs, or the burdens of collecting data may well suggest a preferred alternative.

(d) *Analysis.* the supporting analyses for FMPs should demonstrate that the benefits of fishery regulation are real and substantial relative to the added research, administrative, and enforcement costs, as well as costs to the industry of compliance. In determining the benefits and costs of management measures, each management strategy considered and its impacts on different user groups in the fishery should be evaluated. This requirement need not produce an elaborate, formalistic cost-benefit analysis. Rather, an evaluation of effects and costs, especially of differences among workable alternatives including the status quo, is adequate. If quantitative estimates are not possible, qualitative estimates will suffice.

(1) *Burdens.* Management measures should be designed to give fishermen the greatest possible freedom of action in conducting business and pursuing recreational opportunities that are consistent with ensuring wise use of the resource and reducing conflict in the fishery. The type and level of burden placed on user groups by the regulations need to be identified. Such an examination should include, for example: capital outlays; operating and maintenance costs; reporting costs; administrative, enforcement, and information costs; and prices to consumers. Management measures may shift costs from one level of government to another, from one part of the private sector to another, or from the government to the private sector. Redistribution of costs through regulations is likely to generate controversy. A discussion of these and any other burdens placed on the public through FMP regulations should be a part of the FMP's supporting analyses.

(2) *Gains.* The relative distribution of gains may change as a result of instituting different sets of alternatives, as may the specific type of gain. The analysis of benefits should focus on the specific gains produced by each alternative set of management measures, including the status quo. The benefits to society that result from the alternative management measures should be identified, and the level of gain assessed.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

List of Public Laws

Last Listing June 21, 1982

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202–275–3030).

S.J. Res. 201 / Pub. L. 97–196 Designating "Baltic Freedom Day". (June 18, 1982; 96 Stat. 117) Price: $1.75.