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Friday
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Agricultural Marketing Service
Air Pollution Control
Environmental Protection Agency
Animal Biologics
Animal and Plant Health Inspection Service
Animal Drugs
Food and Drug Administration
Blood
Food and Drug Administration
Child Labor
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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Title 3—

The President

Executive Order 12372 of July 14, 1982

Intergovernmental Review of Federal Programs

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 401(a) of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(a)) and Section 301 of Title 3 of the United States Code, and in order to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development, it is hereby ordered as follows:

Section 1. Federal agencies shall provide opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance or direct Federal development.

Sec. 2. To the extent the States, in consultation with local general purpose governments, and local special purpose governments they consider appropriate, develop their own processes or refine existing processes for State and local elected officials to review and coordinate proposed Federal financial assistance and direct Federal development, the Federal agencies shall, to the extent permitted by law:

(a) Utilize the State process to determine official views of State and local elected officials.

(b) Communicate with State and local elected officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions.

(c) Make efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the designated State process. For those cases where the concerns cannot be accommodated, Federal officials shall explain the bases for their decision in a timely manner.

(d) Allow the States to simplify and consolidate existing Federally required State plan submissions. Where State planning and budgeting systems are sufficient and where permitted by law, the substitution of State plans for Federally required State plans shall be encouraged by the agencies.

(e) Seek the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas. Existing interstate mechanisms that are redesignated as part of the State process may be used for this purpose.

(f) Support State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally-funded, which has a Federally-prescribed membership, which is established for a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

Sec. 3. (a) The State process referred to in Section 2 shall include those where States delegate, in specific instances, to local elected officials the review, coordination, and communication with Federal agencies.

(b) At the discretion of the State and local elected officials, the State process may exclude certain Federal programs from review and comment.

Sec. 4. The Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development. The Office of Management and Budget shall disseminate such lists to the Federal agencies.

Sec. 5. (a) Agencies shall propose rules and regulations governing the formulation, evaluation, and review of proposed Federal financial assistance and direct Federal development pursuant to this Order, to be submitted to the Office of Management and Budget for approval.

(b) The rules and regulations which result from the process indicated in Section 5(a) above shall replace any current rules and regulations and become effective April 30, 1983.

Sec. 6. The Director of the Office of Management and Budget is authorized to prescribe such rules and regulations, if any, as he deems appropriate for the effective implementation and administration of this Order and the Intergovernmental Cooperation Act of 1968. The Director is also authorized to exercise the authority vested in the President by Section 401(a) of that Act (42 U.S.C. 4231(a)), in a manner consistent with this Order.

Sec. 7. The Memorandum of November 8, 1968, is terminated (33 *Fed. Reg.* 16487, November 13, 1968). The Director of the Office of Management and Budget shall revoke OMB Circular A–95, which was issued pursuant to that Memorandum. However, Federal agencies shall continue to comply with the rules and regulations issued pursuant to that Memorandum, including those issued by the Office of Management and Budget, until new rules and regulations have been issued in accord with this Order.

Sec. 8. The Director of the Office of Management and Budget shall report to the President within two years on Federal agency compliance with this Order. The views of State and local elected officials on their experiences with these policies, along with any suggestions for improvement, will be included in the Director's report.

Ronald Reagan

THE WHITE HOUSE,
July 14, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing revised regulations to require that the employee pay his/her contribution, and the Government pay its contribution, to cover the cost of enrollment in the Federal Employees Health Benefits (FEHB) program for each pay period during which the employee's enrollment continues, whether the employee is in pay status or nonpay status. OPM has been enjoined from implementing current interim regulations on this subject. Under previous regulations, neither employees nor the Government were required to make their respective contributions during periods of nonpay status even though the health insurance remained in effect. These regulations will help reduce FEHB premium rates.

EFFECTIVE DATE: The first day of the first pay period beginning on or after August 16, 1982.

FOR FURTHER INFORMATION CONTACT: John Landers, (202) 632–4634.

SUPPLEMENTARY INFORMATION: On November 10, 1981, OPM issued interim regulations (46 FR 55503) which, effective January 1982, eliminated the previous regulatory provisions for free FEHB coverage during periods of nonpay status. On February 26, 1982, OPM was enjoined from implementing the interim regulations by court order. *National Federation of Federal Employees, Local 1836,* v. *Devine,* C.A. No. 82–203 (D.D.C. February 26, 1982). The Government did not appeal the court order and the interim regulations are not being implemented.

On April 13, 1982, OPM issued proposed regulations (47 FR 15996) to require FEHB premium payments (shared by employees and the Government) for all periods during which an enrollment continues, whether the employee is in pay status or in nonpay status. The proposed regulations are now being issued as a final rule. During the 30-day comment period allowed on the proposed regulations, OPM received comments from agencies, FEHB carriers, labor organizations and individuals. All comments, including comments on the previous interim regulations, were considered in developing the final rule. The final rule incorporates four changes from the proposed regulations. These changes do not alter the basic nature of the regulations and are needed to provide uniform terminology in the health benefits regulations and to facilitate equitable implementation of the regulations. The changes are the result of OPM staff analysis of the comments on the proposed regulations.

First, the proposed regulations stated, in § 890.303(e)(2), that "cooperative work-study program" employees are allowed to continue health benefits under certain circumstances for more than 12 months of continuous nonpay status. The terminology used to describe these employees should be changed to conform to the terminology used to describe the same employees under the coverage section of Part 890, § 890.102(c)(2). The wording in § 890.303(e)(2), therefore, is amended to refer to this type of employee as one who is "employed under an OPM approved career-related work-study program * * *"

Second, the final rule deletes § 890.304(a)(1)(i) of the regulations, which provides for termination of an FEHB enrollment at the end of the pay period in which an employee is furloughed by reason of reduction in force. This provision is repealed to provide more equitable treatment of employees furloughed under a reduction in force in light of the fact that under the new rule the FEHB program will receive full payment of the premiums due for each period during which an enrollment continues.

Under § 890.304(a)(4) of the proposed regulations an employee's health benefits enrollment would terminate on the 365th day of continuous nonpay status. This provision was taken from the regulations in effect before issuance of the interim regulations, which provided for free coverage during nonpay status. Because the new regulations require premium payments for each pay period in which an enrollment continues, and because the full premium is required for any pay period in which the employee is covered, this provision is amended to state, in part, that the enrollment terminates at the end of the pay period which includes the 365th day of continuous nonpay status.

Under § 890.502(b) of the proposed regulations, an employee is deemed to consent to have the full amount of an indebtedness for past-due health benefits premiums withheld from future salary as an indebtedness due the United States. This provision for constructive consent was limited to withholding from salary because the Comptroller General has held that a withholding from salary which is not permitted under 5 U.S.C. 5514 (such as this indebtedness) may not generally be made without consent of the employee. The fourth change incorporated into the final rule amends this provision to state that the employee is deemed to consent to have the full amount of the indebtedness withheld from future salary "or from any other monies owed to the employee by the Federal Government." This provision is added to clarify that the employee's personal consent is not needed for a setoff from, for example, a final payment of accrued leave or a refund of civil service retirement deductions. OPM's guidance on implementation will furnish agencies wih a method for providing employees an opportunity to question any recovery action before it takes place, including the correctness of the amount of the indebtedness, and to arrange for reasonable installment withholdings from salary, if available, taking into consideration the employee's individual circumstances.

Some commenters on the proposed regulations indicated that agencies should have a protracted amount of time to publicize and implement the new regulations before they become effective. The 1982 FEHB premium rates

were established under the assumption that the interim regulations eliminating most free coverage during nonpay status would eliminate the need for most of the rate loading used to cover the cost of the previous free coverage. Because of the court injunction against implementation of the interim regulations, there now exists a situation in which free nonpay status coverage is being provided without a corresponding loading of the rates to cover the cost of that free coverage. Therefore, the FEHB program is currently receiving less in premiums than expected, and this loss needs to be offset beginning as soon as practicable by implementation of the new regulations.

In order to lessen the burden of implementation of the new rules, OPM's guidance to agencies will include a general notification letter for employees and other specific instructions and clarification. The general notice is intended to simplify the agencies' need to inform employees generally and especially those employees who are immediately affected. Agencies are urged to inform all employees (using a hand-out provided by OPM) of the new requirements in advance of their effective date so that employees who will be incurring an indebtedness under the new rule will be informed that they would have to cancel their enrollment in order to avoid accumulation of a debt to the United States. Agencies do not need to wait until their individual processing systems under the new rule have been completed before distributing this information to employees. OPM guidance will also include specific instructions and pattern notices to be used by agencies in the recovery of an indebtedness for past-due health benefits premiums. We believe that these steps to aid agencies in implementation of the new rules and the fact that the new requirement for payment of premiums for each pay period in which coverage continues is simple to understand will lessen the agencies' processing burden.

Some commenters suggested that the new regulations will be excessively costly to implement. OPM believes that this is most unlikely. As a general rule, an employee who is placed in a nonpay status will return to duty. If there is an indebtedness for past-due health benefits upon return to duty, a simple procedure will allow the agency to make automatic salary withholdings from salary to settle the debt. In any event, OPM will monitor this aspect of the new regulations as implementation becomes a reality.

Some commenters stated that the new regulations will constitute a hardship for employees in nonpay status. To the contrary, the new rule is designed to provide an equitable and understandable method of paying for health insurance, and expressly provides a method for delaying employees' payments during nonpay status until the employee is once again receiving an income. Thus, in recognition of hardship circumstances, and in view of the difficulty and costliness of determining whether a valid hardship exists in any particular case, employees' FEHB premium payments will not be required *during* nonpay status. Employees who prefer not to accumulate an indebtedness during nonpay status may make payments before returning to pay status.

Some commenters stated that seasonal tobacco inspectors/graders at the Agricultural Marketing Service, U.S.D.A., should be excluded from the new regulations. The cost of their services is paid by imposition of user fees on tobacco producers. The user fee includes the cost of fringe benefits, and is intended to offset the Government's cost of providing the services of these workers. We find no basis for exempting these employees from the requirement that they pay the employee share of the cost of health benefits, just as any other employee must pay. The employee share is not an expense to the Government for providing this service, just as it is not an expense to the Government for any other category of employees.

Some commenters suggested that the delay in receipt of premiums in the case of employees covered during nonpay status might constitute a hardship for health benefits carriers. OPM does not now know the extent of any problem which the delay may create, but we do acknowledge this possibility. This aspect of the new regulations will be analyzed as they are implemented to determine whether any provision should be made to assure prompt payment of premiums.

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

I certify that, within the scope of the Regulatory Flexibility Act, this regulation will not have a significant economic impact on a substantial number of small entities because impact is limited to a small percentage of Federal employees dispersed throughout the country, who will now be required to pay for health insurance which was previously provided free during periods of nonpay status.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Claims, Government employees, Health insurance, Retirement.

Office of Personnel Management.

Donald J. Devine,

Director.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Accordingly, the Office of Personnel Management amends Part 890 of Title 5, Code of Federal Regulations, as follows:

1. In Subpart C, § 890.303(e) is revised to read as follows:

§ 890.303 Continuation of enrollment.

* * * * *

(e) *In nonpay status.* (1) Except as otherwise provided by law, the enrollment of an employee continues while he/she is in nonpay status for up to 365 days. The 365 days' nonpay status may be continuous or broken by periods of less than 4 consecutive months in pay status. If an employee has at least 4 consecutive months in pay status after a period of nonpay status he/she is entitled to begin the 365 days' continuation of enrollment anew. For the purposes of this paragraph, 4 consecutive months in pay status means any 4-month period during which the employee is in pay status for at least part of each pay period.

(2) However, in the case of an employee who is employed under an OPM approved career-related work-study program under Schedule B of at least one year's duration and who is expected to be in a pay status during not less than one-third of the total period of time from the date of the first appointment to the completion of the work-study program, his/her enrollment continues while he/she is in nonpay status so long as he/she is participating in the work-study program.

* * * * *

2. In Subpart C, paragraphs (a)(1) and (a)(4) of § 890.304 are revised to read as follows:

§ 890.304 Termination of enrollment.

(a) * * *

(1) The last day of the pay period in which he/she is separated from the service other than by retirement under

conditions entitling him/her to continue his/her enrollment.

* * * * *

(4) The last day of the pay period which includes the day on which the continuation of enrollment under § 890.303(e) expires, or, if he/she is not entitled to any further continuation because he/she has not had 4 consecutive months of pay status since exhausting his/her 365 days' continuation of coverage in nonpay status, the last day of his/her last pay period in pay status.

* * * * *

3. In Subpart E, § 890.501(e) is revised to read as follows:

§ 890.501 Government contributions.

* * * * *

(e) The employing office shall make a contribution for an employee for each pay period during which the enrollment continues.

* * * * *

4. In Subpart E, the heading of § 890.502 and paragraph (b) of that section are revised to read as follows:

§ 890.502 Employee withholdings and contributions.

* * * * *

(b) An employee or annuitant is responsible for payment of the employee share of the cost of enrollment for every pay period during which the enrollment continues. In each pay period for which health benefits withholdings are not made but during which the enrollment of an employee or annuitant continues, he/she will incur an indebtedness due the United States in the amount of the proper employee withholdings required for that pay period. The employing office shall establish a method for accepting direct payment for the indebtedness from the indvidual before initiation of a recovery action. An individual who incurs an indebtedness under this paragraph is deemed to consent to have the full amount of the indebtedness withheld from future salary, or from any other monies owed to the employee by the Federal Government, as an indebtedness due the United States. If the indebtedness cannot be withheld in full from salary, it may be recovered from other sources normally available to the employing office for the recovery of an indebtedness due the United States.

* * * * *

(5 U.S.C. 8913)

[FR Doc. 82-19410 Filed 7-15-82; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

Revision of User Fees for Cotton Classification Service to Producers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rulemaking.

SUMMARY: This action will revise the user fees for cotton classification services to producers as required by the Omnibus Budget Reconciliation Act of 1981. The Omnibus Budget Reconciliation Act (95 Stat. 357) contains amendments to the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471–476) which direct the Secretary of Agriculture to provide cotton classification services to producers and recover, as nearly as practicable, the costs of providing such services including administrative and supervisory costs through the imposition of a user fee. An overall increase in the fees is necessary to recover the projected costs of services to producers for the 1982 cotton crop.

DATES: Effective date: July 15, 1982. Comment date: USDA will accept public comments on this amendment until September 14, 1982.

ADDRESS: Comments may be addressed to Loyd R. Frazier, Chief, Marketing Services Branch, AMS, USDA, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Loyd R. Frazier, (202) 447–2147.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under the USDA procedure established in accordance with Executive Order 12291 of February 17, 1981, and has been classified "non-major" as it does not meet the criteria contained therein for major regulatory actions. William T. Manley, Deputy Administrator for Marketing Program Operations, Agricultural Marketing Service (AMS), has determined that this action will not have a significant impact on a substantial number of small business entities as (i) cotton classification services will continue to be provided to producers; (ii) the revised fees will be imposed upon the producers who receive the services; and (iii) cotton classification is not mandatory.

The Omnibus Budget Reconciliation Act of 1981 (95 Stat. 357) amended section 3a of the Cotton Statistics and Estimates Act, 7 U.S.C. 473a, to require that user fees shall be charged for the classification of producer cotton for fiscal years 1982, 1983 and 1984. This legislation directed the Secretary to set the user fee at a level that when combined with the proceeds from the sale of samples submitted for classification would recover, as nearly as practicable, the cost of the service provided, including the administrative and supervisory costs. The Secretary was also directed to take necessary action to insure that the Government cotton classification system continues to operate to provide an official quality description for the United States cotton crop. The fee for classification of producers cotton was set at 60 cents per sample (46 FR 48113–48115).

The classification fee to producers is being increased from the initial charge of 60 cents to 67 cents per sample. The increase in the fee is necessary due to the following conditions: (1) Operating costs for providing classification services to producers have increased. A 4.8 percent increase in salaries as well as increases in expenditures for rent, utilities, communications, supplies and materials have had a significant impact on these costs; (2) anticipated volume of cotton to be classed in FY 1983 is substantially below FY 1982 classings. The classing cost per sample is determined largely by the volume of classings since a large percentage of operational costs are fixed. Fixed costs include full-time salaries, building rents, utilities and equipment which cannot be adjusted in years of reduced cotton production and smaller classing volumes. Classings in fiscal year 1983 are estimated at 12.0 million samples compared with classings of 14.8 million in fiscal year 1982. Recent adverse weather conditions in the Southwestern growing region have further reduced the 1982 crop. The extent of this damage cannot be fully assessed at this time; (3) A smaller volume of baled loose samples which are sold and used to defray a portion of the classing costs.

In setting the fee, there are a number of cost and revenue projections which must be made at this time on the basis of limited information. These include: (1) The size of the 1982 cotton crop, (2) the percentage of the 1982 crop for which classification service will be requested, (3) the volume of baled samples to be sold and the price to be received therefor, and (4) the ability to collect classing fees. In recognition of these uncertainties, and adjustment in the per sample classing fee could become necessary during the year.

The fee for issuance of a new memorandum of classification at the request of the owner of the cotton for the business convenience of the owner without the reclassification of such cotton is being increased from $1.60 to

$1.90 per sheet due to increased costs of providing this service.

The fee for a review classification is being increased from $1.00 to $1.05 per sample. In order to avoid a policy that could encourage the unnecessary mutilation of cotton bale packaging by repeated resampling of bales when multiple classifications are desired, the Department will return the samples submitted for review classification if the producer so requests. To defray the costs of handling and returning these samples and to account for the loss in revenue which would have defrayed a portion of the costs of the review classification if the samples had been sold as baled loose cotton, a fee of 25 cents per sample will be charged for those samples returned at the request of the producer. This provision adheres to the policy of the Joint Cotton Industry's Bale Packaging Committee which represents all segments of the United States cotton industry and was formed to promote the improved condition and hence the marketability of United States cotton bales as they pass through marketing channels.

Since the harvesting of the 1983 cotton crop will begin in mid or late July, it is necessary to implement these revisions in fees on July 15, 1982 to insure that uniform fees are paid by all participating growers during the 1982 cotton season. Accordingly, William T. Manley, Deputy Administrator for Marketing Program Operations (AMS), has determined that the existing situation warrants this revision be made effective no later than July 15, 1982.

For the foregoing reasons it is hereby found, pursuant to the administrative procedure provisions of 5 U.S.C. 553, that, for good cause, prior notice and public procedure on this revision are impracticable, unnecessary and contrary to the public interest, and good cause exists for making the amendments effective on July 15, 1982. The Department will, however, accept public comments concerning these amendments until, and will consider revising these amendments should such comments demonstrate a need therefor.

List of Subjects in 7 CFR Part 28

Cotton, Cotton linters, Market news, Grades, Samples, Standards, Staples, Testing.

Accordingly, 7 CFR Part 28 is amended as follows:

PART 28—COTTON CLASSING, TESTING, AND STANDARDS

1. Section 28.909 is amended by revising paragraph (b) to read as follows:

§ 28.909 Costs.

* * * * *

(b) The Division will periodically bill producers or the agents designated by the producers for the cost of classification. The cost for cotton classification service to producers is 67 cents per sample.

2. Section 28.910 is amended by revising paragraph (b) to read as follows:

Classification

§ 28.910 Classification of samples and issuance of memoranda.

* * * * *

(b) Upon the request of an owner of cotton for which classification memoranda have been issued under this subpart, a new memorandum shall be issued for the business convenience of such owner without the reclassification of the cotton. Such rewritten memorandum shall bear the date of its issuance and the date or inclusive dates of the original classification. The fee for a new memorandum shall be $1.90 per sheet.

3. Section 28.911 is revised to read as follows:

§ 28.911 Review classification.

A producer may request one review classification for each bale of eligible cotton. The fee for review classification is $1.05 per sample. Samples for review classification must be drawn by gins or warehouses licensed pursuant to §§ 28.20–28.22, or by employees of the United States Department of Agriculture. Each sample for review classification shall be taken, handled, and submitted according to § 28.908 and to supplemental instructions issued by the Director or an authorized representative of the Director. Costs incident to sampling, tagging, identification, containers, and shipment for samples for review classification shall be assumed by the producer. After classification the samples shall become the property of the Government unless the producer requests the return of the samples. The proceeds of the sale of samples that become Government property shall be used to defray the costs of providing the services under this subpart. Producers who request return of their samples after classing will pay a fee of 25 cents per sample in addition to the fee established above in this section.

(Sec. 10, 42 Stat. 1519, sec. 3c, 50 Stat. 62; 7 U.S.C. 61, 473c, and sec. 156, 95 Stat. 357, unless otherwise noted)

Dated: July 14, 1982.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 82-19478 Filed 7-16-82; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Reg. 368]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period July 18–24, 1982. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: July 18, 1982.

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

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona lemon crop for the benefit of producers, and will not substantially affect costs for the directly regulated handlers.

This final rule is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981–82. The marketing policy was recommended by the committee following discussion at a public meeting on July 7, 1981. The

committee met again publicly on July 13, 1982, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is good.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

Section 910.668 is added as follows:

§ 910.668 Lemon regulation 368.

The quantity of lemons grown in California and Arizona which may be handled during the period July 18, 1982, through July 24, 1982, is established at 280,000 cartons.

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

Dated: July 15, 1982.

D. S. Kuryloski,

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

[FR Doc. 82–19556 Filed 7–15–82; 12:39 pm]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1701

Public Information; Appendix A—REA Bulletins Specification for Expanded Dielectric Coaxial Cable, PE–84

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: REA hereby amends Appendix A—REA Bulletins by revising REA Bulletin 345–84, REA Specification for Expanded Dielectric Coaxial Cable, PE–84, to include two additional cable sizes and to require lower attenuation values for all sizes of coaxial cable. The large diversity of population densities served by REA borrowers makes a larger selection of cable desirable, and technology has advanced to where low-loss cables are readily available. By making these changes, cable will be available to permit REA borrowers to more cost effectively design systems.

EFFECTIVE DATE: July 9, 1982.

FOR FURTHER INFORMATION CONTACT: Joseph M. Flanigan, Director, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382–8663. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: REA regulations are issued pursuant to the Rural Electrification Act as amended (7 U.S.C. 901 et seq.). This final action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity and therefore has been determined to be "not major." This action does not fall within the scope of the Regulatory Flexibility Act and is not subject to OMB Circular A–95 review. This program is listed in the Catalog of Federal Domestic Assistance as 10.853—Community Antenna Television Loans and Loan Guarantees, and 10.851—Rural Telephone Loans and Loan Guarantees.

Background

There have been significant advances in technology since the last issuance of this document, and a wider selection of cable sizes was considered desirable for system design considerations. The existing document is not applicable to much of the new technology and restricts cable availability so that its continuation would have forced REA borrowers to use outmoded less cost-effective technology. If the existing specification was withdrawn rather than revised there would be no REA specification which manufacturers would be required to meet. Unacceptable equipment could be sold to REA borrowers which would result in the loss of system effectiveness and a threat to REA loan security. As a result, revision of the document along the proposed lines was considered to be in the best interest of the program.

A Notice of Proposed Rulemaking was published in the **Federal Register** on March 9, 1982, Volume 47, Number 46, pages 10057 and 10058. However, no public comments were received in response to the notice.

7 CFR Part 1701, Appendix A—REA Bulletins, is hereby amended by revising REA Bulletin 345–84, REA Specification for Expanded Dielectric Coaxial Cable, PE–84.

List of Subjects in 7 CFR Part 1701

Loan programs—communications, Telecommunications, Telephone.

Dated: July 9, 1982.

Jack Van Mark,

Acting Administrator.

[FR Doc. 82–19206 Filed 7–15–82; 8:45 am]

BILLING CODE 3410-15-M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

Bank Holding Companies and Change in Bank Control; Statement of Policy on Nonvoting Equity Investments by Bank Holding Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: In recent months, a number of bank holding companies have made substantial equity investments in banks or bank holding companies located in states other than the home state of the investing bank holding company and have entered into various merger or asset acquisition agreements with these companies or banks that are to be consummated in the event interstate banking is permitted. These investments are accompanied by rights to a substantial amount of the voting shares of the acquiree bank holding company or its subsidiary bank(s). Because of the evident interest in such investments or agreements and because they raise major questions under the Bank Holding Company Act, the Board has issued this statement to provide guidance regarding the consistency of such agreements with the Act.

DATE: July 8, 1982.

FOR FURTHER INFORMATION CONTACT: James V. Mattingly, Jr., Associate General Counsel (202/452–3430) or Kathleen O'Day, Senior Attorney (202/452–3786) or Scott Alvarez, Attorney (202/452–3583) Legal Division, Board of

Governors of the Federal Reserve System, Washington, D.C. 20551.

List of Subjects in 12 CFR Part 225

Banks, Banking, Federal Reserve System, Holding companies, Securities.

Pursuant to its authority under the Bank Holding Company Act (12 U.S.C. 1841 *et seq.*) and section 225.2 of Regulation Y (12 CFR § 225.2), the Board has amended 12 CFR Part 225 by adding a new § 225.143 to read:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

§ 225.143 Policy statement on nonvoting equity investments by bank holding companies.

(a) *Introduction.*

(1) In recent months, a number of bank holding companies have made substantial equity investments in a bank or bank holding company (the "acquiree") located in states other than the home state of the investing company through acquisition of preferred stock or nonvoting common shares of the acquiree. Because of the evident interest in these types of investments and because they raise substantial questions under the Bank Holding Company Act (the "Act"), the Board believes it is appropriate to provide guidance regarding the consistency of such arrangements with the Act.

(2) This statement sets out the Board's concerns with these investments, the considerations the Board will take into account in determining whether the investments are consistent with the Act, and the general scope of arrangements to be avoided by bank holding companies. The Board recognizes that the complexity of legitimate business arrangements precludes rigid rules designed to cover all situations and that decisions regarding the existence or absence of control in any particular case must take into account the effect of the combination of provisions and covenants in the agreement as a whole and the particular facts and circumstances of each case. Nevertheless, the Board believes that the factors outlined in this statement provide a framework for guiding bank holding companies in complying with the requirements of the Act.

(b) *Statutory and Regulatory Provisions.*

(1) Under section 3(a) of the Act, a bank holding company may not acquire direct or indirect ownership or control of more than 5 per cent of the voting shares of a bank without the Board's prior approval. (12 U.S.C. 1842(a)(3)). In addition, this section of the Act provides that a bank holding company may not, without the Board's prior approval, acquire control of a bank: that is, in the words of the statute, "for any action to be taken that causes a bank to become a subsidiary of a bank holding company." (12 U.S.C. 1842(a)(2)). Under the Act, a bank is a subsidiary of a bank holding company if:

(i) The company directly or indirectly owns, controls, or holds with power to vote 25 per cent or more of the voting shares of the bank;

(ii) The company controls in any manner the election of a majority of the board of directors of the bank; or

(iii) The Board determines, after notice and opportunity for hearing, that the company has the power, directly or indirectly, to exercise a controlling influence over the management or policies of the bank. (12 U.S.C. 1841(d)).

(2) In intrastate situations, the Board may approve bank holding company acquisitions of additional banking subsidiaries. However, where the acquiree is located outside the home state of the investing bank holding company, section 3(d) of the Act prevents the Board from approving any application that will permit a bank holding company to "acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank." (12 U.S.C. 1842(d)(1)).

(c) *Review of Agreements.*

(1) In apparent expectation of statutory changes that might make interstate banking permissible, bank holding companies have sought to make substantial equity investments in other bank holding companies across state lines, but without obtaining more than 5 per cent of the voting shares or control of the acquiree. These investments involve a combination of the following arrangements:

(i) Options on, warrants for, or rights to convert nonvoting shares into substantial blocks of voting securities of the acquiree bank holding company or its subsidiary bank(s);

(ii) Merger or asset acquisition agreements with the out-of-state bank or bank holding company that are to be consummated in the event interstate banking is permitted;

(iii) Provisions that limit or restrict major policies, operations or decisions of the acquiree; and

(iv) Provisions that make acquisition of the acquiree or its subsidiary bank(s) by a third party either impossible or economically impracticable.

The various warrants, options, and rights are not exercisable by the investing bank holding company unless interstate banking is permitted, but may be transferred by the investor either immediately or after the passage of a period of time or upon the occurrence of certain events.

(2) After a careful review of a number of these agreements, the Board believes that investments in nonvoting stock, absent other arrangements, can be consistent with the Act. Some of the agreements reviewed appear consistent with the Act since they are limited to investments of relatively moderate size in nonvoting equity that may become voting equity only if interstate banking is authorized.

(3) However, other agreements reviewed by the Board raise substantial problems of consistency with the control provisions of the Act because the investors, uncertain whether or when interstate banking may be authorized, have evidently sought to assure the soundness of their investments, prevent takeovers by others, and allow for sale of their options, warrants, or rights to a person of the investor's choice in the event a third party obtains control of the acquiree or the investor otherwise becomes dissatisfied with its investment. Since the Act precludes the investors from protecting their investments through ownership or use of voting shares or other exercise of control, the investors have substituted contractual agreements for rights normally achieved through voting shares.

(4) For example, various covenants in certain of the agreements seek to assure the continuing soundness of the investment by substantially limiting the discretion of the acquiree's management over major policies and decisions, including restrictions on entering into new banking activities without the investor's approval and requirements for extensive consultations with the investor on financial matters. By their terms, these covenants suggest control by the investing company over the management and policies of the acquiree.

(5) Similarly, certain of the agreements deprive the acquiree bank holding company, by covenant or because of an option, of the right to sell, transfer, or encumber a majority or all of the voting shares of its subsidiary bank(s) with the aim of maintaining the integrity of the investment and preventing takeovers by others. These long-term restrictions on voting shares fall within the presumption in the Board's Regulation Y that attributes control of shares to any company that enters into any agreement placing long-term restrictions on the rights of a

holder of voting securities. (12 CFR 225.2(b)(4)).

(6) Finally, investors wish to reserve the right to sell their options, warrants or rights to a person of their choice to prevent being locked into what may become an unwanted investment. The Board has taken the position that the ability to control the ultimate disposition of voting shares to a person of the investor's choice and to secure the economic benefits therefrom indicates control of the shares under the Act.[1] Moreover, the ability to transfer rights to large blocks of voting shares, even if nonvoting in the hands of the investing company, may result in such a substantial position of leverage over the management of the acquiree as to involve a structure that inevitably results in control prohibited by the Act.

(d) *Provisions That Avoid Control.*

(1) In the context of any particular agreement, provisions of the type described above may be acceptable if combined with other provisions that serve to preclude control. The Board believes that such agreements will not be consistent with the Act unless provisions are included that will preserve management's discretion over the policies and decisions of the acquiree and avoid control of voting shares.

(2) As a first step towards avoiding control, covenants in any agreement should leave management free to conduct banking and permissible nonbanking activities. Another step to avoid control is the right of the acquiree to "call" the equity investment and options or warrants to assure that covenants that may become inhibiting can be avoided by the acquiree. This right makes such investments or agreements more like a loan in which the borrower has a right to escape covenants and avoid the lender's influence by prepaying the loan.

(3) A measure to avoid problems of control arising through the investor's control over the ultimate disposition of rights to substantial amounts of voting shares of the acquiree would be a provision granting the acquiree a right of first refusal before warrants, options or other rights may be sold and requiring a public and dispersed distribution of these rights if the right of first refusal is not exercised.

(4) In this connection, the Board believes that agreements that involve rights to less than 25 percent of the voting shares, with a requirement for a dispersed public distribution in the event of sale, have a much greater prospect of achieving consistency with the Act than agreements involving a greater percentage. This guideline is drawn by analogy from the provision in the Act that ownership of 25 percent or more of the voting securities of a bank constitutes control of the bank.

(5) The Board expects that one effect of this guideline would be to hold down the size of the nonvoting equity investment by the investing company relative to the acquiree's total equity, thus avoiding the potential for control because the investor holds a very large proportion of the acquiree's total equity. Observance of the 25 percent guideline will also make provisions in agreements providing for a right of first refusal or a public and widely dispersed offering of rights to the acquiree's shares more practical and realistic.

(6) Finally, certain arrangements should clearly be avoided regardless of other provisions in the agreement that are designed to avoid control. These are:

(i) Agreements that enable the investing bank holding company (or its designee) to direct in any manner the voting of more than 5 per cent of the voting shares of the acquiree;

(ii) Agreements whereby the investing company has the right to direct the acquiree's use of the proceeds of an equity investment by the investing company to effect certain actions, such as the purchase and redemption of the acquiree's voting shares; and

(iii) The acquisition of more than 5 per cent of the voting shares of the acquiree that "simultaneously" with their acquisition by the investing company become nonvoting shares, remain nonvoting shares while held by the investor, and revert to voting shares when transferred to a third party.

(e) *Review by the Board.* This statement does not constitute the exclusive scope of the Board's concerns, nor are the considerations with respect to control outlined in this statement an exhaustive catalog of permissible or impermissible arrangements. The Board has instructed its staff to review agreements of the kind discussed in this statement and to bring to the Board's attention those that raise problems of consistency with the Act. In this regard, companies are requested to notify the Board of the terms of such proposed merger or asset acquisition agreements or nonvoting equity investments prior to their execution or consummation.

[1] *See* Board letter dated March 18, 1982, to C. A. Cavendes, Sociedad Financiera.

Board of Governors of the Federal Reserve System, July 8, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-19275 Filed 7-15-82; 8:45 am]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33-6413; 34-18842; 35-22547; IC-12504; FR-2; File No. S7-906]

Instructions for the Presentation and Preparation of Pro Forma Financial Information and Requirements for Financial Statements of Businesses Acquired or To Be Acquired

Correction

In FR Doc. 82-18570, beginning on page 29832 in the issue of Friday, July 9, 1982, the following corrections should be made:

1. On page 29840, in the first column, the first line of the paragraph designated "15." should read, "By revising paragraph (t)(1) of the" and the paragraph designation "(t) * * *" should be inserted between the paragraph designated "(1)" and the five stars that precede it.

2. On page 29841, in the third column, the first line of the paragraph designated "21." should read, "By revising paragraph (r)(1) of the" and the paragraph designation "(r) * * *" should be inserted between the paragraph designated "(1)" and the five stars that precede it.

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 522

New Animal Drugs; Change of Sponsor; Wendt Laboratories, Inc.

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for phenylbutazone tablet and injection products from Western Serum Co. to Wendt Laboratories, Inc. Western Serum Co. filed supplemental new animal drug applications (NADA's) that provide for this change.

EFFECTIVE DATE: July 16, 1982.

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

SUPPLEMENTARY INFORMATION: Western Serum Co. filed supplements to its NADA 048–646 for phenylbutazone injection and NADA 048–647 for phenylbutazone tablets. The supplements request that as of February 6, 1982, all of the firm's rights in the NADA's be reassigned to Wendt Laboratories, Inc., 100 Nancy Dr., Belle Plaine, MN 56011.

The supplements for the change of sponsor are approved, and the regulations are amended to reflect the approval.

Under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367 December 23, 1977;), the intercorporate transfer of an NADA is a category I change that does not require reevaluation of the safety and effectiveness data in the parent application.

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

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

List of Subjects

21 CFR Part 520

Animal drugs, Oral use.

21 CFR Part 522

Animal drugs, Injectable.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Parts 520 and 522 are amended as follows:

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

§ 520.1720a [Amended]

1. In § 520.1720a *Phenylbutazone tablets and boluses,* paragraph (b)(5), by removing "011398" and inserting in its place "015579".

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

§ 522.1720 [Amended]

2. In § 522.1720 *Phenylbutazone injection,* paragraph (b)(2), by removing "011398" and inserting in its place "015579".

Effective date. This amendment is effective July 16, 1982.

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

Dated: July 7, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82–18937 Filed 7–15–82; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Parts 606, 610, and 640

[Docket No. 79N–0316]

Source Plasma (Human); Dating Period and Reduction of Record Retention Requirements

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations by prescribing a 10-year dating period for Source Plasma (Human) and requiring the expiration date on the label for Source Plasma (Human). These amendments will reduce recordkeeping retention while ensuring the safety, purity, and efficacy of the final products.

DATES: Effective August 16, 1982, labeling requirements shall become effective January 12, 1983.

FOR FURTHER INFORMATION CONTACT: Steven F. Falter, National Center for Drugs and Biologics (HFB–620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306.

SUPPLEMENTARY INFORMATION: Source Plasma (Human) is a licensed biological product defined as the fluid portion of human blood collected by plasmapheresis and intended as source material for further manufacturing into injectable and noninjectable products. In the **Federal Register** of April 29, 1980 (45 FR 28359), FDA proposed to amend the biologic regulations to prescribe a 10-year dating period for Source Plasma (Human). Consistent with this action, FDA also proposed to amend §606.120 (21 CFR 606.120) and §640.70 (21 CFR 640.70) to require an expiration date on Source Plasma (Human) labels. In accordance with existing § 606.160(d) (21 CFR 606.160(d)), records pertaining to a product having a 10-year dating period must be retained for 10 years and 6 months. (These recordkeeping requirements have been approved by the Office of Management and Budget (OMB) under approval number 0910–0116.) Under current regulations, Source Plasma (Human) has no specific dating period and, therefore, manufacturing records must be retained indefinitely. Four letters of comment were received in response to the proposed rule, two of which expressed total agreement with the proposal. The remaining comments and FDA's response follow:

1. One comment asked if the proposed rules are applicable to all Source Plasma (Human), both that intended for use in manufacturing injectable products and that intended for use in manufacturing noninjectable products. Because of the value of plasma intended for use in manufacturing noninjectable products, the comment recommended that the rules not apply to such source plasma.

The agency does not believe that these regulations will jeopardize the value and marketability of plasma intended for use in manufacturing noninjectable products. The purposes of these regulations, to provide for a record retention period of 10 years and 6 months and to encourage the timely fractionation of the plasma into individual products, apply equally to all Source Plasma (Human), regardless of the intended use. FDA believes that 10 years is ample time to fractionate even the most rare or valuable source materials. To accommodate special circumstances an exemption from the 10-year dating period may be applied for in the form of an amendment to the product license under § 610.53(b) (21 CFR 610.53(b)).

2. One comment on proposed § 606.120(b)(5) requested that it be amended to provide for a 10-year dating period for unlicensed recovered human plasma in addition to Source Plasma (Human) and consequently a 10 year and 6 month record retention period.

Providing a dating period for recovered human plasma is beyond the scope of this rulemaking. The agency is currently reviewing all aspects of regulating unlicensed recovered human plasma, including a review of recordkeeping requirements. Upon completion of this review, FDA will take the necessary actions to ensure the safe, effective, and efficient utilization of this valuable source material.

3. One comment on proposed § 640.70(a)(6) requested that the collection date, instead of the expiration date, should continue to be required on the container label to serve as a means of identifying the plasma unit. The comment suggested that a cautionary

statement be added to the label stating that the product should not be used longer than 10 years after the stated collection date.

The agency rejects this comment. The required inclusion of the expiration date on the Source Plasma (Human) label is consistent with the labeling requirements for all other licensed biological products. The expiration date may be used, as the collection date has been used in the past, as part of the means of identifying individual units of plasma. FDA sees no advantage to retaining the collection date and including an additional cautionary statement on the label.

4. For clarification, FDA notes that for some long-dated final products (e.g., albumin), the records pertaining to the Source Plasma (Human) used in deriving the product may be destroyed before the expiration date of the final product. In the experience of FDA, there has been no instance where it was necessary to consult records concerning source material for a plasma derivative after such an extended period of time; therefore, records concerning Source Plasma (Human) may be destroyed after 10 years and 6 months, even though final products derived from the plasma may remain on the market.

The economic impact of this rule has been assessed in accordance with Executive Order 12291. The agency has determined that the rule will have no adverse effect on manufacturers or users of Source Plasma (Human). A dating period for the product is being established largely with the intent of reducing the recordkeeping burden associated with the product. The agency is not aware of the existence of any aged plasma which would become outdated with the establishment of the dating period. In the future, certain plasma may be exempted from the dating period if it is found necessary to retain the plasma beyond the expiration date. Manufacturers will be required to revise their product labels for Source Plasma (Human); however, currently approved labeling remaining at the effective date for the new labeling provisions may be modified to meet the new requirements. Thus, no additional expense resulting from outdated labeling need be incurred. Therefore, the agency concludes that the rule does not warrant designation as a major rule under any of the criteria specified under section 1(b) of Executive Order 12291. The requirement for a regulatory flexibility analysis under the Regulatory Flexibility Act does not apply to this final rule because the proposed rule was issued prior to January 1, 1981, and is therefore exempt.

List of Subjects

21 CFR Part 607

Blood; Laboratories.

21 CFR Part 610

Biologics; Labeling.

21 CFR Part 640

Blood.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 701, 52 Stat. 1040–1042 as amended, 1050–1051 as amended, 1055–1056 as amended (21 U.S.C. 321, 352, 371)) and the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Subchapter F in Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 606—CURRENT GOOD MANUFACTURING PRACTICES FOR BLOOD AND BLOOD COMPONENTS

1. In Part 606, by revising § 606.120(b)(5) to read as follows:

§ 606.120 Labeling.

* * * * *

(b) * * *

(5) The expiration date, including the day and year, and if it is a factor, the hour; or in the case of recovered plasma for further manufacture, the date of collection.

* * * * *

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

2. In Part 610, § 610.53(a) is amended by revising the item "Source Plasma (Human)" to read as follows:

§ 610.53 Dating periods for specific products.

(a) * * *

Source Plasma (Human)...	Ten years. Section 610.51 does not apply.

* * * * *

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

3. In Part 640, by revising § 640.70(a)(6) read as follows:

§ 640.70 Labeling.

(a) * * *

(6) The expiration date of the plasma. If plasma intended for manufacturing into noninjectable products is pooled from two or more donors the expiration date is determined from the collection date of the oldest unit in the pool, and the pooling records shall show the collection date for each unit constituting the pool.

* * * * *

Effective dates. This regulation becomes effective on August 16, 1982. On or after this date, all Source Plasma (Human) licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), including that already received in interstate commerce, shall have a dating period of 10 years from the date of collection. Labeling requirements shall become effective January 12, 1983. On or after January 12, 1983, no person may initially introduce or initially deliver for introduction into interstate commerce any licensed biological product to which the regulations apply, unless the product's labeling complies with the requirements set forth in the regulations.

(Secs. 201, 502, 701, 52 Stat. 1040–1042 as amended, 52 Stat. 1050–1051 as amended, 1055–1056 as amended (21 U.S.C. 321, 352, 371); sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262))

Dated: June 7, 1982.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 82-19179 Filed 7-15-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissoner

24 CFR Parts 805, 860, 861, and 865

[Docket No. R-82-976]

Gross Rent; Public Housing Program

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

ACTION: Notice of effective date for interim rule.

SUMMARY: This document announces the effective date for the interm rule concerning gross rent payable by families under the Public Housing Program published in the Federal Register on May 4, 1982 (47 FR 19120) which sets forth regulatory changes to implement recent statutory amendments affecting the amount of rent which families participating in the Public Housing Program will be required to pay. The effective date provision of the rule stated that the rule would become effective upon expiration of the first

period of 30 calendar days of continuous session of Congress after publication, subject to waiver, and announced that future notice of the effectiveness of the rule would be published in the Federal Register. The period of 30 calendar days of continuous session of Congress following publication expired during June 1982. This document provides notice that the effective date for the interim rule is August 1, 1982.

DATE: The effective date for the interim rule published May 4, 1982 at 47 FR 19120 is August 1, 1982.

FOR FURTHER INFORMATION CONTACT: John J. Knapp, General Counsel, Department of Housing and Urban Development, Room 10214, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone No. (202) 755–7244. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On May 11, 1982, H. J. Res. 480 was introduced in the House of Representatives. This joint resolution proposed the disapproval of certain rules prescribed by the Secretary of Housing and Urban Development, including the interim rule dscribed in this document. On May 26, 1982, the Committee on Banking, Finance and Urban Affairs voted to report out the Resolution, which was thereupon filed with the Clerk of the House on June 2, 1982.

Section 7(o)(3) of the Department of Housing and Urban Development Act, 42, U.S.C. 3535(o)(3), provides that no HUD rule or regulation may become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the day on which such rule or regulation is published, and that, if within that 30-day period, either the Banking, Housing, and Urban Affairs Committee of the Senate or the Banking, Finance and Urban Affairs Committee of the House of Representatives reports out a joint resolution of disapproval or other legislation which is intended to invalidate the rule or regulation, the rule or regulation shall not become effective for a period of 90 calendar days from the date of Committee action.

The Department of Justice, both before and after passage of section 7(o)(3) of the Department of Housing and Urban Development Act in 1978, advised the Secretary of Housing and Urban Development that the triggering mechanism for the additional 90-day waiting period contained in Section 7(o)(3) is unconstitutional because it purports to allow Congress, by action of its Committees, to impose legally binding requirements on the Executive Branch. The Secretary, in proposing an amendment to strike out the second sentence of section 7(o)(3), advised the Speaker of the House and the President of the Senate on March 19, 1979, that the Department of Justice had advised that the further waiting period provision is unconstitutional and, therefore, could not impose a binding requirement on the Department.

Apart from the constitutional issue, invocation of section 7(o)(3) to delay the effective date of this interim rule is contrary to the stated intent of the legislative review process established by section 7(o) of the Department of Housing and Urban Development Act. Legislative history surrounding the enactment of section 7(o) emphasized that the disapproval procedure was intended to be utilized only when a Committee believed that a Departmental regulation violated the intent of Congress as expressed in specific enacted legislation (see, *e.g.*, the Conference Report on the 1978 legislation). In this instance, the objection of the House Committee would appear to be that the interim rule would implement an explicit statutory directive which is not supported by a majority of the Committee's membership. The interim rule implements an increase in tenant contribution to rent from 25% to 30% of adjusted income, as directed by section 322 of the Housing and Community Development Amendments of 1981. That provision was not contained in the 1981 legislation as reported by the House Banking Committee, but was included in the bill reported by the Senate Banking Committee and approved by the Senate, was added to the House legislation by floor amendment, and was adopted in Conference. In 1982, the House Banking Committee has reported a bill which would, in essence, reverse the 1981 enactment; no similar provision is contained in the 1982 authorizing legislation reported by the Senate. While the Committee's report accompanying the resolution of disapproval seeks to base the Committee's action on disapproval of the manner of phase-in of the increase as prescribed by the regulation, it is apparent from the record of the Committee mark-up session that intent to delay any implementation of the statute was the prime motivating factor. (Compare H. Rep. No. 97–590 and the Minority Views attached thereto; see also the floor statement by the sole dissenting Majority member at 128 Cong. Rec. H 3123.)

Under some circumstances the Secretary may deem it appropriate, as a matter of comity between the Executive and Legislative Branches, to delay implementation of a rule which a Committee of Congress has voted to disapprove, notwithstanding the opinion of the Executive Branch that the action of disapproval has no binding effect as a constitutional matter. (Compare, for example, the notice of delayed implementation of a separate, unrelated rule disapproved by Committee action, FR Doc. 82–19110 published elsewhere in this issue.) In this instance, however, the Secretary has determined that his obligation to implement the duly enacted statutory directives makes such comity inappropriate.

DATE: The effective date for the interim rule published May 4, 1982 at 47 FR 19120 is August 1, 1982.

FOR FURTHER INFORMATION CONTACT: John J. Knapp, General Counsel, Department of Housing and Urban Development, Room 10214, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone No. (202) 755–7244. This is not a toll-free number.

Date: July 9, 1982.

Philip Abrams,

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

[FR Doc. 82–19111 Filed 7–15–82; 8:45 am]

BILLING CODE 4210–27–M

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24 CFR Part 885

[Docket No. R–82–982]

Housing for the Elderly or Handicapped; Amendments To Implement Cost Savings Procedure

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

ACTION: Notice of deferred effective date for interim rule.

SUMMARY: This document announces that the effective date for the interim rule concerning cost saving procedures in housing for the elderly and handicapped published in the Federal Register on May 11, 1982 (47 FR 20113) has been deferred until such time, not earlier than September 1, 1982, as may be specified by further notice published in the Federal Register. The interim rule was published originally to become effective on June 22, 1982. The House Committee on Banking, Finance and Urban Affairs voted to disapprove this rule under Section 7(o)(3) of the Department of Housing and Urban Development Act. The Secretary of Housing and Urban Development (HUD) has determined, as a matter of comity between the Executive and Legislative

Branches, to delay the effectiveness of this rule.

EFFECTIVE DATE: The specification previously published of June 22, 1982, as the effective date for the interim rule published on May 11, 1982 (47 FR 20113) is withdrawn. The effective date of the interim rule is deferred until such date, not earlier than September 1, 1982, as may be specified by further notice published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: John J. Knapp, General Counsel, Department of Housing and Urban Development, Room 10214, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone no. (202) 755-7244. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On May 19, 1982, H. J. Res. 488 was introduced in the House of Representatives. This joint resolution proposed the disapproval of the above-captioned rule. On May 26, 1982, the Committee on Banking, Finance and Urban Affairs voted to report out the Resolution, which was thereupon filed with the Clerk of the House on June 2, 1982.

Section 7(o)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o)(3), provides that no HUD rule or reguation may become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the day on which such rule or regulation is published, and that, if within that 30-day period, either the Banking, Housing, and Urban Affiars Committee of the Senate or the Banking, Finance and Urban Affairs Committee of the House of Representatives reports out a joint resolution of disapproval or other legislation which is intended to invalidate the rule or regulation, the rule or regulation shall not become effective for a period of 90 calendar days from the date of Committee action.

The Department of Justice, both before and after passage of Section 7(o)(3) of the Department of Housing and Urban Development Act in 1978, advised the Secretary of Housing and Urban Development that the triggering mechanism for the additional 90-day waiting period contained in Section 7(o)(3) is unconstitutional because it purports to allow Congress, by action of its Committees, to impose legally binding requirements on the Executive Branch. The Secretary, in proposing an amendment to strike out the second sentence of Section 7(o)(3), advised the Speaker of the House and the President of the Senate on March 19, 1979, that the Department of Justice had advised that the further waiting period provision is unconstitutional and, therefore, could not impose a binding requirement on the Department.

Under some circumstances the Secretary may deem it appropriate, as a matter of comity between the Executive and Legislative Branches, to delay implementation of a rule which a Committee of Congress has voted to disapprove, notwithstanding the opinion of the Executive Branch that the action of disapproval has no binding effect as a constitutional matter. In this instance, the interim rule would implement certain administrative policy determinations intended to effect cost savings in the Section 202 program providing direct loans to nonprofit sponsors for housing for the elderly and handicapped. In order to avoid disruption of the process of applications for FY 1982 funding consideration that is now underway, the Secretary has determined to defer effectiveness of the interim rule until not earlier than expiration of the 90-day period following the reporting out of the Committee's resolution.

Dated: July 9, 1982.

Philip Abrams,

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

[FR Doc. 82-19110 Filed 7-15-82; 8:45 am]

BILLING CODE 4210-27-M

Office of the Secretary

24 CFR Part 888

[Docket No. R-82-922]

Section 8 Housing Assistance Payments Program—Financing Adjustment for Fair Market Rents

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

ACTION: Notice of effective date for interim rule.

SUMMARY: This document announces the effective date for the interim rule published in the Federal Register on May 25, 1982 (47 FR 22520) which amended the financing adjustment rules for calculating Fair Market Rents to (1) increase the ceiling on interest rates from 12 percent to 14 percent, (2) extend the deadline for start of construction from June 1, 1982 to August 1, 1982, (3) permit use of the financing adjustment in connection with property disposition projects sold by HUD and (4) permit projects funded in fiscal year 1982 to use the financing adjustment. The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver, and announced that future notice of the effectiveness of the rule would be published in the Federal Register.

Thirty calendar days of continuous session of Congress have expired since the rule was published.

DATE: The effective date for the interim rule published May 25, 1982, at 47 FR 22520, is July 16, 1982.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10278, 451 7th Street, S.W., Washington, D.C. 20410, Telephone No. (202) 755-7055. This is not a toll-free number.

Dated: July 14, 1982.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 82-19426 Filed 7-15-82; 8:45 am]

BILLING CODE 4210-27-M

24 CFR Part 889

[Docket No. R-82-975]

Gross Family Contribution; Section 8 Housing Assistance Payments Program

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

ACTION: Notice of effective date for interim rule.

SUMMARY: This document announces the effective date for the interim rule on gross family contributions under Section 8 housing assistance payments program published in the Federal Register on May 4, 1982 (47 FR 19128) which sets forth regulatory changes to implement recent statutory amendments affecting the amount of rent which families participating in the Section 8 Program will be required to pay. The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver, and announced that future notice of the effectiveness of the rule would be published in the Federal Register. The period of 30 calendar days of continuous session of Congress following publication expired during June 1982. This document provides notice that the effective date for the interim rule is August 1, 1982.

DATE: The effective date for the interim rule published May 4, 1982 at 47 FR 19128 is August 1, 1982.

FOR FURTHER INFORMATION CONTACT: John J. Knapp, General Counsel, Department of Housing and Urban Development, Room 10214, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone No. (202) 755–7244. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On May 11, 1982, H.J. Res. 480 was introduced in the House of Representatives. This joint resolution proposed the disapproval of certain rules prescribed by the Secretary of Housing and Urban Development, including the interim rule described in this document. On May 26, 1982, the Committee on Banking, Finance and Urban Affairs voted to report out the Resolution, which was thereupon filed with the Clerk of the House on June 2, 1982.

Section 7(o)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o)(3), provides that no HUD rule or regulation may become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the day on which such rule or regulation is published, and that, if within that 30-day period, either the Banking, Housing, and Urban Affairs Committee of the Senate or the Banking, Finance and Urban Affairs Committee of the House of Representatives reports out a joint resolution of disapproval or other legislation which is intended to invalidate the rule or regulation, the rule or regulation shall not become effective for a period of 90 calendar days from the date of Committee action.

The Department of Justice, both before and after passage of Section 7(o)(3) of the Department of Housing and Urban Development Act in 1978, advised the Secretary of Housing and Urban Development that the triggering mechanism for the additional 90-day waiting period contained in Section 7(o)(3) is unconstitutional because it purports to allow Congress, by action of its Committees, to impose legally binding requirements on the Executive Branch. The Secretary, in proposing an amendment to strike out the second sentence of Section 7(o)(3), advised the Speaker of the House and the President of the Senate on March 19, 1979, that the Department of Justice had advised that the further waiting period provision is unconstitutional and, therefore, could not impose a binding requirement on the Department.

Apart from the constitutional issue, invocation of Section 7(o)(3) to delay the effective date of this interim rule is contrary to the stated intent of the legislative review process established by Section 7(o) of the Department of Housing and Urban Development Act. Legislative history surrounding the enactment of Section 7(o) emphasized that the disapproval procedure was intended to be utilized only when a Committee believed that a Departmental regulation violated the intent of Congress as expressed in specific enacted legislation (see, *e.g.*, the Conference Report on the 1978 legislation). In this instance, the objection of the House Committee would appear to be that the interim rule would implement an explicit statutory directive which is not supported by a majority of the Committee's membership. The interim rule implements an increase in tenant contribution to rent from 25% to 30% of adjusted income, as directed by Section 322 of the Housing and Community Development Amendments of 1981. That provision was not contained in the 1981 legislation as reported by the House Banking Committee, but was included in the bill reported by the Senate Banking Committee and approved by the Senate, was added to the House legislation by floor amendment, and was adopted in Conference. In 1982, the House Banking Committee has reported a bill which would, in essence, reverse the 1981 enactment; no similar provision is contained in the 1982 authorizing legislation reported by the Senate. While the Committee's report accompanying the resolution of disapproval seeks to base the Committee's action on disapproval of the manner of phase-in of the increase as prescribed by the regulation, it is apparent from the record of the Committee mark-up session that intent to delay any implementation of the statute was the prime motivating factor. (Compare H. Rep. No. 97–590 and the Minority Views attached thereto; see also the floor statement by the sole dissenting Majority member at 128 Cong. Rec. H 3123.)

Under some circumstances the Secretary may deem it appropriate, as a matter of comity between the Executive and Legislative Branches, to delay implementation of a rule which a Committee of Congress has voted to disapprove, notwithstanding the opinion of the Executive Branch that the action of disapproval has no binding effect as a constitutional matter. (Compare, for example, the notice of delayed implementation of a separate, unrelated rule disapproved by Committee action, FR Doc. 82–19110 published elsewhere in this issue. In this instance, however, the Secretary has determined that his obligation to implement the duly enacted statutory directives makes such comity inappropriate.

Dated: July 9, 1982.

Philip Abrams,

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

[FR Doc. 19109 Filed 7–15–82; 8:45 am]

BILLING CODE 4210–77–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–9–FRL–2083–8]

Arizona State Implementation Plan Revision

Correction

In FR Doc. 82–9822, at page 15579, in the issue of Monday, April 12, 1982, on page 15580, last column, in the regulatory text, correct § 52.120(c)(44)(i)(B) by inserting the number "25" after the existing "25" in the second line.

BILLING CODE 1505–01–M

40 CFR Parts 52 and 81

[A–5–FRL 2140–4]

Approval and Promulgation of Implementation Plans Designation of Areas for Air Quality Planning Purposes; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA today is publishing rulemaking pursuant to Part D of the Clean Air Act (CAA) on certain revisions to the Indiana State Implementation Plan (SIP) for total suspended particulate (TSP) and is publishing rulemaking pursuant to Section 110 on other general provisions within the State's plan.

In this notice EPA is specifying those portions of the revisions to the Indiana SIP which it is approving, conditionally approving, or deferring action.

EPA is taking this action pursuant to Part D of the Clean Air Act. Part D of the Act requires each state to revise its SIP to meet specific requirements for the areas designated as nonattainment.

This revision is expected to have a favorable impact of Indiana's ambient air quality. Additionally, this revision is expected to have a favorable impact on the air quality of the States adjoining Indiana's nonattainment area.

EFFECTIVE DATE: This final rulemaking is effective as of July 16, 1982.

ADDRESSES: Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Robert B. Miller at (312) 886–6031 before visiting the Region V Office).

Environmental Protection Agency, Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206

Copies of the State material regarding 40 CFR Part 52 is available for inspection at: The Federal Register Office, 1100 L Street NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Robert B. Miller, Air Programs Branch, Environmental Protection Agency, Region V, Chicago, Illinois 60604 (312) 886–6031.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962) and on October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the CAA, EPA designated parts of eleven counties in Indiana as nonattainment for the TSP National Ambient Air Quality Standards (NAAQS). These designated nonattainment areas were in Clark, Dearborn, Dubois, Howard, Lake, LaPorte, Marion, St. Joseph, Vanderburgh, Vigo, and Wayne Counties. On May 21, 1980, the State of Indiana requested that LaPorte County be redesignated from primary nonattainment to attainment. EPA approved this request on September 25, 1981 (46 FR 47220). Similarly, on November 2, 1981 (46 FR 54340) EPA designated the TSP nonattainment portion of Wayne County as unclassifiable.

Part D of the Act requires each state to revise its SIP to meet specific requirements for the areas designated as nonattainment. These SIP revisions must demonstrate attainment of the primary TSP NAAQS as expeditiously as practicable, but no later than December 31, 1982. If attainment of the NAAQS by December 31, 1982 cannot be demonstrated for an area designated as nonattainment for TSP, an acceptable alternative SIP for that area must include provisions for applying reasonably available control technology (RACT) to stationary sources of particulate emissions and studying the nature and extent of the nontraditional particulate sources in the area. The study would then be used in designing a control strategy for such sources. The requirements for an approvable Part D SIP are further described in a **Federal Register** notice published April 4, 1979 (44 FR 20372). Supplements to the April 4, 1979 notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182).

On June 26, 1979, pursuant to Part D of the CAA, the State of Indiana submitted to EPA a proposed control strategy and regulations for TSP. EPA reviewed Indiana's submittal and proposed rulemaking on March 27, 1980 (45 FR 20432). Since March 27, 1980, Indiana has submitted new control strategies and regulations for TSP that have substantially modified many of those proposed at that time. Based on these new submittals, EPA reproposed rulemaking action on the Indiana Part D TSP implementation plan (March 3, 1982, 47 FR 9019). This proposal superceded all actions proposed in the March 27, 1980 notice for TSP except for Knauf Fiberglass. At the request of the State, on April 16, 1982, the public comment period was extended until May 7, 1982 (47 FR 16361).

In addition, on July 3, 1980 (45 FR 45314), EPA proposed rulemaking for the portion of the Indiana Part D SIP pertaining to particulate emissions from iron and steel process sources. The action was reproposed for coke batteries in the State of Indiana by EPA on June 1, 1982 (47 FR 23773) and is still relevant. Accordingly, the adequacy of the Indiana Part D TSP SIP as it applies to coke batteries will not be addressed in this notice.

In this notice EPA is specifying those portions of the revisions to the Indiana SIP which it is approving, conditionally approving, or deferring action.

EPA is approving a portion of the SIP on the condition that the State corrects the deficiencies by a specified date. A date originally committed to by the State was proposed in the March 3, 1982 notice and was modified in response to the State's public comment. EPA will follow the procedures described below when determining if the requirements of conditional approval have been met:

1. When the State submits the required additional regulations, EPA will publish a notice in the **Federal Register** announcing receipt and availability of the material for public comment. The notice will also announce that the conditional approval is continuing pending EPA's final action on the submission.

2. EPA will evaluate the State's submission and public comment on the submission to determine if noted deficiencies have been fully corrected. After review is complete, a **Federal Register** notice will either fully approve the plan if all conditions have been met, or withdraw the conditional approval and disapprove the plan. If the plan is disapproved, the Section 110(a)(2)(I) restrictions on construction will be in effect.

3. If the State fails to submit the required materials according to the negotiated schedule, EPA will publish a **Federal Register** notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved, and Section 110(a)(2)(I) restrictions on growth are in effect.

The table below summarizes the regulations considered in today's rulemaking on the Indiana Part D TSP SIP [1] and other general provisions and EPA's action on them:

[1] Indiana's revised opacity regulation, 325 IAC Article 5, the comments received in response to EPA's proposed disapproval of this regulation, the Howard County TSP redesignation request, and the SIP Strategy for Lake County will be addressed in subsequent notices.

Regulation	Date of submittal	Action
325 IAC 1.1-3 Vigo County Redesignation	May 26, 1981	Approval.
325 IAC 6-1 Particulate Emission Limitations for Nonattainment Areas	June 26, 1979	Approval.
Section 4 Compliance Time Schedules	October 6, 1980	Approval.
Section 2(e) Foundry Melt Processes	October 6, 1980	Approval.
325 IAC 6-1-8 Dearborn County Amendments	October 6, 1980	Approval.
	August 10, 1981	
325 IAC 6-1-9 Dubois County	October 6, 1980	Approval.
325 IAC 6-1-12 Marion County Amendments	February 11, 1980	Approval.
	October 28, 1981	

Regulation	Date of submittal	Action
325 IAC 6-1-13 Vigo County Amendments	January 29, 1981 October 28, 1981 and May 7, 1982	Approval, except defer action on coke battery emission limitations.
325 IAC 6-1-14 Wayne County Amendments	October 6, 1980 January 29, 1981	Approval.
325 IAC 6-1-15 Howard County	January 29, 1981	Approval of emission limitations, defer action on overall plan.
325 IAC 6-1-16 Vanderburgh County Amendments	January 29, 1981 October 28, 1981	Approval.
325 IAC 6-1-17 Clark County	July 8, 1981	Approval.
325 IAC 6-1-18 St. Joseph County	July 8, 1981	Approval.
325 IAC 6-3 Particulate Emission Limitations for Process Operations	October 6, 1980	Approval.
Codification of Air Pollution Control Board Regulations	October 6, 1980	Approval.
Schedule for development of Industrial Fugitive Dust Regulations (325 IAC 6-5).	November 25, 1981 and May 7, 1982	Conditional Approval (Regulation is necessary for approvable Part D TSP SIP in Clark, Dearborn, Dubois, Howard, Marion, St. Joseph, Vanderburgh, and Vigo Counties).
Schedule for Nontraditional Dust Studies	January 29, 1981	Approval.

The following sections of the notice discuss the Indiana Part D TSP SIP and EPA's responses to the applicable comments received in response to its March 3, 1982 notice of proposed rulemaking.

Control Strategy Evaluation of the Indiana Part D SIP for TSP

The Indiana Part D SIP for TSP contains monitored air quality data trend analyses, point and area source emission inventories, meteoroloical data summaries, summaries of annual and short-term dispersion modeling studies, air pollution control regulations, economic and energy impact analyses, and reasonable further progress schedules. Indiana used dispersion modeling to develop a TSP control strategy to demonstrate attainment in all nonattainment counties. On January 29, 1981, the State submitted an "Indiana State Implementation Plan TSP Control Strategy Summary" which identified the State rule promulgation date, technical support document title and date, date of formal submittal to EPA, future amendments, and the basis of the TSP Part D SIP strategy for each nonattainment county. The January 29, 1981 strategy summary stated that the strategies for Lake,[2] Marion, and Vigo Counties demonstrated primary attainment and that the strategies for Clark, Dearborn, Dubois, Howard, St. Joseph, Vanderburgh, and Wayne [3] Counties applied RACT but do not show attainment.

Section 172(b)(2) of the CAA requires the implementation of reasonably available control measures as expeditiously as practicable. EPA has defined RACT as the lowest emission limit that is reasonably available considering technical and economic feasibility. It may require technology that has been applied to similar, but not necessarily identical source categories. In the nonattainment area control strategies, RACT may mean more restrictive limitations than that required by the existing SIP regulations (i.e. the existing SIP is not stringent enough to attain the standards) and generally no less restrictive than status quo (no removal of existing particulate control equipment). It is not intended that extensive research and development be conducted before a given control technology can be applied to a source, but it does mean that in the case where an emission limitation for a source is less stringent than a state-set generic RACT level, it should be documented on a case-by-case basis.

Indiana has defined general RACT standards for power plants and industrial boilers, foundries, grain elevators and terminals, asphalt plants, incinerators and painting operations. These general RACT levels, along with other information such as the existing degree of control, were used to set source specific limitations for certain sources in the Indiana nonattainment counties. These are codified at 325 IAC 6-1-8 through 6-1-18. In addition, the Indiana RACT strategy includes visible emission regulations [4] and a commitment by the State to develop industrial fugitive dust regulations.

The Indiana Part D SIP gives a number of sources, in counties where the strategy relies on RACT plus nontraditional particulate matter studies, emission limitations that are less stringent than RACT as defined by Indiana for that type of source. Given that these sources have annual emissions of less than 100 tons per year and/or are located in secondary nonattainment areas, EPA is approving these emission limitations as RACT for these sources.

As a final part of the TSP strategy, the State submitted a schedule to complete and implement nontraditional particulate mater studies.

EPA has reviewed the TSP control strategies and regulations submited by Indiana and the comments received in response to EPA's notice of proposed rulemaking. A summary of EPA's findings is set forth below. A more detailed discussion of EPA's evaluation can be found both in the Indiana TSP SIP Technical Support Documents on file at the addresses above and in the March 3, 1982 notice of proposed rulemaking.

Nontraditional Particulate Matter Studies

Part D SIP control strategies that do not demonstrate attainment, despite the application of RACT for the emission sources, must contain a commitment to study the nature and extent of nontraditional particulate sources. On January 29, 1981 the State formally committed itself to perform a nontraditional particulate matter study and to develop a strategy and regulations to control nontraditional sources for Marion, Dubois, Clark, Wayne, Dearborn, St. Joseph, Howard, and Vanderburgh Counties. The study will include the analysis of hi-vol filters, the identification of the sources which have contributed to the filter loading, a review of fugitive dust control demonstration projects, and the development of control strategies. EPA reviewed the schedule of activities submitted by the State and found it to be approvable. However, the Indiana Part D TSP SIP remained deficient in this area because there was no commitment from State to conduct nontraditional particulate matter studies in Vigo County. Accordingly, EPA proposed to approve the nontraditional fugitive dust studies portion of the Indiana Part D TSP SIP with the understanding that the State would commit to conduct nontraditional particulate matter studies in Vigo County. On May 7, 1982, the State responded to EPA's March 3, 1982 notice

[2] As stated previously, the Lake County TSP strategy will not be addressed in this notice.

[3] As stated previously, EPA has recently changed Wayne County's attainment status to unclassifiable.

[4] EPA is deferring action at this time on Indiana's revised opacity regulation, 325 IAC 5-1. EPA accepts the currently approved SIP opacity regulation, APC 3; as RACT for Indiana and will continue to enforce it until EPA approves a revised opacity regulation for Indiana.

of proposed rulemaking by committing to perform such a study in Vigo County and rescinded its commitment for Wayne County. The State's commitments are discussed later in this notice in EPA's analyses of the individual counties' strategies.

Visible Emission Limitations

Visible emission regulations are an integral portion of RACT for TSP sources and are a required component of a SIP for TSP pursuant to 40 CFR 51.19(c). The visible emission limitations submitted by the State on October 6, 1980, 325 IAC 5–1, apply to all particulate sources throughout the State. EPA reviewed the regulation and found that it could not be approved for several reasons, including its relaxation of the existing 40% opacity SIP limit for intermittent sources in nonattainment areas. Therefore, EPA proposed to disapprove it in its March 3, 1982 notice.

The State in its response to the notice of proposed rulemaking offered clarifications on several of the approvability issues and agreed to work out a rule that will be acceptable to EPA, as long as the rule contains reasonable limitations. EPA accepts the State's commitment as evidence of good faith and, therefore, is deferring action on 325 IAC 5–1 at this time. EPA anticipates working closely with the State in the development of a revised, approvable regulation. If a regulation is developed which satisfies the approvability issues listed in the March 3, 1982 notice of proposed rulemaking, EPA anticipates that the State will withdraw its present regulation and EPA will propose the new regulation for action. If the State does not develop a revised regulation, EPA will go forward with its proposed disapproval action on the State's existing regulation, 325 IAC 5–1.

In the interim, SIP regulation APC 3, as federally approved on October 28, 1975 (40 FR 50033), will remain effective and enforceable statewide in attainment, nonattainment, and unclassified areas. EPA believes that the federally approved regulation APC 3 represents RACT for all sources, including iron and steel sources.

Schedule for Development of Rule 325 IAC 6–5, Industrial Fugitive Dust Rule

An integral portion of RACT for TSP sources in nonattainment areas is industrial fugitive dust regulations. These regulations are necessary in all nonattainment areas where the Part D TSP control strategy is based on RACT and further studies of nontraditional sources and, in fact, are generally necessary to demonstrate attainment where the Part D TSP strategy is based on a modeled attainment demonstration.

On January 29, 1981, the State formally submitted a schedule for the development, adoption, promulgation, and submittal of its regulation to implement RACT on industrial fugitive emission sources (325 IAC 6–5) by November 15, 1981. On November 25, 1981 the State revised its projected submittal date to April 1982. In the State's May 7, 1982 response to EPA's notice of proposed rulemaking, it now commits itself to submit these regulations, adopted and promulgated, by July 31, 1982. EPA has reviewed this revised schedule, finds the State is on schedule for meeting the revised submittal date (Indiana's Environmental Management Board adopted the regulations on May 21, 1982), and is approving the revised schedule. EPA will propose rulemaking on these regulations upon their submittal by the State.

At this time the Indiana TSP SIP is still deficient, however, in that there are presently no approvable industrial fugitive dust RACT regulations in effect in any of the nonattainment TSP counties covered by this notice. EPA is approving the Indiana Part D SIP for TSP in Clark, Dearborn, Dubois, Marion (partial), St. Joseph, Vanderburgh, and Vigo Counties on the condition that Indiana submits its approvable industrial fugitive dust regulations by July 31, 1982. Sources in primary nonattainment areas must implement these regulations by December 31, 1982.

It should be noted that the present regulations do not contain any short-term emission limits for some mineral aggregate operations and grain terminal operations that are specifically listed in 325 IAC 6–1–8, Dearborn County; 325 IAC 6–1–9, Dubois County; and 325 IAC 6–1–15, Howard County. EPA proposed to approve the Indiana TSP regulations for the counties where these sources are located with the understanding that the State would include, in its industrial fugitive dust regulations, requirements for the major sources which presently do not have short term emission limits. The State commented in its May 7, 1982 letter that major sources in nonattainment areas, including these non-stack sources, will be subject to its new industrial fugitive dust rule, 325 IAC 6–5, which is to be submitted to EPA by July 31, 1982. Non-major sources will continue to be subject to the requirements of Indiana's existing fugitive dust rule, 325 IAC 6–4. Therefore, EPA is approving the TSP regulations with the understanding that major non-stack sources in these nonattainment areas will be covered by Indiana's new industrial fugitive regulation. All fugitive sources, of course, continue to be subject to the SIP opacity regulation.

325 IAC 6–1, Particulate Emissions for Nonattainment Areas

The TSP regulations in 325 IAC 6–1 submitted by the State on June 26, 1979, as amended on October 6, 1980, apply to particulate sources in nonattainment areas. The regulation contains general emission limitations (Section 2), test methods (Section 3), compliance timetables (Section 4) and other general provisions (Sections 5 and 6). The general emission limitations in Section 2 are applicable to all sources that are not specifically listed in the appendix to the rule [5] and that have either the potential before controls to emit 100 tons or more of TSP per year or have actual emissions of 10 tons or more of TSP per year. Specific RACT based emission limitations are given for fuel combustion steam generators, asphalt concrete plants, grain elevators, foundries, glass container manufacturing, mineral aggregate operations and general sources.

EPA evaluated the provisions of 325 IAC 6–1, Sections 1 through 6, and found them to be generally approvable. Accordingly, EPA proposed to approve 325 IAC 6–1 Sections 1 through 6, with three exceptions. Below are the exceptions, the State's response to them, and EPA's final action on them.

1. Section 2 (d)(1)(A) which regulates grain elevators is expressed in terms of "0.03 grams per dry standard cubic foot." "0.03 grams" should be expressed in terms of "0.03 grains." In the State's May 7, 1982 response to EPA's notice of proposed rulemaking, it committed itself to correct the error. EPA approves Section 2(d)(1)(A) with the understanding that the State will correct the typographical error.

2. Section 2(d)(2)(C) regulates the percent opacity from affected grain elevators as determined pursuant to 325 IAC 5–1. Because EPA is deferring action on 325 IAC 5–1, EPA will approve Section 2(d)(2)(c) with the understanding that it will rely on the federally approved regulation APC 3 to determine percent opacity from affected grain elevators. The State concurred with this approach to federal enforcement of Section 2(d)(2)(C) in its May 7, 1982 letter.

3. Section 3 specifies that the test methods to determine compliance with

[5] The appendix to 325 IAC 6–1 (325 IAC 6–1–8 thru 325 IAC 6–1–18) contains source specific regulations for most sources in each nonattainment county. These regulations are discussed later in this notice.

the regulation shall be conducted in accordance with the procedures set forth in Methods 1–5, Appendix A of 40 CFR Part 60, or other procedures approved by the Indiana Air Pollution Control (IAPCB). This section does not contain provisions to determine compliance with short term emission limits for process fugitive sources which do not vent through a stack, i.e., grain elevators and mineral aggregate operations. Section 3 also does not require other test procedures approved by the IAPCB to be submitted to EPA as a SIP revision. EPA proposed to approve Section 3 with the understanding that 1) alternative test methods approved by the IAPCB will be submitted to EPA as SIP revisions and 2) during the public comment period the State would clarify the intent of this section for non-stack sources and indicate the method that will be used to determine compliance for non-stack sources.

The State in its May 7, 1982 letter stated it is willing to submit alternate test methods to EPA on a case-by-case basis as SIP revisions. It also stated that it does not intend to enforce the numerical emission limits for nonstack sources contained in its plan, because the limits were only included in the strategies to facilitate modeling. It does intend, however, to enforce compliance by requiring good housekeeping practices at grain elevators as specified in 325 IAC 6–1, by requiring compliance with the fugitive dust provisions in 325 IAC 6–4, and, after adoption by the State, require compliance with the industrial fugitive dust provisions in 325 IAC 6–5.

EPA finds the State's response acceptable and is approving Section 3. EPA notes, however, that while the State may use its discretion as to the emission limits it enforces, all emission limits approved by EPA as a part of the SIP may be enforced against applicable sources. Also, in addition to the methods mentioned by Indiana, opacity is an essential method for determining compliance for nonstack sources and will be utilized by EPA in determining compliance.

325 IAC 6–1–17 Clark County (Primary Nonattainment), 325 IAC 6–1–18 St. Joseph County (Secondary Nonattainment), 325 IAC 6–1–16 Vanderburgh County (Secondary Nonattainment)

On the dates referenced in the summary table at the beginning of this notice, the State submitted the control strategies and regulations for the nonattainment portions of Clark, St. Joseph, and Vanderburgh Counties. In the January 29, 1981 strategy summary, Indiana stated that its Part D SIP TSP strategies for these counties do not show attainment, but do apply RACT and the commitment to perform the necessary nontraditional particulate matter studies. EPA reviewed the technical support and regulations and agreed that the emission limitations for the Clark, St. Joseph, and Vanderburgh County sources represent RACT. Accordingly, EPA proposed to approve the source specific emission regulations 325 IAC 6–1–17, 325 IAC 6–1–18, and 325 IAC 6–1–16 for Clark, St. Joseph, and Vanderburgh Counties. EPA also proposed approval of the Part D TSP SIP strategy for these three counties conditioned on the submittal of approvable industrial fugitive dust regulations by April 1982.

The State responded in its May 7, 1982 letter that it now anticipates submittal of its industrial fugitive dust regulations by July 31, 1982, its nontraditional fugitive dust study for Clark and Vanderburgh Counties by November 15, 1982, and its nontraditional fugitive dust study for St. Joseph County by March 1986[6]. The State has committed itself to attain the secondary NAAQS in areas such as St. Joseph County before December 31, 1989. Therefore, EPA finds the State's commitments acceptable because it should provide for attainment of the standards by December 31, 1989. Based on the present regulations in place and the State's commitment to conduct nontraditional fugitive emission studies, EPA approves the strategies for Clark, Vanderburgh, and St. Joseph Counties, including 325 IAC 6–1–17, 6–1–18, and 6–1–16, on the condition that the State submit its industrial source fugitive dust regulation to EPA by July 31, 1982.

325 IAC 6–1–8 Dearborn County (Primary Nonattainment) and 325 IAC 6–1–9 Dubois County (Primary Nonattainment)

On the dates referenced in the table at the beginning of this notice, the State submitted the control strategies and regulations for the nonattainment portions of Dearborn and Dubois Counties. In the January 29, 1981 strategy summary, Indiana stated that its Part D SIP strategies for these Counties do not show attainment, but do apply RACT and the commitment to perform the necessary nontraditional particulate matter studies. EPA reviewed the technical support and regulations and proposed that the emission limitations for the Dearborn and Dubois County sources represent RACT with the exception of those sources with no short term emission limitations.[7] EPA proposed to approve the remainder of 325 IAC 6–1–8 and 325 IAC 6–1–9 for Dearborn and Dubois.

In its May 7, 1982 letter, the State committed itself to submit its industrial fugitive dust regulations by July 31, 1982 and its nontraditional fugitive dust studies for Dearborn and Dubois Counties to EPA by November 15, 1982. Indiana stated that the industrial fugitive dust regulations would cover these major sources without short term emission limits. Indiana's commitment is approvable. Based on the present regulations in place and the State's commitment to conduct nontraditional fugitive emission studies, EPA is conditionally approving the Dearborn and Dubois County strategies, including 325 IAC 6–1–8 and 325 IAC 6–1–9. Approval of the Part D SIP strategy for these two counties is conditioned on the submittal of approvable industrial fugitive dust regulations by July 31, 1982. These industrial fugitive dust regulations must cover all major sources without short term emission limits.

325 IAC 6–1–15 Howard County (Secondary Nonattainment)

On January 29, 1981 the State submitted the control strategies and regulations for the nonattainment portions of Howard County. In the strategy summary, Indiana stated that its Part D SIP strategy for this County does not show attainment, but does apply RACT and the commitment to perform the necessary nontraditional particulate matter studies. EPA reviewed the technical support and regulations and proposed that the emission limitations for the Howard County sources represent RACT with the exception of those sources with no short term emission limitations.[6] EPA proposed to approve the remainder of the plan, including 325 IAC 6–1–15, for Howard County.

Indiana's May 7, 1982 letter notified EPA that the State anticipated requesting redesignation of Howard County to attainment based on 8 quarters of ambient data. It, therefore, rescinded its commitment to perform a nontraditional fugitive dust study in Howard County. It requested that EPA redesignate Howard County to attainment on May 21, 1982. This request is currently under EPA review.

[6] St. Joseph County Health Department has committed itself to submit its nontraditional fugitive dust study to the State by December 31, 1985.

[7] EPA's proposed rulemaking action for these types of sources is discussed under industrial fugitive dust regulations.

As discussed previously, EPA may only approve a RACT further studies Part D SIP strategy if the State commits itself to perform a nontraditional fugitive dust study in the area in question. If an area is redesignated as attainment no such study is necessary. EPA, therefore, today is approving the Howard County emission regulations in 325 IAC 6–1–15, but is deferring action at this time on the Part D Howard County plan as a whole. If EPA ultimately does approve the redesignation request, no Part D plan is needed. If the redesignation can not be approved, then the State must renew its commitment to submit a nontraditional fugitive dust study and approvable industrial fugitive dust regulations for Howard County. The industrial fugitive dust regulation must cover the major sources that have no short term emission limits. The TSP growth restrictions of Section 110(a)(2)(I) are not in effect in Howard County, because the area is designated nonattainment for only the secondary NAAQS.

325 IAC 6–1–12 Marion County (Primary Nonattainment)

On February 11, 1980 and October 28, 1981 the State submitted the control strategy and regulations for the nonattainment portions of Marion County. In January 29, 1981 strategy summary Indiana stated that its Part D SIP strategy for Marion County demonstrated attainment of the primary TSP standards.

Indiana performed a dispersion modeling analysis which projects that a significant reduction in ambient TSP concentrations will occur by the application of at least RACT to major point sources. The remaining TSP reductions are projected to come from the control of area source emissions through a proposed residential open burning ban. EPA reviewed the Marion County TSP analysis and found a number of technical deficiencies within the modeling methodology. These are listed in the March 3, 1982 notice of proposed rulemaking.

However, because the Marion County strategy met the requirements of a RACT plus further studies conditionally approvable Part D SIP, EPA proposed to approve the Marion County plan, including 325 IAC 6–1–12, (except for those portions of the regulations which apply to RACT for the iron and steel process sources, i.e., coke batteries) as a RACT plus further studies plan. EPA's proposed action on the Part D SIP strategy for Marion County was conditioned on the submittal of approvable industrial fugitive dust regulations. EPA also gave the State the option of submitting an approvable modeled attainment demonstration.

In the State's May 7, 1982 response to EPA's notice of proposed rulemaking, the State informed EPA that it believed that further justification of the modeling would serve no useful purpose at this time and recommended that EPA take final action on Marion County, as proposed. Further, on April 16, 1982 it submitted Marion County specific open burning regulations. EPA will rulemake on the Marion County open burning regulations in a future **Federal Register** notice.

The State committed itself to submit a nontraditional fugitive dust study to EPA by November 15, 1982 and to submit an industrial fugitive dust regulation to EPA by July 31, 1982. With the exception of EPA's determination of whether the emission limits on Marion County's coke batteries constitute RACT, EPA finds that the Marion County Part D plan is conditionally approvable. EPA is conditionally approving the Marion County plan, including 325 IAC 6–1–12, except for its coke battery regulations. The condition is based on the State's submittal of its industrial fugitive dust regulations to EPA by July 31, 1982. If EPA ultimately finds that the coke battery emission limits constitute RACT, EPA will conditionally approve the complete Marion County Part D plan in a future **Federal Register** notice. The conditional approval of the complete Part D plan will lift the growth restrictions of Section 110 (a)(2)(I). Finally, EPA approved certain source specific emission limitations for Indiana Farm Bureau Cooperative on February 3, 1982 (47 FR 4991), and today's rulemaking does not affect these limitations.

325 IAC 6–1–13 Vigo County (Primary Nonattainment)

On January 29, 1981 and October 28, 1981, the State submitted the control strategy and regulations for the nonattainment portions of Vigo County. In its submission, Indiana stated that its Part D SIP strategy for Vigo County demonstrated attainment of the primary particulate standard. On May 26, 1981, Indiana requested that portions of Vigo County be redesignated attainment for TSP. This redesignation request is addressed later in this notice.

Indiana submitted a dispersion modeling analysis for Vigo County which was prepared by the Wabash Valley Environmental Association (WVEA) in corporation with the Indiana Air Pollution Control Division and the Vigo County Air Pollution Control Division. EPA reviewed the Vigo County TSP analysis and found a number of technical deficiencies within the modeling methodology which were listed in the March 3, 1982 notice of proposed rulemaking.

EPA reviewed the Vigo County technical support and regulations and concurred that the emission limitations for sources in Vigo County other than coke batteries represent RACT. Therefore, EPA proposed in its March 3, 1982 notice of proposed rulemaking conditional approval of the Vigo County plan (325 IAC 6–1–13), with the exception of those regulations which deal with RACT emission limits for iron and steel sources, i.e. coke batteries. This conditional approval would be based on RACT plus nontraditional particulate matter studies rather than a rigorous attainment demonstration. Additionally, the State in the public comment period would have to commit itself to apply the industrial fugitive dust regulations and to perform a nontraditional fugitive dust study in Vigo County. EPA noted that, alternatively, the State could resubmit the Vigo County modeled attainment demonstration with the necessary corrections and corresponding regulations.

In the Indiana May 7, 1982 response to EPA's notice of proposed rulemaking, the State commented that it does not believe further justification of the modeling would serve any useful purpose at this time and recommended EPA approve the Vigo County plan based on RACT and further studies. The State also committed itself to submit a nontraditional fugitive dust study for Vigo County by November 15, 1982 and to include Vigo County in its industrial fugitive dust regulation, 325 IAC 6–5.

EPA elsewhere in this **Federal Register** notice is redesignating a portion of Vigo County attainment for TSP where before it was designated primary nonattainment. There are no coke batteries in the area in Vigo County which is still designated nonattainment, and therefore, EPA's future action on these regulations will not affect the Vigo County Part D plan. EPA is conditionally approving the Vigo County plan, including 325 IAC 6–1–13, with the exception of the coke battery regulations and is conditionally approving the total Part D plan. EPA is approving them on the condition that the State submit its industrial fugitive dust regulations to EPA by July 31, 1982 and on the understanding that the State will submit to EPA the nontraditional fugitive study for Vigo County by November 15, 1982. EPA's conditional approval of the Part D plan today

removes the Section 110(a)(2)(I) TSP growth restrictions from Vigo County.

325 IAC 6–1–14 Wayne County

On October 6, 1980 the State submitted the control strategy and regulations for the nonattainment portions of Wayne County. Amendments to the regulations and technical support document were submitted on January 29, 1981. On January 29, 1981, Indiana stated that its Part D SIP strategy for Wayne County does not show attainment, but does apply RACT and the commitment to perform the necessary nontraditional particulate matter studies. On November 20, 1980, Indiana requested that Wayne County be redesignated attainment for TSP based on the rural fugitive dust policy. EPA redesignated the nonattainment portions of Wayne County to unclassified on November 2, 1981 (46 FR 54340) based on uncertainties in the monitored data.

EPA reviewed the Wayne County technical support and regulations and agrees that the emission limitations for the Wayne County sources represent RACT.

Accordingly, EPA proposed to approve the control strategy and regulations for Wayne County. Because EPA had redesignated Wayne County from nonattainment to unclassified, the submittal of approvable industrial fugitive dust regulations for Wayne County was not a condition of EPA's approval in this notice.

The State responded in its May 7, 1982 letter that because the County no longer contains a nonattainment area, the State no longer commits to perform a nontraditional fugitive dust study in Wayne County. EPA agrees that a nontraditional fugitive dust study for Wayne County is not required at this time and approves the Wayne County particulate strategy, including 325 IAC 6–1–14.

General Provisions

The State has submitted a number of other provisions to be included in the SIP that are not specifically required by Part D of the CAA. These provisions are addressed below.

Codification of the Indiana Air Pollution Control Board Regulations

On October 6, 1980 the State submitted a recodification of the IAPCB Rules and Regulations to replace Indiana's June 26, 1979 SIP submittal Appendix 8.1, which set forth the previous IAPCB regulations. The codification places the regulations into an organized framework that is consistent with the Indiana Administrative Code. This action codifies the Air Pollution Control Regulations APC 1 through APC 23 into 325 IAC 1.1–12 as set forth below:

New codification	Name	Former No.
325 IAC 1.1–1	Definitions	APC 1.
325 IAC 1.1–2	Ambient air quality standards.	APC 14.
325 IAC 1.1–3	Nonattainment/ attainment/ unclassfiable designations.	APC 22.
325 IAC 1.1–4	Episode levels and actions.	APC 12.
325 IAC 1.1–5	Malfunctions	APC 11.
325 IAC 1.1–6	Stack height provisions.	Part of APC 13, APC 23.
325 IAC 1.1–7	Miscellaneous provisions.	Part APC 13, APC 15, APC 23.
325 IAC 2–1	Permit, PSD, emission offset.	APC 19.
325 IAC 3–1	Continuous montoring of emissions.	APC 8.
325 IAC 4–1	Open burning limitations.	APC 2.
325 IAC 4–2	Incinerator limitations.	APC 7.
325 IAC 5–1	Visible emission limitations.	APC 3.
325 IAC 6–1	Particulate emissions for nonattainment areas.	APC 23.
325 IAC 6–1–8 [1]	Dearborn County	APC 23, appendix A.
325 IAC 6–1–9 [1]	Dubois County	Do.
325 IAC 6–1–10 [1]	Lake County TSP point source strategy.	Do.
325 IAC 6–1–11 [1]	Lake County fugitive emission strategy.	Do.
325 IAC 6–1–12 [1]	Marion County	Do.
325 IAC 6–1–13 [1]	Vigo County	Do.
325 IAC 6–1–14 [1]	Wayne County	Do.
325 IAC 6–1–15 [1]	Howard County	Do.
325 IAC 6–1–16 [1]	Vanderburgh County.	Do.
325 IAC 6–1–17 [2]	Clark County	Do.
325 IAC 6–1–18 [2]	St. Joseph County	Do.
325 IAC 6–2	Particulate emission limitations for indirect heating sources.	APC 4R.
325 IAC 6–3	Particulate emission limitations for process operations.	APC 5.
325 IAC 6–4	Maximum allowable fugitive dust.	APC 20.
325 IAC 7–1	Sulfur dioxide emission limitations.	APC 13.
325 IAC 7–1–8	SO_2 emission limitations for LaPorte, Lake, Marion, and Vigo County.	APC 13, Appendix A.
325 IAC 8–1	Volatile organic compound emission limitations.	APC 15.
325 IAC 9–1	Carbon monoxide emission limitations.	APC 16.
325 IAC 10–1	Nitrogen oxide emission limitations.	APC 17.
325 IAC 11–1	Particulate emission limitations for certain fountries.	APC 6.
325 IAC 11–2	Sulfuric acid plants	APC 10.
325 IAC 11–3	Coke oven batteries.	APC 9.
325 IAC 11–4	Fiber glass insulation manufacturing.	Part of APC 23.
325 IAC 12–1–18	New source performance standards.	Part of APC 23, APC 13, APC 3.

[1] October 6, 1980 Codification Numbers changed by letter dated January 29, 1981.

[2] Codification numbers assigned by letter dated March 18, 1981.

EPA proposed to approve the recodification of the IAPCB Regulations from APC 1 through APC 23 to 325 IAC 1.1 through 325 IAC 12.18. It should be noted that this proposed approval was directed specifically to the codification numbering system change, not to the substance within each of the codified rules. No comments were received and EPA is approving the codification change.

325 IAC 6–3 Particulate Emission Limitations for Process Operations (APC 5)

The October 6, 1980 submittal which recodified APC 5 to 325 IAC 6–3 also included a change to the process operation emission limitations. Section 2 of the rule has specific emission limitations for cement kilns and catalytic cracking units which commenced operation prior to December 6, 1968. Section 2(c) is a process weight table which has general applicability for all process sources. Although EPA presumed that the applicable rule for catalytic cracking units or cement kilns which commenced operation after December 6, 1968 is the process weight table in Section 2(c), it is not specifically stated in the regulation. EPA proposed to approve this revision to 325 IAC 6–3 provided that the State during the public comment period confirm that catalytic cracking units or cement kilns which commenced operation after December 6, 1968 are subject to the process weight table in Section 2(c). The State so confirmed in its May 7, 1982 letter, and EPA is approving 325 IAC 6–3.

325 IAC 1.1–3 Redesignation of Vigo County for TSP

On May 26, 1981, the State submitted Rule 325 IAC 1.1–3, Vigo County TSP Nonattainment Area Designation, with technical support documentation and requested that EPA redefine the primary TSP nonattainment designation boundaries in Vigo County. The State requested that Honey Creek, Fayette, Lost Creek, Otter Creek, and Sugar Creek Townships be redesignated from primary nonattainment to attainment, leaving only Harrison Township designated as primary nonattainment in Vigo County. The State submitted a modeling analysis and eight quarters of representative quality assured monitoring data showing no violations of the NAAQS for TSP in the area requested to be redesignated. Due to numerous deficiencies (See Vigo County Part D SIP discussion in the March 3, 1982 notice of proposed rulemaking), the

modeling data cannot be used to support the redesignation request.

However, the monitoring data submitted by the State indicate that Harrison Township is the only township which is nonattainment and the remaining five townships can be properly reclassified as attainment. Therefore, on March 3, 1982 EPA proposed to redesignate Honey Creek, Fayette, Lost Creek, Otter Creek, and Sugar Creek Townships as attainment of the primary and secondary NAAQS for TSP. Harrison Township would remain designated as primary nonattainment of the NAAQS for TSP.

During the public comment period, Indiana requested EPA on March 12, 1982 to further redefine the boundaries of the nonattainment area from all of Harrison Township to the area within 0.5 kilometers of the CAAP Monitoring Station, SAROAD 15–4080–014–F01, where the nonattainment was recorded. This site is located at Universal Transverse Mercator (UTM) Coordinates Zone 16 East 464.52 North 4369.21 or between US 41 and Lafayette Avenue in the Indiana State University Parking Lot 23. The Vigo County Air Pollution Control requested the same 0.5 kilometer nonattainment boundaries. EPA concurs with the commentors that a 0.5 kilometer boundary is consistent with EPA monitoring guidelines and is appropriate in Vigo County. EPA today is redesignating Harrison, Honey Creek, Fayette, Lost Creek, Otter Creek, and Sugar Creek Townships, except for a 0.5 kilometer radius area around the CAAP Monitoring Station in Harrison Township, as attainment for TSP. The 0.5 kilometer radius circle in Harrison Township remains primary nonattainment.

Other Comments

Three commentors and the State commented on EPA's proposed disapproval of Indiana's opacity regulation, 325 IAC 5–1. As stated earlier, EPA is currently deferring action on this regulation and will respond to the comments on the opacity regulation when it takes further action on Indiana's opacity plan.

The State of Connecticut commended Indiana for establishing open burning regulations in Marion County. It commented that Connecticut has State-wide open burning regulations and suggested that Indiana adopt State-wide regulations as well.

Indiana does have a State-wide open burning regulation for some types of sources, 325 IAC 4–1. The Marion County open burning regulations expand the State-wide regulation. EPA is currently reviewing the Marion County open burning regulations and will rulemake on it in the future.

EPA's conditional approval today of the Part D TSP plans for Clark, Dearborn, Dubois, and Vigo Counties will remove the TSP growth restrictions of Section 110(a)(2)(I) from these Counties at this time. As discussed earlier in this notice, if the State does not meet its commitment to submit approvable industrial fugitive dust regulations for these Counties by July 31, 1982, the restrictions will be reinstated. Although EPA is approving most of the TSP emission limits in Marion County today, the growth restrictions remain in effect until EPA approves the complete Marion County plan, including the coke battery rule. As to the remaining primary TSP nonattainment County, Lake, EPA will propose rulemaking on it upon EPA's receipt of a complete plan. The Section 110(a)(2)(I) restrictions do not apply to secondary nonattainment counties, i.e., Howard, St. Joseph, and Vanderburgh. EPA's deferral of action on Indiana's opacity regulation does not affect the approvability of the plans as a whole because the SIP currently contains an opacity regulation, APC 3, as approved October 28, 1975. EPA has determined that this regulation constitutes RACT for opacity for all sources within Indiana's nonattainment areas and, therefore, meets the Part D requirement for RACT in nonattainment areas.

40 CFR Part 52 lists the applicable deadlines for each state for attaining ambient standards (attainment dates) required by Section 110(a)(2)(A) of the Act. For each nonattainment area where a revised plan provides attainment by the deadline required by Section 172(a) of the Act, the new deadlines are being substituted on the attainment date charts. These dates in Indiana are generally December 31, 1982 for attaining the primary TSP standards and December 31, 1989 for attaining the secondary TSP standard. The attainment dates under Section 110(a)(2)(A) approved by EPA earlier will be referenced in a footnote to the charts. Sources subject to SIP requirements and deadlines established under Section 110(a)(2)(A) remain obligated to comply with those requirements, as well as with Part D Section 172 plan requirements.

The measures approved today will be in addition to, and not in lieu of, existing SIP regulations. The present emission control regulations for any source will remain applicable and enforceable to prevent a source from operating without controls, or under less stringent controls, while it is moving toward compliance with the new regulations or, if it chooses, challenging the new regulations. In some instances, the present emission control regulations contained in the federally approved SIP are different from the regulations currently being enforced by the State. In these situations, the present federally-approved SIP will remain applicable and enforceable until there is compliance with the newly promulgated and federally-approved regulations. Failure of a source to meet applicable pre-existing regulations will result in appropriate enforcement action, including assessment of noncompliance penalties. Furthermore, if there is any instance of delay or lapse in the applicability of the new regulations, because of a court order or for any other reason, the pre-existing regulations will be applicable and enforceable.

The only exception to this rule is in cases where there is a conflict between the requirements of the new regulations and the requirements of the existing regulations such that it would be impossible for a source to comply with the pre-existing SIP while moving toward compliance with the new regulations. In these situations, the State may exempt a source from compliance with the preexisting regulations. Any exemption granted will be reviewed and acted on by EPA.

This final rulemaking becomes effective on the date it is published. EPA has determined that good cause exists for making these revisions immediately effective and deviating from the requirement of 5 U.S.C. Section 553(d) (the Administrative Procedures Act) that substantive rules be published thirty days before their effective date. By making this final rulemaking immediately effective, some of the restrictions on industrial growth contained in section 110(a)(2)(I) of the CAA will be lifted from the State of Indiana. These restrictions are imposed for failure to have a State Implementation Plan which meets the requirements of Part D after the final date for SIP approval specified in the Act. EPA has determined that the Indiana TSP SIP for Clark, Dearborn, Dubois, and Vigo Counties meets the requirements of Part D. Therefore, it would be contrary to the public interest to continue the restrictions on industrial growth in these areas for thirty days after the publication of this notice.

Under Executive Order 12291 (Order), EPA must judge whether a regulation is "Major" and, therefore, subject to the requirements of a Regulatory Impact Analysis. Today's action does not constitute a Major regulation because it primarily approves or conditionally

approves provisions adopted by the State and submitted to EPA. Where EPA is deferring action on certain provisions, existing approved regulations will remain in effect. This action will remove the restrictions on industrial growth contained in Section 110(a)(2)(I) of the CAA for TSP for the areas in Indiana covered by this action. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by the Order.

Pursuant to the provisions of 5 U.S.C. Section 605(b) I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities. This action approves, conditionally approves and defers rulemaking on State actions. For approval and/or conditional approval it imposes no new requirements beyond those which the State has already imposed. For deferrals, the sources will remain subject to the applicable provisions of the Indiana TSP plan. Thus, no additional requirements will be imposed on these sources.

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

List of Subjects in 40 CFR Part 52

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

List of Subjects in 40 CFR Part 81

Environmental Protection Agency, Air pollution control, National parks, Wilderness areas.

Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

(Secs. 107, 110 and 172 of the Clean Air Act, as amended)

Dated: July 7, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter I, Parts 52 and 81 are amended as follows:

1. Section 52.770 is amended by adding new paragraphs (c)(34) and (c)(35) and reserving (c)(36) as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(34) On June 26, 1979, the Governor of Indiana submitted general TSP RACT emisson limits for nonattainment areas. These regulations were amended and recodified as 325 IAC 6–1 and resubmitted on October 6, 1980. On October 6, 1980, the State submitted a revised TSP regulation for process sources, 325 IAC 6–3; a source specific Dearborn County strategy (amendments were submitted on August 10, 1981), 325 IAC 6–1–8; a source specific Dubois County strategy, 325 IAC 6–1–9; and a source specific Wayne County strategy (amendments were submitted on January 29, 1981), 325 IAC 6–1–14. On February 11, 1980, Indiana submitted a source specific Marion County strategy (amendments were submitted on October 28, 1981), 325 IAC 6–1–12. EPA is deferring rulemaking at this time on the coke battery emission limitations in the Marion County strategy. On January 29, 1981, the State submitted a source specific Vigo County strategy (ammendments were submitted on October 28, 1981 and May 7, 1982), 325 IAC 6–1–13; a source specific Howard County strategy, 325 IAC 6–1–15; and a source specific Vanderburgh County strategy (amendments were submitted on October 28, 1981), 325 IAC 6–1–16. EPA is deferring rulemaking at this time on the coke battery emission limitations in the Vigo County strategy and on whether the Howard County strategy currently contains all the elements required by the Clean Air Act. On July 8, 1981, the State submitted a source specific Clark County strategy, 325 IAC 6–1–17, and a source specific St. Joseph County strategy, 325 IAC 6–1–18. On January 29, 1981 and May 7, 1982, the State submitted additional information and commitments.

(35) On October 6, 1980, Indiana submitted its regulations as recodified. Amendments were submitted on January 29, 1981 and March 18, 1981. EPA's approval is directed specifically to the codification numbering system change, not to the substance within each of the codified rules.

(36) [Reserved]

* * * * *

2. Section 52.773 is amended by adding new paragraph (g) as follows.

§ 52.773 Approval status.

* * * * *

(g) The administrator finds that the total suspended particulate strategies for Clark, Dearborn, Dubois, St. Joseph, Vanderburgh, and Vigo Counties satisfy all the requirements of Part D, Title I of the Clean Air Act except as noted below.

* * * * *

3. Section 52.776 is amended by adding new paragraph (e) as follows:

§ 52.776 Control strategy: particulate matter.

* * * * *

(e) Part D—Conditional Approval—The complete Indiana plan for Clark, Dearborn, Dubois, Marion (except for coke batteries), St. Joseph, Vanderburgh, and Vigo Counties is approved provided that the following condition is satisfied:

(1) The Part D Plan must contain Industrial Fugitive Dust Regulations. The State must submit these by July 31, 1982.

* * * * *

4. The particulate matter column and the key in Section 52.783(a) is amended, as follows: (The remainder of the Section does not change, i.e., the AQCR, SO_2, NO_x, CO, and O_3 columns, the preamble, and the notes)

§ 52.783 Attainment dates for national standards.

* * * * *

(a) * * *

* * * * *

POLLUTANT

Air quality control region	Particulate matter	
	Primary	Secondary
East Central Indiana Intrastate (AQCR 76):		
a. Primary and Secondary	n	n
b. Remainder of AQCR	a	a
Evansville (Indiana)-Owensboro, Henderson (Kentucky) Interstate (AQCR 77):		
a. Primary and Secondary	I	o
b. Remainder of AQCR	a	a
Louisville Interstate (AQCR 78):		
a. Primary and Secondary	h	o
b. Remainder of AQCR	a	a
Metropolitan Chicago Interstate (Indiana-Illinois) (AQCR 67):		
a. Primary and Secondary	h	o
b. Remainder of AQCR	a	c
Metropolitan Cincinnati Interstate (AQCR 79):		
a. Primary and Secondary	h	o
b. Remainder of AQCR	a	a
Metropolitan Indianapolis Interstate (AQCR 80):		
a. Primary and Secondary	h	o
b. Remainder of AQCR	a	a
Northeast Indiana Intrastate (AQCR 81):		
a. Primary and Secondary	I	I
b. Remainder of AQCR	a	a
South Bend-Elkhart (Indiana) Benton Harbor (Michigan) Interstate (AQCR 82):		
a. Primary and Secondary	I	o
b. Remainder of AQCR	a	a
Southern Indiana Intrastate (AQCR 83):		
a. Primary and Secondary	h	o
b. Remainder of AQCR	a	a
Wabash Valley Intrastate (AQCR 84):		
a. Primary and Secondary	h	o
b. Remainder of AQCR	a	a

a. July 1975.
b. Five years from plan approval or promulgation.
c. Eighteen-month extension granted.
d. Air quality levels presently below the primary standards.
e. Air quality levels presently below the secondary standards.
f. Thirteen-month extension granted.
g. Transportation and/or land use control strategy to be submitted no later than April 15, 1973.
h. December 31, 1982.
i. December 31, 1985.
j. December 31, 1987.
k. May 31, 1975.
l. None designated.
m. Attainment date will be specified in the future.
n. November 2, 1981.
o. December 31, 1989.

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

5. Section 81.315 is amended by changing the Vigo County TSP designation as follows:

§ 81.315 Indiana.

* * * * *

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * **Indiana—TSP**	*	*	*	
Vigo County:				
The area within a 0.5 kilometers radius circle centered at UTM Coordinates Zone 16 East 464.52 km North 4369.21 km.	X			
The remainder of Vigo County			X	
* * *	*	*	*	*

[FR Doc. 82-19150 Filed 7-15-82; 8:45 am]

BILLING CODE 6712-01-M

COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Part 1510

National Oil and Hazardous Substances Pollution Contingency Plan

Cross Reference: For a document issued by the Environmental Protection Agency regarding the transfer of Council on Environmental Quality regulations in 40 CFR Chapter V, Part 1510, to the Environmental Protection Agency, 40 CFR Chapter I, Part 300, See FR Doc. 82-19141 in Part V of this issue. Refer to the table of contents under Environmental Protection Agency to determine the appropriate page number.

BILLING CODE 6560-01-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

Correction

In FR Doc. 82-16991, published at page 27078, on Wednesday, June 23, 1982, on page 27079, in the first column, in the sixth line from the top "T. 26 S., R. 23 E.," should be corrected to read "T. 9 S., R. 23 E.,"

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 80-520; RM-3358, RM-3795, and RM-3796]

FM Broadcast Station in Aguada, Arecibo, Cidra, Lajas, Manati, Mayaguez, Quebradillas, Utuado, and Cabo Rojo, Puerto Rico; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action denies a joint petition for rule making to change three existing FM stations in Puerto Rico (WRFE, Aguado; WREI, Quebradillas; and WBRQ, Cidra) from Class A to Class B channels; to make a new Class A assignment (Channel 249A, Lajas); and to require four existing Class B stations to change their channels (WNIK, Arecibo; WMLD, Manati; WIOA, Mayaguez; and WERR, Utuado). Instead the action grants an assignment of Class B Channel 279 to Lajas, Puerto Rico. This channel can also be applied for at Cabo Rojo pursuant to the "15 mile rule," Section 73.203(b) of the Commission's Rules, as requested by David Ortiz Radio Corp. through the filing of a counterproposal for Cabo Rojo.

DATE: Effective August 31, 1982.

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

FOR FURTHER INFORMATION CONTACT: Philip S. Cross, Broadcast Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: June 29, 1982.

Released: July 8, 1982.

By the Assistant Chief, Policy and Rules Division:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Aguada, Arecibo, Cidra, Lajas, Manati, Mayaguez, Quebradillas, Utuado and Cabo Rojo,[1] Puerto Rico) BC Docket No. 80-520, RM-3358, RM-3795, RM-3796.

1. The Commission has before it the *Notice of Proposed Rule Making*, 45 FR 58624, published September 4, 1980, in response to a joint petition for rule making which proposed to change three existing FM stations in Puerto Rico from Class A to Class B channels and to make a new Class A assignment for which one of the petitioners would apply.

2. The joint petition was filed by the following: (collectively referred to hereinafter as "petitioners"): Aurio Matos, licensee of FM Station WRFE, Aguada ("WRFE"); Arzuaga & Davilla Associates, licensee of FM Station WREI, Quebradillas ("WREI"); Radio Musical, Inc., licensee of FM Station WBRQ, Cidra ("WBRQ"); Enrique Leon, prospective applicant for a new FM channel at Lajas ("Leon").

3. Petitioners request the following assignments: Channel 281 for 288A at Aguada (WRFE); Channel 248 for 249A at Cidra (WBRQ); Channel 245 for 252A at Quebradillas (WREI); and Channel 249A (new) at Lajas.

4. To make such new assignments possible, petitioners propose that the channel of four existing Puerto Rico FM stations also be changed as follows: Channel 251 for 293 at Arecibo (Station WNIK); Channel 293 for 245 at Manati (Station WMLD); Channel 291 for 248 at Mayaguez (Station WIOA); and Channel 279 for 281 at Utuado (Station WERR).

5. Petitioners have agreed to reimburse those stations for the costs of the changes.

6. The licensees of the stations involved in the involuntary substitutions of their channels (paragraph 4, *supra*) were ordered to show cause why their licenses should not be modified as

[1] This community has been added to the caption.

proposed by petitioners in the event that petitioners prevailed herein. Each of the said licensees requested a hearing pursuant to Section 1.87 of our Rules and Section 316 of the Communications Act of 1934, as amended, before modification of its license.

7. In the *Notice of Proposed Rule Making*, we held that an adequate public interest basis for the proposals had not been fully established, particularly where such a major reshuffling of operating facilities was contemplated. We added that, rather than outright dismissal of the petition as urged by the opponents, further discussion seemed appropriate in order to afford adequate opportunity for ascertaining the public interest factors.

8. The following comments, counterproposals, and reply comments were received:

Comments: Petitioners; Radio Americas Corporation, licensee of Station WIOA, Mayaguez ("WIOA"); Guyama Broadcasting Company, Inc., licensee of Station WXRF–FM, Guyama ("WXRF"); Radio Redentor, Inc. licensee of Station WERR(FM), Utuado ("WERR"); Portorican American Broadcasting Co., Inc., licensee of Station WOQI(FM), Ponce ("WOQI"); Arecibo Radio Corporation, Inc., licensee of Station WNIK–FM, Arecibo, ("WNIK"); Arecibo Broadcasting Corporation, licensee of Station WMLD(FM), Manati ("WMLD"); and Radio Oriental, Inc.

Comments and counterproposal: David Ortiz Radio Corporation, licensee of Station WEKO(AM), Cabo Rojo ("WEKO").

Supplement to comments: Petitioners; WEKO.

Reply Comments: Petitioners; WXRF; WERR; WIOA; WNIK; WMLD; and George M. Arroyo, President of Radio Musical, Inc.

9. In support of their proposal, petitioners claim, generally, that it would remedy the inability of their stations to serve their own "municipios," dramatically improve their present service, provide a greatly expanded service over a wide area of Puerto Rico, create a new Class A station, eliminate a present short-spacing between two FM stations and better enable the stations to compete with existing Class B stations.

10. The opponents responded to the *Notice* by asserting that petitioners failed to meet their burden of setting forth sufficient public interest factors favoring the proposal; to submit any engineering or other data showing that the stations do not adequately serve their communities of license; to show that any alleged lack of coverage could not be remedied by translators or improved station facilities; and to show that there is any need for the proposed expansion of service across the island of Puerto Rico. The opposition also contends that the proposal would prohibit at least two of the present Class B stations from improving their facilities. We shall treat the issues in more detail in the following paragraphs.

Inability To Serve Community of License

11. Petitioners state that their present Class A stations cannot provide adequate service to their respective "municipios" due to poor reception in low-lying areas. Terrain profile engineering data and graphs were submitted with petitioners' comments "to demonstrate the inherent problems facing petitioners." The engineering study included a tabulation of the radials, extending a distance of ten miles from the transmitter site, and a calculated correction factor for each station (WBRQ, WRFE and WREI) to show the roughness of terrain.[2]

12. Petitioners contend that the roughness of terrain in Puerto Rico has long been a problem with respect to FM reception. They state that the "special terrain" situation was a fundamental reason for the general exception made in 1964 of permitting existing Class B stations to operate with a power up to 25 kilowatts at 2,000 feet antenna height above average terrain (HAAT) (whereas mainland U.S. Class B stations were permitted 1.6 kilowatts at 2,000 feet HAAT), *Fourth Report and Order*, FCC 64–919, 3 RR 2d 1571 (1964). Petitioners complain that no similar relief has been given for Class A stations.[3]

13. WIOA's comments (in which WMLD and WERR join) claim that petitioners had failed to provide any engineering data to back up their assertion that parts of their service areas are shadowed or otherwise receive an inadequate signal. WXRF concurs that petitioners "in some as yet undemonstrated manner" claim their three Class A stations do not provide adequate technical coverage and that none provides an adequate signal for its municipio. WXRF asserts that the claim is in direct contradiction of the showings made by each in its application [4] requesting authorization for the presently existing station; that in each case specific representations were made to the Commission that the station had line-of-site transmitter location, provided the required minimum signal strength to the community of license and in all other respects complied with the Commission's technical rules. On that basis WXRF raises questions of misrepresentation and character qualifications on the part of those petitioners.

"Municipios"

14. The claim of the petitioners that they cannot adequately serve their respective "municipios" was questioned in our *Notice of Proposed Rule Making*. The basic question is what constitutes the community of license, the "municipio" or the "pueblo" (town). We stated that, with respect to the "municipio," petitioners are "neither obligated nor entitled to serve them," if comparable to U.S. mainland counties.

15. Petitioners assert that the community of license in Puerto Rico should be the "municipio." They state that the "municipio" is not comparable to a U.S. mainland country. They claim that the "municipio" is the basic and smallest local governmental unit in Puerto Rico, similar to a town or city on the U.S. mainland. Petitioners state that a "municipio" is composed of one "pueblo" or town, which bears the same name as the "municipio" and is the seat of government of the "municipio;" that a "municipio" has not only a "pueblo" but also other groupings of "barrios" and villages. Most of the population of a "municipio" lives outside the "pueblo," with petitioners showing that 64 percent to 78 percent of the population in their respective "municipios" live outside the "pueblo," *e.g.*, in Aguada the population of the "pueblo" is 4,590 and, of the "municipio," 13,372. Petitioners contend that consideration of their "municipios" as the licensed community would be proper and reasonable.

16. WIOA, joined by WMLD and WERR, notes that the question of what is the community of license in Puerto Rico has been specifically addressed and settled previously by the Commission. WIOA cites *WSTE–TV, Inc.* (FCC 79–821, December 13, 1979), where the Commission was faced with another claim of inadequate "municipio" coverage and there determined that:

> The geographical unit 'municipio' corresponds to a county in the United States; a municipio is to be distinguished from a 'pueblo' (town) which is the seat of government of the municipio and, in most instances, bears the same name as the

[2] Petitioners' engineering study was not in compliance with prescribed Commission procedures (see paragraph 53 *infra*).

[3] In this regard, a proceeding is pending (BC Docket No. 81–421) which proposes to permit increased antenna height (to 1,100 feet) for Class A stations to remedy the "special terrain" coverage problems.

[4] WRFE, File No. BPH–9187; WREI, File No. BPH–7773; and WBRQ, File No. BPH–8827 (WXRF Exhibit A).

municipio. It is the boundaries of the pueblo, rather than the municipio * * * which are relevant to the Commission's principal city coverage requirements. (*WSTE*, paragraph 20.)

WIOA adds that while the "municipio" is the basic equivalent of a mainland county, the "municipio" is of much less significance, inasmuch as virtually all governmental functions are directly controlled from San Juan, *e.g.*, schools, police, capital expenditures and taxing functions.

Use of Optimum Facilities and Translators

17. In our *Notice of Proposed Rule Making*, we stated that "petitioners should consider whether improved operating facilities or other measures would produce their desired results." Opponents of the proposal contend that petitioners could remedy any claimed, but still not proved, coverage deficiencies by improving their presently authorized operating facilities or by using translators as provided by the FCC rules. WXRF states that petitioners have been operating their stations with less than optimum facilities. For example, WXRF notes that Station WREI operates with an antenna height above average terrain of minus 40 feet and that great improvement in coverage could be obtained by increasing the tower height to the allowed 300 feet above average terrain. WXRF also points out that Station WBRQ chose to move its antenna site farther from its city of license (Cidra) than the original site. Thus coverage of Cidra could be improved by returning to a site closer to Cidra. WXRF urges petitioners to provide service to the areas allegedly not receiving adequate signals by using one or more FM translator stations. This approach is said to be eminently more sensible than the wholesale disruption of FM service throughout Puerto Rico proposed by petitioners.

18. WIOA states that petitioners have made no showing that any of its stations is operating at maximum permissible output or that coverage could not be improved through improved facilities. WIOA asserts that even if portions of petitioners communities of license were not properly served because of terrain problems the Commission's preferred solution is for the licensee to install boosters or translators to provide a signal to the affected area in accordance with § 74.1231 of our rules. WIOA states that it would be premature on the Commission's part to order the complex and totally unwarranted changes in allocations requested without first satisfying itself that petitioners cannot solve their claimed coverage problems by this simple expedient. WIOA reasons that the use of translators would be far less costly and vastly less disruptive of existing services than the creation of three new antenna sites, plus the changing of frequencies for four other stations.

19. WNIK argues that petitioners have dismissed out of hand the less disruptive alternatives such as utilizing translators or alternative sites. WNIK declares that petitioners do not state how many translators would be required, nor could the number, if one had been provided, be verified because the specific areas where reception difficulties are said to occur have never been identified. WNIK states that, likewise with alternative sites, petitioners offer only the broad generalization that there are none from which improved coverage could be obtained; and that alternative sites were considered only with regard to improving the over-all coverage and not with regard to improving coverage in their communities of license, which petitioners claim is a problem.

20. Petitioners respond that WREI, pursuant to a long-standing agreement with Station WPRM, San Juan, cannot exceed its present 90 foot tower height because of a short spacing problem. Petitioners claim that the terrain around Cidra makes it impossible for WBRQ to improve coverage of the city merely by a change of antenna site. With respect to translators, petitioners contend that they would be utterly useless; that their permitted power of 1 watt is hardly adequate; that many translators and frequencies would be required to avoid terrain problems. Thus petitioners believe that the translator option should be rejected as impractical, costly and confusing to FM listeners. Petitioners also point out that translators are "secondary services" and could be terminated when a need for the frequencies arose elsewhere. Petitioners conclude that Class B stations are the only option available to them.

Competitive Equality

21. Petitioners have claimed that they are at a competitive disadvantage with the Class B stations on the Island. We stated in our *Notice of Proposed Rule Making* that petitioners sought or acquired their Class A stations with full knowledge that Puerto Rico's FM assignments are primarily Class B operations (the Island has 31 Class B assignments and 5 Class A assignments); and that to now raise complaints as to the unfairness of the allocation scheme is inappropriate. Petitioners responded that their competitive disadvantage is a reality of the Puerto Rico market and deserves comment. Petitioners claim that their situation is tantamount to intermixture of Class A and Class B stations in various markets. Petitioners declare that Class B stations are not distant competitors, but that some have transmitter sites which overpower the service provided by petitioners' Class A stations. Certain of the Class B stations, have transmitter sites extremely close to petitioners' sites, *e.g.*, Station WIOA's transmitter site is only 200 feet from the site of Station WRFE. Petitioners complain that all three of its stations are faced with the reality that Class B competitors place a signal over petitioners' service areas and municipios which is superior to petitioners' signals. Petitioners claim that time buyers and advertising agencies avoid Class A stations. Naturally, the petitioners lament that they do not receive any regional or island-wide advertising.

22. WXRF asserts that "the Commission has already properly rejected petitioners' *private interest* arguments regarding equalization for competition" in paragraph 6 of the *Notice of Proposed Rule Making*. WNIK declares that petitioners mischaracterize the Commission's policy concerning intermixture of Class A and B stations; that the Commission's policy is intended to prevent the assignment of Class B or C channels to communities having only Class A's, and not the reverse as indicated by petitioners.

Public Interest Considerations

23. Fundamental to this proceeding is the matter of whether there is an adequate public interest basis for petitioners' proposals, particularly where such a major reshuffling of existing facilities is involved. Petitioners urge that their proposals should be adopted in view of their "overall positive public interest attributes." Petitioners state that their "proposed new stations will provide expanded service reaching many more persons." The Engineering Statement submitted with the petition shows the following increases in service:

	Population	Area (square miles)
WFRE, Aguada:		
Present 1 mV/m	252,323	304
Proposed 1 mV/m	400,648	725
Gain	148,325	421
Percentage of gain	58.8	138
WREI, Quebradillas:		
Present 1 mV/m	62,087	122
Proposed 1 mV/m	1,531,925	2,551
Gain	1,469,838	2,429
Percentage of gain	2,367	1,991
WBRQ, Cidra:		
Present 1 mV/m	747,312	615

	Population	Area (square miles)
Proposed 1 mV/m	2,088,545	2,158
Gain	1,344,233	1,543
Percentage of gain	180	251

24. Petitioners also claim that certain areas of Puerto Rico would receive at least one additional primary service and that other areas would receive two additional primary services.

25. Petitioners state that the Commission has long enabled and expected licensees to improve service whenever possible. The Commission is said to have encouraged licensees to seek facilities that utilized frequencies efficiently to provide the public with maximum feasible service. Petitioners conclude that the proposal herein is totally consistent with that Commission policy. Citing *Clear Channel Assignments*, 47 RR 2d 1099 (1980).

A. New Class A Assignment At Lajas

26. Petitioners further contend that an additional public interest consideration is its proposal for a new Class A assignment at Lajas. The proposal would give Lajas its first local FM service. Lajas is located at the southwestern end of Puerto Rico. The town of Lajas has population of 3,391, and the municipio has a population of 16,545. Petitioner, Enrique Leon, has stated he will make application for a new station on the channel if it is so assigned.

B. Expanded Coverage by WOQI

27. Another public interest consideration as stated by petitioners is that of making possible the expanded coverage proposed by FM Station WOQI, Channel 227, Ponce, Puerto Rico, WOQI previously sought to improve its coverage by changing its transmitter location to a mountain-top site 10.5 miles from Ponce. The application (ARN 781108AE) contained a request for waiver of a short-spacing restriction to the site of WERR. The waiver was denied, and the application was returned. A petition for reconsideration has since been denied. WOQI filed comments herein supporting petitioners' proposal, since the assignment of Channel 279 to Utuada (WERR) instead of 281 would eliminate the present 15 mile restriction between WOQI's proposed site and the WERR transmitter site. WOQI made a showing in its application that operation from the new site would serve a population in excess of two million in an area of 3,023 miles.

Adverse Public Interest Considerations

28. Opponents declare that petitioners have failed to meet their burden in showing that the proposal would serve the public interest. They state, that, to the contrary, the proposal is inimical to the public interest.

29. The opponents point to the *Notice* where the Bureau decided to initiate further proceedings despite the material failing of the petitioners' prior showing in order to provide additional data in support of its proposal. They further assert that the Commission observed in its *Notice* that petitioners' "* * * complaints of inadequate signals are unclear * * *" and that [p]etitioners' private interest in increased service areas is obvious and requires no discussion here. WIOA contends that "[w]here, as here, there is a total absence of any *public* interest showing, it can only be concluded that the 'private interest' noted by the Commission is the *sole* rationale for the petitioners' 'complaints' and that, accordingly, the complaint and proposed resolution must be flatly rejected." WXRF in particular notes that the Island of Puerto Rico is small (113 miles long, 41 miles wide) with 31 Class B and 5 Class A FM stations, and more than 50 AM stations. WXRF states that it is obvious "all parts of the island already receive an abundance of aural broadcast services" and thus "it is clear why no need for additional service from petitioners' proposed Class B operations has or can be shown." WXRF concludes that the proposal must be denied as contrary to the public interest.

De Facto Reallocation Of Licenses

30. WIOA charges that the proposed modifications to Class B channels constitute a *de facto* reallocation of licenses. WIOA points out that in each case, petitioners' station would move further from its city of license onto higher ground from which their signals would reach significantly larger communities. The Commission no longer considers this issue in the context of a rule making proceeding in view of the action taken in BC Docket No. 80–130, *Second Report and Order*, 47 FR 26624, published June 21, 1982.

Effect On Planned Improvements Of Existing Class B Stations

31. WXRF and WNIK contend that the forced changes in their channels would jeopardize plans to improve their facilities. WXRF has pending before the Commission an application to change transmitter site and increase antenna height above average terrain from minus 240 feet to 1,994 feet (File No. 791231 AJ). Petitioners' proposal to change the channel of WMLD, Manati, would, WXRF states, cause the WXRF proposal to be short spaced, and, accordingly action on the proposal of WXRF has been deferred pending resolution of this rule making proceeding. WXRF states that it would be contrary to the public interest to restrict existing Class B stations from improving their facilities to the maximum permitted under FCC rules (effective radiated power of 25 kW and antenna height above average terrain of 2,000 feet) solely because of the major reshuffling of FM channels to accommodate the purely private interests of petitioners. WXRF asserts that if the petitioners' proposal is granted the Commission should take one of three alternative steps specified by WXRF. The three alternatives are: (1) Condition the use of Channel 293 by WMLD on not involving short spacing with WXRF's proposed locations; (2) waive § 72.207 to permit short spacing of approximately 4 miles; or (3) permit WXRF to exchange frequencies with Station WDOY, Fajardo.

32. WNIK also states that it proposes to improve its facilities by moving its transmitter to a site which it has obtained in the mountains south of Arecibo. The move would enable WNIK to increase its antenna height above average terrain from minus 170 feet to 596 feet. WNIK states that the area within its 1 mV/m contour would be increased from 311.2 square miles to 2,105 square miles; and the population served would be increased to 1,717,427. WNIK states that if it were forced to change channels, relocation to the newly-acquired site or virtually any other site would be foreclosed.

33. WMLD asserts that it has been considering for some time a change in transmitter site in order to improve the coverage of its service area. WMLD contends that the proposed frequency change would prevent it from accomplishing that purpose because "impermissible interference" would result.

34. Petitioners contend that there are suitable alternate transmitter site locations available for all three stations (WXRF, WNIK, and WMLD) to improve their facilities. Petitioners state that the failure of those stations to come forward with applications for improved facilities before this rule making proceeding was initiated should cause the Commission to ignore these planned changes.

35. In reply comments, WXRF and WNIK charge that the alternate sites offered by petitioners are not suitable.

Programming Confusion

36. WERR claims that petitioners' proposal would cause it "particularized harm." WERR states that it is a noncommercial station devoted exclusively to high-quality religious programming throughout western Puerto Rico. WERR's channel would be taken over by petitioners' WRFE, which also has a religious programming format but as a commercial station. WERR asserts that WFRE is proposing, in essence, to "inherit" the religious programming audience built by WERR. WERR states that it exists entirely through direct listener contributions. It contends that listeners will assume that WERR has changed its call letters and gone commercial, with the concomitant certainty that listener contributions will diminish or terminate entirely. WERR states that it has expended considerable time and money in promoting its presence at 104.1 MHz on the dial.

37. Petitioners contend that the channel change for WERR from 104.1 to 103.7 MHz would be insignificant to the average listener. Petitioner states that the audience of WERR would not be inherited by WFRE since, with the exception of the northeastern part of the island, the two stations would cover totally different areas. Petitioner further states that to avoid the problem WFRE could delay changing channels for a sufficient time to give WERR time to notify its listeners of its new dial position.

WMLD Unfavorable Dial Position

38. WMLD claims that it would suffer irreparable harm by the forced move "from its present position at the center of the FM dial (96.9 MHz) to the furthest fringe (106.5 MHz)." WMLD states that it has operated on its present channel for seven years, and that its listening public identifies the station with 96.9 MHz; that to move WMLD to the end of the dial will confuse present listeners and make it unlikely for WMLD to attract additional listners in the already very crowded FM dial. WMLD asserts that the economic harm it would suffer would not be offset by any counterbalancing benefit to the public.

39. Petitioners reply that the move is not significant and, accordingly, does not provide a substantive basis for WMLD's argument.

Counterproposals

40. David Ortiz Radio Corporation ("Ortiz"), licensee of AM Station WEKO, Cabo Rojo, Puerto Rico, filed comments and a counterproposal to assign Class B Channel 279 to Cabo Rojo rather than as a substitute at Utuado as proposed by petitioners. In petitioners' proposal, WERR, Utuado, is one of the four existing stations that would be required to change channels. WERR operates on Channel 281 and would be required to switch to Channel 279.

41. Ortiz submits that petitioners have failed to show adequate public interest justification for their proposal and that the goal of improving radio service on the Island could be best achieved by rejection of that proposal in favor of permitting the Class B stations (WXRF, WNIK, and WMLD) to maximize their facilities. Ortiz submits that its own proposal would accommodate such maximization and obviate the disruption of service inherent in petitioners' proposal.

42. Ortiz notes that petitioners' proposal would assign a new Class A channel to Lajas whereas its proposal would assign a superior Class B channel to Cabo Rojo. Each of the communities is in the southwest corner of Puerto Rico.

43. Ortiz states that its proposed assignment complies with all Commission rules and requirements. It would not require the deletion or substitution of any other channels. If the channel is assigned to Cabo Rojo, Ortiz states that it will file an application to operate thereon.

44. Ortiz relates that between 1960 and 1970 the pueblo, or town, of Cabo Rojo more than doubled in population, from 3,086 to 7,181. During the same period, Ortiz states, the municipio, "the Puerto Rican equivalent of a county," increased from 24,868 to 26,060.

45. Ortiz gives the following data concerning Cabo Rojo: Most of the labor force depends upon construction and agriculture. Manufacturing and government are the other leading categories of employers. Many of the residents make a living from fishing. A tourist industry has developed around the area's fine beaches. Cabo Rojo has one AM station, WEKO, and the only existing FM assignment for Cabo Rojo, Channel 221A, is used by Station WGIT in Hormigueros in the adjoining municipio.

46. Petitioners claim that the counterproposal for Cabo Rojo is an inefficient use of spectrum space. Petitioners state that their proposal would allow the Class A stations to improve their facilities as well as provide a first FM service to Lajas. Also, petitioners say that their proposal offers an opportunity for WOQI to increase its service area.

47. Petitioners point out that Cabo Rojo has one local aural service (WEKO(AM)) whereas Lajas has no local aural service. An application for an AM station in Lajas is presently being contested. Petitioners declare that the Ortiz engineering exhibit shows severe site restrictions which do not allow for reasonable heights to accomplish wide area coverage. The lack of height, petitioners say, would restrict coverage on land while the rest of the signal would be wasted over the ocean west of Cabo Rojo. Petitioners submit an engineering exhibit to show that Channel 272A could be assigned to Cabo Rojo, instead.

48. A separate counterproposal to assign Channel 248 to San Lorenzo, Puerto Rico, filed by Radio Oriental, Inc. ("Oriental"), was subsequently withdrawn.

Conclusion

49. The threshold issues before us are twofold: (1) The petitioners' contention that their Class A facilities cannot adequately serve their communities of license; and (2) the public interest factors supporting a grant or denial of petitioners' proposal.

50. Petitioners claim that the municipio should be considered their community of license. The Commission rejected such a claim in *WSTE-TV, Inc.* We stated that a municipio corresponds to a county in the United States and is to be distinguished from a pueblo, or town. In particular, the Commission stated, it is the boundaries of the pueblo, rather than the municipio * * * which are relevant to the Commission's principal city coverage requirements."

51. Petitioners take the position that the Commission's statement in *WSTE-TV* was not a substantive determination and was "no more than a correction of the geographical references made by WAPA-TV, which had, in that case, labeled the 'municipio' as part of the 'town/pueblo'." We must reject the contention. Our holding has consistently been that principal city coverage requirements are relevant to the pueblo and not the municipio. We further stated in *Southwestern Broadcasting Corp.*, 38 RR 2d 39, 40 and n. 1 (1976):

> It should be noted that if we were to license broadcast stations to communities in Puerto Rico on the basis of a municipio, as suggested in the petition, almost no broadcast station in Puerto Rico would provide the required principal-city service to the community of license. By U.S. Census definition, a municipio corresponds to a county on the U.S. mainland. Counties, as such, are geographically too extensive to qualify as licensed communities for broadcast stations within the meaning of Section 307(b) of the Communications Act.

Petitioners have submitted no factual data nor persuasively made arguments which would cause us to reverse our holdings.

52. Petitioners urge that they should be permitted to improve coverage of their municipios, but that is a different matter from what constitutes a community of license and whether it can be adequately served pursuant to the requirements of our rules.

53. Of primary importance, petitioners have failed to demonstrate that their Class A stations do not meet the community coverage requirements of our rules. Petitioners have failed to identify any specific areas and populations within their respective 1 mV/m contours which experience the alleged shadowing because of terrain. Petitioners rely upon data submitted in their Engineering Statement, Tables I, II and III, showing terrain roughness factors and correction factors. Those data neither show the foregoing nor do they comply with the acceptable mode of measurements, *i.e.*, the F(50, 50) and F(50, 10) curves pursuant to §§ 73.313 and 73.333 of our rules.

54. Moreover, petitioners' allegation that their Class A facilities cannot properly serve their communities of license is not consistent with representations in their respective applications for the present facilities that their stations met all the Commission's technical requirements including those of principal city coverage.

55. Since petitioners have failed to demonstrate that their Class A facilities cannot properly serve their communities of license, the matter of petitioners improving coverage of those communities by use of optimum facilities or translators is not of sufficient weight to overcome their impact on planned improvements for existing Stations WXRF, WNIK and WMLD. We have not favored such improvements of existing stations where as a result the opportunity for a new station would be foreclosed. See *Lockhart, Texas*, 81 F.C.C. 2d 171 (1980); *Falmouth, Massachusetts*, Mimeo No. 003900, released October 15, 1981. However, this policy has not been extended to a situation like the present one where one group of stations (Class B) plans improvements through site relocations while another group of stations (Class A) plans improvements through an upgrading in their class of channel and in some cases a change in transmitter location. To support such a finding, petitioners should have provided a comparative analysis demonstrating that the Class A stations' improvements are of greater public benefit than those proposed for the existing Class B stations. Petitioners have not undertaken any such study. Thus we have no basis for concluding that there is a greater need for the services to be provided under petitioners' proposal.

56. Opponents charge that petitioners' proposal would severely disrupt existing FM service in Puerto Rico solely to further their own ends. WIOA asserts that the Commission has previously rejected a proposal similar to the instant petition and cites *Broadcast Good Music! Committee, Third Report, Memorandum Opinion and Order*, 49 F.C.C. 2d 1270. There, the Commission dismissed a proposal to shuffle six operating FM stations and one FM allocation in Georgia and Mississippi in order to add a seventh FM station to Atlanta. The new station would have provided classical music to the Atlanta area. Proponents argued that Atlanta was without a classical music station, the need for which they considered self-evident.

57. The Commission did not disagree with the beneficial effect but found other considerations more important and stated at 1274:

> This would be an unprecedented reshuffling of the FM stations of the sort which the Commission avoided in establishing the FM Table of Assignments. No sound reason has been advanced why such action should be taken, and we must refrain in the absence of an overwhelming public interest consideration. Indeed, if anything, the public interest strongly militates against the changes of channel assignments of six operating stations scattered over a wide area to make a single channel assignment to a city which has a sufficient amount of FM service and an abundance of aural service generally.

WIOA adds that, while the Atlanta proposal involved more changes than the instant proposal, the difference is one of degree and not of kind; and that the Commission's standards for this type of case are the correct ones, dictating a rejection of the instant proposal.

58. Petitioners take the position that the Commission's refusal to grant the *Broadcast Good Music!* proposal was based upon circumstances not extant in this case and cannot be compared to the present situation. For example, petitioners state, no public interest showing at all was made for the proposed changes and it was merely presumed that a classical format was in the public interest. Petitioners reason that the Commission will not allocate FM channels merely on the basis of format, since format is easily changed, nor will it allocate channels without a substantial public interest showing. Petitioners state that equally as important to the final decision was the fact that Atlanta already had 6 local stations, each having clear coverage of Atlanta, its community of license. Petitioners conclude that their proposal is vastly different; that it is based upon a showing of urgent need in the public interest.

59. While there are differences in the *Atlanta* case and this case, we do find relevance in citing that proceeding to demonstrate that there is a point at which it is necessary to take a closer look at the benefits resulting from the substitutions. We believe we have reached that point here, particularly where each of the affected licensees has objected and requested a hearing. The *Atlanta* case provides a frame of reference for the approach to be taken where a major reshuffling of channels is proposed. As we have discussed before, we cannot find that the gain area is in such need of service that it would be worthwhile to undertake further steps including a hearing in order to grant the proposal.

60. Petitioners were afforded an opportunity to augment the record here as to public interest factors which would warrant a grant of their proposal. We must agree with the opponents that petitioners have submitted only a reiteration of their original showing, except for the WOQI matter. However, we have reviewed the entire showing and taken a further look at its merits. We find that petitioners have failed to support adequately their case with respect to inability to serve their communities of license or that a grant of the proposal would serve the public interest, convenience and necessity.

61. Moreover we note that the four Class B stations which were ordered to show cause regarding a change in their frequencies have all asserted their hearing rights under Section 316 of the Communications Act of 1934, as amended. We could not modify these licenses without a hearing because the usual procedure of changing the frequency at the license expiration date (see *Transcontinent Televison Corp.* v. *FCC*, 308 F 2d 339 (D.C. Cir. 1962) would delay the modification until 1989.

62. We do recognize merit, however, in providing a first FM service to Lajas and we note that Channel 279 which has been proposed for assignment to Cabo Rojo (with a 6.6 mile site restriction) could also be assigned to Lajas (with an 8.8 mile site restriction) without any other changes. Therefore we shall undertake a comparative analysis of the two communities.

63. First as for local service Cabo Rojo has a fulltime AM station while Lajas has no local aural service. An application for a first fulltime AM station is presently in hearing. We need not place weight on the pendency of an AM station at Lajas since the channel allocation is not crucial to the actual licensing of a station. The assignment of Channel 279 to either Lajas or Cabo Rojo is subject to the provisions of Section 73.203(b) of the Commission's Rules, the 15 mile rule. The two communities are within 15 miles and neither has an FM assignment. Thus it does not matter where the assignment is made for licensing purposes since all Cabo Rojo applicants can apply for a Lajas channel assignment and vice versa. In view of that fact we have not undertaken a comparative analysis of the communities nor have we asked for additional filings pertaining to this question. From an allocations standpoint, we have chosen Lajas as the community to designate for the assignment on the basis that it has no local aural service at present. The place of assignment, however, as we have stated should have no bearing on the place to be licensed should other cities within 15 miles such as Cabo Rojo, be specified.

64. The petitioners herein have complained that the Commission in 1964 amended its rules to permit Puerto Rican Class B stations to operate with increased effective radiated power and antenna height above average terrain, but have provided no similar relief for Class A stations. Petitioners' attention is invited to the fact that the Commission is nearing completion of a rule making proceeding in which it has proposed to allow Class A stations in Puerto Rico and the Virgin Islands to operate with increased facilities, *i.e.*, 3 kW effective radiated power at antenna heights of 1,100 feet above average terrain (BC Docket No. 81–421). The licensees of the three Class A stations should look to that proceeding as a means for resolving their coverage problems.

65. Authority for the action herein is contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§0.204(b) and 0.281 of the Commission's Rules.

66. In view of the foregoing, It is ordered, that the petition for rule making filed by Aurio Matos, Arzuaga and Davilla Associates, Radio Musical, Inc. and Enrique Leon, "petitioners" herein, is denied.

67. It is further ordered, that, effective August 31, 1982, § 73.202(b) of the Commission's rules, the FM Table of Assignments is amended with respect to the following community:

City	Channel No.
Lajas, Puerto Rico	279

68. It is further ordered, that this proceeding is terminated.

69. For further information concerning the above, contact Philip S. Cross, Broadcast Bureau, (202) 632–5414.

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

Federal Communications Commission.

Martin Blumenthal,

Assistant Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82–19333 Filed 7–15–82; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[BC Docket No. 82–60; RM–3979 and RM–4028]

FM Broadcast Station in Brooklyn and Grinnell, Iowa; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 257A to Brooklyn, Iowa, in response to a petition filed by Mitchell Broadcasting Company, instead of to Grinnell, Iowa, as requested by Pamela R. White. The assigned channel could provide a first FM service to Brooklyn.

DATE: Effective August 31, 1982.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order—Proceeding Terminated

Adopted: June 28, 1982.

Released: July 6, 1982.

By the Chief, Policy and Rules Division:

Division:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Brooklyn and Grinnell, Iowa), BC Docket No. 82–60 RM–3979 RM–4028.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 47 FR 6903, published February 17, 1982, proposing the assignment of Channel 257A to either Brooklyn or Grinnell, Iowa. The *Notice* was issued in response to petitions filed by Mitchell Broadcasting Company ("Mitchell") (petitioner) [1] and by Pamela R. White ("White") (petitioner), respectively. Both petitioners filed supporting comments, restating their intention to apply for Channel 257A if assigned to the Community requested. Both petitioners also filed reply comments. We also received letters in support of the Grinnell proposal from residents of the area.

2. Brooklyn (population 1,509) [2], in Poweshiek County (population 19,306), is located approximately 96 kilometers (60 miles) west of Des Moines, Iowa. It is without local broadcast service. Grinnell (population 8,868), in Poweshiek County, is located approximately 72 kilometers (45 miles) east of Des Moines. It is served by daytime-only AM Station KGRN and noncommercial FM Station KDIC (Channel 203).

3. In comments, Mitchell submits that an FM assignment to Brooklyn would bring about a more equitable distribution of radio service than an FM assignment to Grinnell. A Grinnell station would provide service to an area containing several communities which already have local service. On the other hand, a Brooklyn station would not serve any community which currently has local service, with the possible exception of Grinnell. Therefore, based on the service provided to unserved communities, its population and promise of future growth, Mitchell Broadcasting asserts that a first FM assignment to Brooklyn is warranted.

4. White Comments that while neither Grinnell nor Brooklyn have local FM service, Grinnell has a greater need and would offer more support for an FM station. Although both communities are located in Poweshiek County, Grinnell has more than 5½ times the population of Brooklyn and would be expected to have more businesses and community services. White also notes that neither of Grinnell's two radio stations operates fulltime. The AM station operates daytime-only, and the FM educational station is not obligated to serve the needs of the entire community nor is it required to maintain minimum hours nor operate during the summer or school vacation periods which it does not do.

[1] Mitchell Broadcasting is the licensee of AM Station KGRN, Grinnell, Iowa.

[2] Population figures are taken from the 1980 U.S. Census.

Thus, White claims that Grinnell's needs for emergency and other information are not met after sunset.

5. In response, Mitchell disagrees with White's assertion that Brooklyn is of insufficient size to warrant an FM assignment. For example, White is said to be co-owner of Station KQYB in Spring Grove, Minnesota, which has a smaller population than Brooklyn and under White's assumption could not adequately support a station. With regard to KGRN being a daytime-only station, Mitchell states that KGRN is in the process of applying for unlimited time facilities. Additionally, Grinnell has a CATV system with a local access channel, operated by the Grinnell newspaper, which should be considered local service. Finally, Mitchell refers to its engineering statement which reveals potential airspace problems limiting the site of a transmitter east of Grinnell where the site must be to avoid a short-spacing. The Grinnell Municipal Airport is said to severely limit the availability of sites east of Grinnell. According to Mitchell, a Brooklyn assignment presents no such obstacles.

6. White responds that the Commission must choose between assigning Channel 257A to Grinnell (pop. 8,868) or Brooklyn (pop. 1,509). White claims that Mitchell has dramatized the number of community services and other facilities available to Brooklyn, as an examination of the facts shows the services to be less than alleged. White notes that Mitchell has not submitted an application for unlimited time operation for Station KGRN. As Mitchell does not explain the delay, White urges that the Commission not presume that KGRN will be licensed for fulltime operation. While Mitchell asserts that a Brooklyn station will provide service to communities up to 24 miles away, White argues that no engineering data was provided to substantiate its claim. As the Commission is aware, the predicted contour of a Class A FM station does not extend 24 miles from the transmitter. According to White, the data provided with regard to Grinnell clearly indicates that Channel 257A should be assigned to that community.

7. After consideration of the proposal and comments filed in response to the *Notice*, we have concluded that Channel 257A should be assigned to Brooklyn, Iowa. No other channels are available for assignment to either community. Our priorities favor a first local FM service to a community. Here we have taken into consideration the AM station at Grinnell (KGRN) although it is currently limited to daytime operation. From this viewpoint we believe and it has been our policy to give each community at least one local service. On that basis we must prefer Brooklyn for the assignment even though it is the smaller community. See *Stevenson, Alabama, et al.*, 35 R.R. 2d 605 (1975), *recons. den.*, Mimeo No. 64632, released May 10, 1976, and *Wiggins and Lumberton, Miss.*, 50 R.R. 2d 32 (1981). To do otherwise would mean Brooklyn would be foreclosed from any local service, while Grinnell would have two commercial and one noncommercial stations.

8. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's rules, it is ordered that, effective August 31, 1982, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended with respect to the following community:

City	Channel No.
Brooklyn, Iowa	257A

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

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

(Secs. 4, 303, 48 Stat., as amended, 1068, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division Broadcast Bureau.

[FR Doc. 82-19341 Filed 7-15-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-145; RM-4030]

FM Broadcast Station in Phillipsburg, Kansas; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action substitutes Class C Channel 223 for Channel 221A at Phillipsburg, Kansas, in response to a petition filed by Northwest Enterprises.

DATE: Effective September 7, 1982.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order—Proceeding Terminated

Adopted: July 2, 1982.

Released: July 9, 1982.

By the Chief, Policy and Rules Division:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Phillipsburg, Kansas), BC Docket No. 82-145 RM-4030.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 47 F.R. 11906, published March 19, 1982, which invited comments on two alternative proposals for an FM assignment at Phillipsburg, Kansas. The *Notice* was issued in response to a petition filed by Northwest Enterprises ("petitioner").

Option I. Substitute Channel 223 for Channel 221A.

Option II. Substitute Channel 237A for Channel 221A and assign Channel 223.

Comments in support of Option I were filed by the petitioner, restating its interest in the Class C channel. Bengel Broadcasting ("Bengel") [1] submitted comments opposing both proposals, to which petitioner responded. Bengel also filed reply comments.

2. Bengel comments that the need for a Class C assignment at Phillipsburg is questionable and cannot be demonstrated. Bengel contends that two Class A channels at Phillipsburg would better serve the public interest. Nonetheless, should the Commission decide that the need exists for a Class C allocation at Phillipsburg, it will amend its pending application to specify the Class C channel made available as a result of this proceeding. Bengel further suggests as an alternative proposal in the absence of an expression by the petitioner to apply for a Class A channel, that the Commission should assign two Class C channels (Channels 223 and 245).[2]

3. Petitioner in response disagrees with Bengel's allegations regarding the need for a Class C assignment at Phillipsburg. Petitioner argues that based on Bengel's unwillingness to continue to pursue its pending application for Channel 221A if a Class

[1] Bengel Broadcasting is an applicant for Channel 221A at Phillipsburg (File No. 810922A) and the licensee of Station KKAN(AM), Phillipsburg, Kansas.

[2] According to Bengel, a Channel 245 assignment at Phillipsburg would require a 35 mile site restriction to the south, providing a 70 dBu signal over Phillipsburg is operated with 75 kW at 500 feet.

C channel is assigned, two options are still available to the Commission: (1) Substitute a Class C channel for the Class A channel as proposed; or (2) follow Bengel's suggestion and assign two Class C channels to Phillipsburg. Petitioner points out that it has no objection to a second Class C channel, but intends to apply for Channel 223, if assigned.

4. The information submitted by the petitioner and Bengel, in response to the *Notice*, focused on the issues of appropriate class of channel and economic stability.[3] In the *Notice* we stated that Option II was proposed to permit the applicant for Channel 221A or any other interested party desirous of operating a Class A facility at Phillipsburg, the opportunity to do so. We now have no such interest in Option II. The *Notice* also invited optional proposals. As an alternate proposal, Bengel suggested assigning Channel 245 to Phillipsburg as a second Class C facility. However, our analysis indicates that that channel is not available due to short-spacing to Stations KSRD, Seward, Nebraska, KELN, North Platte, Nebraska, and KANS, Larned, Kansas. We have been unable to find any other Class C channels available for assignment to Phillipsburg on a drop-in basis. Thus, our only alternative is to grant or deny Option I.

5. After consideration of the proposals and comments in this proceeding, we are convinced that Option I (substitution of Channel 223 for Channel 221A) would best serve the public interest. We do not regard the alternate proposal to assign two Class A channels to Phillipsburg as a viable option since there has been no expression of interest in operating two Class A channels. We find that there are no other options available for which there is interest. We note that the Class C assignment could provide substantial first and second nighttime aural service.

6. Accordingly, pursuant to authority contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's rules, it is ordered, that effective September 7, 1982, the FM Table of Assignments, § 73.202(b) of the rules, is amended with respect to the community listed below:

City	Channel No.
Phillipsburg, Kans.	223

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

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

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division Broadcast Bureau.

[FR Doc. 82-19340 Filed 7-15-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-737; RM-3882]

FM Broadcast Station in Montevideo, Olivia, and Ortonville, Minnesota; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Class C FM Channel 268 to Ortonville, Minnesota, in response to a petition filed by C.G.N. Corporation. The proposal would provide FM service to previously unserved rural areas.

DATE: Effective August 31, 1982.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: June 29, 1982.

Released: July 8, 1982.

By the Chief, Policy and Rules Division:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Montevideo, Olivia, and Ortonville, Minnesota), BC Docket No. 81-737, RM-3882.

1. Before the Commission is the *Notice of Proposed Rule Making*, 46 FR 53471, published October 29, 1981, proposing three alternative assignment plans looking toward the assignment of a Class C channel to Ortonville, Minnesota, with related channel substitutions at Olivia or Montevideo, Minnesota, as follows:

Plan I—substitute Channel 268 for Channel 292A at Ortonville, Minnesota, with a 24.6 mile site restriction.

Plan II—substitute Channel 221A for Channel 269A at Olivia, Minnesota, and substitute Channel 268 for Channel 292A at Ortonville, with no site restriction.

Plan III—substitute Channel 224A for Channel 288A at Montevideo, Minnesota, and substitute Channel 287 for Channel 292A at Ortonville.

This proposal was made in response to a petition filed by C.G.N. Corporation ("petitioner"), seeking the assignment of Class C Channel 268 to Ortonville. In response to the *Notice*, petitioner filed comments in support of Plans I or II, and reaffirmed its intention to apply for the channel, if assigned. Comments were also received from Olivia Broadcasting Company ("OBC"),[1] Tri-State Broadcasting Company ("Tri-State"),[2] and Maynard Meyer ("Meyer").[3] Informal comments were received from Ingstad Broadcasting, Inc. ("Ingstad"),[4] and Western Minnesota Stereo, Inc. ("Western").[5] OBC, Tri-State and Meyer each filed reply comments.

Background

2. Ortonville (population 2,550),[6] seat of Big Stone County (population 7,941), is located on the Minnesota-South Dakota border approximately 248 kilometers (155 miles) west of Minneapolis, Minnesota. A portion of Ortonville is also located in Lac Qui Parle County (population 10,592). Ortonville is presently served by daytime-only AM Station KDIO, and FM Channel 292A (application pending).

3. As reflected in the *Notice* in support of the assignment of a wide-coverage area Class C channel to Ortonville, petitioner stated that Channel 292A has been assigned to the city since the inception of the Table of Assignments but never activated.[7] Petitioner claimed

[3] The Commission on May 20, 1982, adopted a *Second Report and Order* in BC Docket No. 80-130, 47 FR 26624, published June 21, 1982, revising the FM assignment policies. In accordance with the newly developed policies, it is no longer necessary to consider these issues except where conflicting assignment proposals are involved.

[1] OBC is the applicant for Class A Channel 269A in Olivia, Minnesota, (File No. 811105AJ).

[2] Tri-State has filed an application for Class A Channel 292A at Ortonville, Minnesota (File No. 811209AL).

[3] An application for Channel 221A at Madison has been filed on behalf of Meyer's Corporation, Lac Qui Parle Broadcasting Company, Inc. (BC Docket No. 81-372; File No. 820104AA).

[4] Ingstad's comments were late filed and have not been considered.

[5] Western is the permittee on Channel 288A in Montevideo, Minnesota. Although its comments were late-filed, no prejudice will result from their acceptance since the parties were served, and they have no significant relevance to our ultimate resolution of this proceeding.

[6] Population figures are derived from the 1980 U.S. Census, Advance Reports.

[7] The *Notice* indicated that should we ultimately decide to assign a Class C channel to Ortonville, we proposed to delete the current Class A assignment (Channel 292A) since it then appeared that there was no interest in the facility.

that a Class C channel at Ortonville would serve the largely rural population of Big Stone, Traverse, and Lac Qui Parle Counties in western Minnesota.

4. From the outset petitioner recognized that if Channel 268 were assigned to Ortonville as a "drop-in", it would require a site restriction of approximately 25 miles northwest to prevent short-spacing to the assignment of Channel 269A in Olivia, Minnesota.[8] Therefore, petitioner suggested that Channel 244A be substituted for Channel 269A at Olivia in order to lessen the site restriction. OBC opposed this aspect of the proposal, stating that such substitution would impose a site restriction approximately eight miles from Olivia. This, it claimed, was not suitable for a Class A assignment. Petitioner disputed OBC's claim, declaring that the only short-spacing with regard to Olivia would result from the assignment of Channel 244A to North Mankato, Minnesota (BC Docket No. 80–517). Petitioner claimed that the latter assignment would require a site restriction approximating 1.03 miles instead of 8.0. Regardless, petitioner concluded that while the Olivia substitution would achieve a desirable reduction in the Ortonville site restriction, it was not imperative to the assignment of Channel 268 to that community.

5. As indicated in the *Notice*, the assignment of Channel 268 to Ortonville would cause preclusion to occur on Channels 266, 267, 268 and 269A. Petitioner stated that with the exception of Wheaton, Minnesota, all communities with a population in excess of 1,000 that lie within the precluded area either have existing assignments or have other channels available for assignment. Additionally, petitioner noted that Wheaton will be able to receive the signal of Channel 268 at Ortonville.

6. The *Notice* also requested petitioner to supply a *Roanoke Rapids*[9] study to demonstrate the areas and populations which would receive a first and second FM service from the proposed Ortonville assignment. This data was requested since the Commission does not normally assign high-powered Class C channels to communities the size of Ortonville unless it can be established that substantial unserved and underserved populations will receive service from the proposed operation.

7. The *Notice* set forth three assignment plans which would permit the allocation of a Class C channel to Ortonville. The first plan would assign Channel 268 to Ortonville as a "drop-in." However, as noted earlier, this proposal requires a site restriction of 24.6 miles northwest of the community to avoid short-spacing to Channel 269A in Olivia. To avoid this site restriction, Plan II would substitute Channel 221A[10] for Channel 269A at Olivia. This plan would require a site restriction of only 4.0 miles east to comply with the minimum distance separation requirements on the co-channel at Madison, Minnesota. Plan III proposes to substitute Channel 224A for Channel 288A at Montevideo, Minnesota, in order to permit the assignment of Channel 287 to Ortonville with a lesser site restriction (approximately 11.3 miles west of the community). With respect to Plan III, we stated in the *Notice* that if this proposal were adopted, the two applicants for Channel 288A in Montevideo would be permitted to amend their applications to specify the newly-assigned channel.

8. A number of submissions were filed in response to the plans proposed in the *Notice*. Petitioner indicated its support for either Plan I or II, with preference given to Plan I. Likewise, it noted its opposition to Plan III. Petitioner also requested that the Commission not delete the existing Class A allocation to Ortonville despite the resulting intermixture, since an application for its use had been filed by Tri-State. In support of the intermixture, petitioner cited *Woodward, Oklahoma*, 46 FR 56793, published November 19, 1981, wherein the Commission permitted such intermixture on the basis of substantial first and second FM service that would be provided to surrounding areas by the Class C assignment.

9. Petitioner submitted a *Roanoke Rapids* study based on Plan I since that proposal, according to its engineer, would serve a greater white area and population than would Plan II. Although Plan II would allow more flexibility in site selection, petitioner stated that Plan I can achieve the necessary 70 dBu signal over Ortonville, by utilizing a tower 700 feet HAAT, operating with 100 kW ERP. Based on its engineering study, petitioner claims that this proposed facility could provide a first FM service to 26,292 persons residing in an area of 12,867 square miles, and a second FM service to 16,626 persons within an area of 2,715 square miles, either representing a first or second FM service to more than 89% of the population in the proposed 60 dBu service area. Petitioner concludes that if either Plan I or II were ultimately adopted, it would promptly file an application for a permit to construct and operate a Class C FM station at Ortonville.

10. In opposition comments, OBC states that it has an application pending for Channel 269A at Olivia, Minnesota, for which it proposes to use an existing two-way radio tower located approximately 2.5 miles from Olivia. OBC states that this existing tower already has FAA approval and would not require an environmental impact study. If Option II is adopted, OBC claims that the consequent site restriction attached thereto would not permit its use of this transmitter site. Further, OBC asserts that its attempts to locate land in the restricted area, as required by Plan II, have proved unsuccessful. In sum OBC asserts that it has no objection to the adoption of either Plan I or III, but that adoption of Plan II would effectively serve to deprive Olivia of its only station.

11. The comments of Tri-State, applicant for the Class A facility in Ortonville, asserted its belief that a Class C channel should not be assigned to Ortonville since the community receives numerous FM signals from area stations. Further, Tri-State requests that the Commission retain the present allocation of Channel 292A to Ortonville. In this regard, it notes that if its application for that channel is granted, it will proceed with construction regardless of whether the Commission determines to allocate a Class C channel to Ortonville.

12. Meyer's comments oppose Plan II insofar as it proposes to substitute Channel 221A for Channel 269A at Olivia. Its concern stems from the Commission's recent allocation of Channel 221A to Madison, Minnesota (BC Docket 81–372), as noted *supra*. Meyer states that since the two communities are less than 65 miles apart, the assignment would not comply with the minimum distance separation requirements.

13. In reply comments, OBC again reiterates its preference for Plan I, stating that such proposal would not disturb existing assignments in other communities, nor would it impose a

[8] Section 73.207(a) of the Commission's Rules requires a minimum distance separation of 105 miles between first adjacent Class A and Class C channels. The distance between Olivia and Ortonville is approximately 80 miles.

[9] 9 FCC 2d 672 (1967).

[10] As noted *supra*, petitioner suggested that Channel 244A be substituted for Channel 269A at Olivia. However, a staff analysis revealed that such substitution would require a site restriction of approximately 7.4 miles. At that distance, it was questionable whether a station could provide a 70 dBu signal over the entire community as required by § 73.315(a) of the Commission's Rules. Therefore, we proposed to substitute Channel 221A in lieu of 244A, since it requires a lesser site restriction.

severe site restriction on the channel presently assigned to Olivia. OBC asserts that if Plan II is adopted, it might prevent the Olivia channel from ever being used and thus deny the opportunity for its first local aural broadcast service.

14. Tri-State's reply comments dispute petitioner's engineering showing as to the number of FM services available to Ortonville. It states that petitioner failed to include an existing station at Fergus Falls (Channel 243); applications for new stations at Madison (Channel 221A) and Ortonville (Channel 292A); a proposal for a new Class C allocation at Sisseton, South Dakota (BC Docket No. 82–4; RM–3974); and an allocation at Milbank, South Dakota (Channel 282). It adds that if all the available FM services are considered, the Ortonville Class C proposal would provide a first service to only 221 persons in an area of 42 square miles. However, it notes that if the Sisseton proposal were excluded, the Ortonville Class C would provide a first service to 10,543 persons residing in an area of 1,203 square miles. Tri-State adds that the Commission should make a determination between the allocation proposals for a Class C station at either Ortonville or Sisseton since each proposal would serve to duplicate first and second service areas.

15. Tri-State notes that the petitioner's proposed Ortonville site, approximately 26 miles northwest of the community, would provide the best showing of a first service area. Additionally, it claims that petitioner's technical proposal (100 kW ERP with an antenna 700 feet) (HAAT), would be very costly for this small market. It suggests that the cost factor for such proposed facilities may serve to exclude other potential applicants, thereby depriving the public of a choice of good applicants.

16. Tri-State advises that its engineering exhibit is based only on Plan I, and therefore it has disregarded any comments with respect to Plan II or III. It further notes that because of the site restriction imposed under Plan I and its effect on the proposed allocation at Sisseton, perhaps the Commission's policy of allocating Class A channels to small towns is correct. Therefore, it concludes, since Ortonville is a small rural area which currently has a Class A allocation, that channel should be retained and the proposal to allocate a Class C channel to Ortonville should be denied.

17. In reply comments with respect to Plan II, Meyer reiterates his earlier concern and states that his corporation has filed an application for a construction permit on Channel 221A in Madison. He urges that if Channel 221A is assigned to Olivia, extreme care should be taken in selecting a transmitter site which is not a considerable distance from the community.

18. Western's informal comments are directed to Plan III. Western is now the permittee for Channel 288A in Montevideo and thus would be affected if Channel 224A is substituted for Channel 288A to accommodate the assignment of Channel 287 at Ortonville. It urges that if the Commission adopts Plan III, such action be conditioned upon petitioner's reimbursement to the eventual licensee of all reasonable and necessary expenses it will incur as a result of the substitution.

Conclusions

19. In response to Tri-State's assertion that a Class C channel should not be assigned to Ortonville due to the number of other FM services available to the community, the same argument could be made with respect to the Class A allocation. However, while the availability of reception services has been cited by the Commission as justification for denying a channel assignment in comparative cases, we are aware of no situation in which a channel assignment was denied to a community solely on the basis of reception services received in that community from other nearby stations. A channel is assigned to a specific community to broadcast programs meeting that community's special needs and interests. No station owing a primary obligation to another locality is expected to provide the equivalent of such service. See, *Clinton, Louisiana*, 45 RR 2d 1587–88 (1979). Therefore, the signals received in Ortonville from stations licensed to other communities cannot be considered as substitutes for local service, and the reception of these signals does not provide a basis for denying the assignment herein.

20. Tri-State claims that petitioner failed to include in its *Roanoke Rapids* study the proposal for a Class C allocation at Sisseton, South Dakota (BC Docket No. 82–4; RM–3974). However, petitioner was correct in omitting that community from its study since *Roanoke Rapids* data is based on existing assignments. However, the Sisseton channel has since been assigned (adopted May 21, 1982) and we have, on our own, considered the impact of that assignment.

21. However, Tri-State is correct in noting that petitioner neglected to include existing Class C Station KJJK, Fergus Falls, in its study, as well as the Class A allocation at Ortonville (Channel 292A), and a Class C allocation at Milbank, South Dakota (Channel 282). A staff analysis reveals that when these areas are taken into consideration, they would reduce somewhat the extent of petitioner's first and second service showings. According to our analysis, based on the 1980 U.S. Census figures, petitioner's proposal would serve approximately 6,600 persons in the white area, and approximately 1,700 persons residing in the grey area. Thus, its proposal will still provide a substantial amount of service to persons residing in previously unserved rural areas.

22. Additionally, since it has been shown that all precluded communities except Wheaton, Minnesota, have existing assignments or other channels available, we believe the preclusion impact is insignificant. We find that Wheaton is not of sufficient size to warrant our reserving a channel there for future use at the expense of another location where demand is present. See, *Effingham, Illinois*, 48 RR 2d 165 (1980); *Sonora, California*, 46 FR 48200, published October 1, 1981.

23. With respect to Tri-State's claim that the cost of the proposed facilities for Channel 268 may effectively exclude other potential applicants and deprive the community of a choice of applicants, we note that there are cost factors involved in the other alternatives. The Montevideo station would be entitled to reimbursement for the frequency change and the Olivia applicant would have to find a new site in order to use the new frequency proposed there. Nevertheless, we believe that the provision of a first local service to Ortonville and of a needed wide coverage area service justifies the assignment even if the potential number of applicants may be diminished.

24. We are not deleting the existing Class A assignment to Ortonville since an application for its use has been filed by Tri-State, as noted earlier. Consequently, by retaining the Class A and adopting any one of the plans, intermixture will result. See, *Plymouth, New Hampshire, et al.*, 29 RR 2d 1377 (1974). According to its comments, Tri-State appears to be willing to operate a Class A facility in spite of the possible competitive disadvantage. Therefore, intermixture will not pose an obstacle to grant of the proposal herein. See, *Show Low, Arizona*, 49 RR 2d 1605 (1981).

25. Although a community of Ortonville's size is not generally assigned a Class C facility, from the information submitted by petitioner, it

appears that even considering the recent Sisseton, S.D., assignment, the Class C assignment would nevertheless provide some first service to persons in sparsely populated rural areas which the Class A facility would not serve. Therefore, the proposal is justified. See, *Cobleskill, New York*, 48 RR 2d 1406 (1981).

26. Since we have determined that a Class C assignment is warranted, we now turn to the issue of whether the 24.6 mile site restriction necessitates the adoption of one of the other two proposals. Either the Olivia or the Montevideo substitution involves needless changes which in the Olivia case could make an alternative site unavailable for the new channel. Petitioner has indicated that land in the restricted transmitter site area is available for an Ortonville station. Therefore, we have no objection to the imposition of a site restriction. It also appears that the site restriction places the transmitter in an area where coverage of unserved and underserved areas would be greater.

27. In view of the above considerations, we find that the public interest would benefit from the assignment of Channel 268 to Ortonville. We have also determined in paragraph 24, *supra*, that the Class A channel (292A) should be retained.

28. Accordingly, pursuant to the authority contained in §§ 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's rules, it is ordered, that effective August 31, 1982, the FM Table of Assignments, § 73.202(b) of the rules, is amended with regard to Ortonville, Minnesota, as follows:

City	Channel No.
Ortonville, Minn.	268, 292A

29. It is further ordered, that this proceeding is terminated.

30. For further information concerning the above, contact Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Martin Blumenthal,

Assistant Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-19343 Filed 7-15-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-881; RM-3435 and RM-4053]

FM Broadcast Station in Washington and Wilmington, North Carolina; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns FM Channel 252A to Washington, North Carolina, in response to a proposal filed by Pamlico Broadcasting Company. The assignment could provide Washington with its second FM service. It also denies the conflicting proposal of Genesis Communications, Incorporated to assign Class C Channel 253 to Wilmington, North Carolina, as that community's fourth FM service.

DATE: Effective August 31, 1982.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order

(Proceeding Terminated)

Adopted: June 28, 1982.

Released: July 7, 1982.

By the Chief, Policy and Rules Division.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Washington and Wilmington,[1] North Carolina) BC Docket No. 81-881, RM-3435, RM-4053.

1. Before the Commission is a *Notice of Proposed Rule Making*, 46 FR 67875, published December 29, 1981, proposing the assignment of FM Channel 252A to Washington, North Carolina, as that community's second FM assignment, in response to a petition filed by Pamlico Broadcasting Company ("Petitioner"). A counterproposal [2] was filed by Genesis Communications, Inc. ("Genesis") seeking the assignment of Class C Channel 253 to Wilmington, North Carolina, as that community's fourth FM allocation. Comments opposing the Washington proposal were filed by Genesis.[3] Reply comments were filed by the following: River Broadcasting Co. of North Carolina, Ltd. ("River"), licensee of co-owned Stations WVBS (AM-FM), Burgaw, North Carolina; WKLM Radio, Inc. ("WKLM"), licensee of AM Station WKLM, Wilmington; and Village Radio of Wilmington, Inc. ("Village"), licensee of FM Station WWQQ, Wilmington. Additionally, supporting comments were filed by the petitioner in which it reaffirmed its intention to apply for Channel 252A, if assigned as proposed.

2. These petitions were filed prior to the Commission's adoption of the *Second Report and Order* in BC Docket No. 80-130 regarding *Revisions of FM Assignment Policies and Procedures*, 47 FR 26624, published June 2, 1982, which eliminated many of the previous policy considerations such as preclusion and intermixture. In order to make a § 307(b) determination, we shall evaluate the proposals under the comparative factors set forth in the *Second Report and Order* in addition to the traditional comparative criteria that has been developed through case law.

3. Washington (population 8,418),[4] the seat of Beaufort County (population 40,266), is located approximately 145 kilometers (90 miles) east of Raleigh, North Carolina. It is served by daytime AM Station WEEW as well as by co-owned Stations WITN (AM) and WITN-FM (Channel 227). Channel 252A can be assigned with a site restriction approximately 8.0 kilometers (4.8 miles) southwest of the community to avoid short-spacing to Station WWDR (Channel 252A), Murfreesboro, North Carolina, in conformity with § 73.207(a) of the Commission's rules.

4. Wilmington (population 44,000), the seat of New Hanover County (population 103,471), is located approximately 184 kilometers (115 miles) south-southwest of Raleigh, North Carolina. It is served by daytime AM Station WKLM, full-time AM Stations WGNI, WWQQ and WWIL, and by FM Stations WAAV (Channel 274), WWQQ-FM (Channel 265A), and WHSL (Channel 247). Additionally, Channel 260 is assigned to Wilmington although it is presently being used at Burgaw, North Carolina, pursuant to § 73.203(b) of the Commission's Rules. A Wilmington assignment would require a

[1] This community has been added to the caption.

[2] Genesis' proposal was filed on January 29, 1982. Although styled as a petition for rule making, a closer examination determined that its petition conflicted with the proposed assignment of Channel 252A to Washington (RM-3435), since the distance between the two communities is 98 miles, whereas a separation of 105 miles is required between a Class A and first adjacent Class C channel.

[3] In addition, a letter of support for the assignment of Channel 252A to Washington, North Carolina, was received from Ninety-Eight Broadcasting Company. This letter was received too late to be considered as comments.

[4] Population figures are derived from the preliminary 1980 U.S. Census Reports.

site restriction approximately 23 miles northeast of the community to avoid short-spacing to Station WQTR (Channel 253), Whiteville, North Carolina.

5. In justification of its proposal, petitioner stated that Washington is the largest city in Beaufort County. Further, it noted that although Beaufort County is largely agrarian, approximately 23% of its workforce is employed by manufacturing industries, which are experiencing a substantial economic expansion, ranking fifth among the 100 counties in North Carolina in investment by existing industries during a five-year period ending 1977. Additionally, it indicated that in 1978, Washington experienced retail sales of $147,200,000.00, a 10.8% increase over 1977, and that such sales have nearly tripled in the past decade. Also, petitioner notes that Washington voters have approved a bond issue to finance a proposed annexation which will double the size of the community and thereby increase its population by nearly 3,000 persons. According to petitioner, this latter factor, as well as the degree of economic expansion in the area have intensified the need for an additional FM broadcast station in Washington.

6. Genesis states that Wilmington has experienced a substantial increase in major industries, which it claims has formed the basis of a broad economic structure. Additionally, it indicates that during the past decade, construction of housing units increased approximately 38% in New Hanover County. Further, it claims that gross retail sales in the County increased approximately 71% during the period 1975–1981. In support of its petition, Genesis states that Wilmington's economic indicators, in totality, demonstrate an increasingly strong financial base which can support an additional station in the community.

7. In further justification of its proposal, Genesis states that New Hanover County experienced an increase in population between 1970–1980 of approximately 25%, and that if Channel 253 is assigned to Wilmington, it would serve a greater number of individuals than would the assignment of Channel 252A to Washington. To further this point, it set forth the ratio of population per station for the two proposals as follows: *Washington*—based on present county population of 40,266 with three current services represents a ratio of one station for every 13,422 persons. If Channel 252A is assigned, Genesis states that the ratio is diluted to one station for every 10,066 persons. On the other hand, it indicates that if Channel 253 were assigned to Wilmington, the ratio would be one station for every 12,933 persons.

8. In reply comments, River, WKLM and Village all opposed Genesis' proposal to assign Channel 253 to Wilmington. River and WKLM specifically advocate assigning Channel 252A to Washington instead.

9. More specifically, River opposes an additional Class C assignment to Wilmington on the basis of the Commission's population guidelines, which were in effect at the time its comments were filed, with respect to distribution of channels according to a given community size. However, these considerations are now moot in view of the recent adoption of the *Second Report and Order*, as noted *supra*.

10. Village's opposition to the Wilmington proposal is premised on the resultant intermixture such assignment would create, as well as its economic impact. Again, we note that adoption of the *Second Report and Order* referred to above eliminates these considerations at the rule making level.

11. WKLM advises that in order to accommodate the Wilmington proposal, a substantial site restriction northeast of the community would have to be imposed to comply with § 73.207(a) to avoid short-spacing to a third adjacent Class C channel in Whiteville, North Carolina. Also, according to WKLM, a transmitter located within the restricted site area would require an antenna elevation of considerable height in order to afford city-grade service over all of Wilmington, as required by § 73.315(a) of the Commission's rules. Further, WKLM asserts that the restricted area is so near three Federal airways that the required antenna height necessary to provide city-grade coverage to Wilmington could not be constructed without aeronautical conflicts.

12. Additionally, WKLM correctly notes that if Channel 253 were assigned to Wilmington, it could not be applied for at a nearby community under § 73.203(b), the "15-mile rule." This restriction results from the fact that Channel 260, assigned to Wilmington, was previously removed for use by Station WPJC(FM), Burgaw, North Carolina, and § 73.203(b) prohibits the removal of more than one channel from a community listed in the Table of Assignments.

13. On a comparative basis, we do not view the traditional criteria such as population growth (both communities have declined in population in the last decade), relative sizes of the communities or reception of other services to be of sufficient importance here since the most important factor of availability of local broadcast service provides a clear choice. As we noted before, Washington has three local services (provided by daytime-only Station WEEW and co-owned Stations WITN (AM) and WITN–FM), and Wilmington has seven local services comprised of AM Stations WKLM, WGNI, WWQQ and WWIL, in addition to FM Stations WAAV, WWQQ and WHSL. An additonal Washington assignment could provide a full-time competitive outlet in the community, and a second nighttime voice for the expression of diversified programming since we do not view the co-owned stations to be in the same competitive relationship as stations of different owners. We do not find a greater need for additional service at Wilmington. We believe this determination is consistent with the mandate of sec. 307(b) of the Communications Act of 1934, as amended, to provide a fair, efficient, and equitable distribution of radio services among the various communities, and is in accord with our assignment priorities as set forth in the *Second Report and Order* regarding *Revision of FM Assignment Policies and Procedures, supra*, and with traditional assignment principles.[5]

14. Another factor in our deliberations involves the site at which Genesis proposes to locate its transmitter. According to WKLM, that site is restricted to 500 foot AGL F.A.A. antenna height limitation. A staff engineering study reveals that in order to place a 70 dBu signal over Wilmington, an antenna approximately 650 feet HAAT must be utilized. In order to obtain this, the site would have to be further removed from Wilmington. Moving its site to an area where the transmitter might theoretically be located would require an antenna height of approximately 1500 feet HAAT in order to cover Wilmington. As noted by WKLM, an antenna tower of such height could be quite costly since the land is

[5] See, *Anamosa and Iowa City, Iowa*, 46 F.C.C. 2d 520, 524–525 (1974); *Springdale, Arkansas and Washburn, Missouri*, 46 FR 1628, published March 12, 1981.

flat. Generally, we would need some indication that a party is willing to go to the expense involved in constructing such a tall antenna.

15. Although areas appear to be available for the Wilmington proposal, assuming a suitable antenna height is employed, we are not convinced that a Wilmington Channel 253 station would be able to comply with the technical requirements of § 73.315(a) regarding city-grade coverage, nor that it could comply with applicable F.A.A. constraints. Therefore, from a technical standpoint, we find that Genesis' proposal fails to provide a sufficient basis for adoption.

16. Accordingly pursuant to the authority contained in Secs. 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's Rules, it is ordered, that effective August 31, 1982, the FM Table of Assignments, § 73.202(b) of the rules, is amended with regard to Washington, North Carolina, as follows:

City	Channel No.
Washington, N.C.	227, 252A

17. It is further ordered, that the petition of Genesis Communications, Incorporated (RM–4053) to assign Class C FM Channel 253 to Wilmington, North Carolina, is denied.

18. It is further ordered, that this proceeding is terminated.

19. For further information concerning the above, contact Nancy V. Joyner, Broadcast Bureau, (202) 632–7792.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82–19342 Filed 7–15–82; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 2712–126]

Ocean Salmon Fisheries off the Coasts of California, Oregon, and Washington

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: An emergency interim rule is in effect through July 15, 1982, which amends on an interim basis the regulations for the ocean salmon fisheries off the coasts of Washington, Oregon and California. The emergency interim rule contains management measures similar to those contained in a Secretarial Amendment which was approved by the Assistant Administrator for Fisheries, NOAA, on May 26, 1982. NOAA extends this rule for an additional 45 days to prevent overfishing, to allow more salmon to survive the ocean fisheries and reach the Indian subsistence fisheries in internal waters, and to achieve spawning escapement requirements.

DATES: Interim rule is effective on July 16, 1982, and remains effective through August 29, 1982.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins (Regional Director, NMFS) 206–527–6150; or A. W. Ford (Regional Director, NMFS) 213–548–2575.

SUPPLEMENTARY INFORMATION: A Secretarial Amendment to the fishery management plan (FMP) for the Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California was approved by the Assistant Administrator for Fisheries, NOAA, on May 26, 1982. The Secretarial Amendment provides management measures to replace the disapproved portion of the 1982 FMP amendment prepared by the Pacific Fishery Management Council (see 47 FR 21256, May 18, 1982). This Secretarial Amendment generally establishes seasons and gear restrictions for the commercial ocean salmon fisheries south of Cape Blanco, Oregon. On June 1, 1982, NOAA implemented an emergency interim rule (47 FR 24134), under the authority of section 305(e)(2) of the Magnuson Fishery Conservation and Management Act, to effect management measures similar to the measures contained in the Secretarial Amendment.

That emergency rule was to be effective during the period June 1, 1982, through July 15, 1982; the preamble stated that the emergency rule "may be extended for a second 45-day period." The preamble to the emergency interim rule also discusses the background and objectives of the Secretarial Amendment, management measures selected, and the classification of the rulemaking.

On July 2, 1982 (47 FR 28971), NOAA proposed rules to implement the Secretarial Amendment.

This action extends the emergency interim rule for a second 45-day period, from July 16, 1982, through August 29, 1982, to continue management of the fisheries. At the end of this period, the regulations which this emergency interim rule temporarily amended (see 46 FR 44989, September 9, 1981; 46 FR 45960, September 16, 1981; 47 FR 4275, January 29, 1982) will again be in effect unless replaced by other rules.

The NOAA Administrator determined that this rule is not major under Executive Order 12291 (E.O. 12291).

List of Subjects in 50 CFR Part 661

Fish, Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: July 13, 1982.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 82–19344 Filed 7–14–82; 11:03 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 47, No. 137
Friday, July 16, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 551

Pay Administration (General) and Federal Pay Administration Under the Fair Labor Standards Act; Computing Fractional Hours of Overtime Work

Correction

In FR Doc. 82-18029 appearing on page 28962 in the issue of Friday, July 2, 1982, make the following correction:

On page 28964, column one, paragraph (a) of § 551.412 contained errors and should have read as follows:

§ 551.412 Preparatory or concluding activities.

(a) A preparatory or concluding activity that is closely related to the principal activity(s) and is indispensable to its performance is an integral part of the principal activity(s). If the total time spent in that activity(s) is more than ten minutes per day, it is part of the workday and it shall be considered hours of work. Conversely, if the total time spent in that activity(s) is ten minutes or less per day, it is not a part of the workday and it shall be disregarded.

(b)* * *

BILLING CODE 1505-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 27, 28, and 61

Cotton and Cottonseed; Revision in Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rulemaking.

SUMMARY: A revision in fees is proposed due to the increased costs of providing cotton classing, cotton linters grading and related services, and supervision of cottonseed grading.

DATE: Comments by September 14, 1982.

ADDRESS: Comments may be mailed to Loyd R. Frazier, Chief, Marketing Services Branch, Cotton Division, AMS, USDA, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Loyd R. Frazier, (202) 447-2147.

SUPPLEMENTARY INFORMATION: This proposal has been reviewed under the USDA procedure established in accordance with Executive Order 12291 of February 17, 1981 and has been classified "non-major" as it does not meet the criteria contained therein for major regulatory actions. William T. Manley, Deputy Administrator for Marketing Programs Operations, has determined that this action will not have a significant impact on a substantial number of small business entities because (i) use of the services is voluntary; and (ii) further, if there is any impact, the Secretary is required by statute to make the services available and to recover the costs of the services from the users of the services. Since all of these services are directly related to the marketing of cotton, it is desirable that all fee increases have a uniform effective date. An effective date of October 1, 1982, the beginning of Fiscal Year 1983, is proposed.

The United States Cotton Standards Act (7 U.S.C. 51-65), United States Cotton Futures Act (7 U.S.C. 15b), and Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627) authorize the Secretary of Agriculture to provide cotton classing, cotton linters grading and related services and supervision of cottonseed grading to the public on a fee basis. The Secretary is further directed to set such fees for these services as will allow USDA to recover the costs of providing the services.

The services provided include cotton classing, cotton linters grading and cottonseed grading supervision. Due to increases of USDA costs in providing these services since the last adjustment in fees on October 1, 1981 (46 FR 48111-48113), an average increase in fees of about 5 percent is proposed.

Many factors are considered in calculating the cost of providing services. Increases in personnel costs have had the most significant impact on these costs. Federal salaries have increased 4.8 percent since October 1, 1981. Some increases in expenditures for rent, utilities, and communications have also occurred during that period.

These increases, along with increased costs for supplies and materials, are responsible for an overall increase in the costs of providing services of approximately 5 percent.

List of Subjects

7 CFR Part 27

Classification, Cotton, Micronaire, Samples;

7 CFR Part 28

Cotton Linters, Grades, Staples;

7 CFR Part 61

Cottonseed, Chemists, and Grades.

Therefore the following amendments are proposed:

PART 27—COTTON CLASSIFICATION UNDER COTTON FUTURES LEGISLATION

1. Section 27.80 is amended by revising paragraphs (a), (b), (d), (e), (f), (g), and (h) to read as follows:

§ 27.80 Fees; classification, Micronaire, and supervision.

For services rendered by the Cotton Division pursuant to this subpart, whether the cotton involved is tenderable or not, the person requesting the services shall pay fees as follows:

(a) Initial classification and certification—95 cents per bale.

(b) Review classification and certification—$1.15 per bale.

* * * * *

(d) Combination service—$2.10 per bale. (Initial classification, review classification, and Micronaire determination covered by the same request and only the review classification and Micronaire determination results certified on cotton class certificates.)

(e) Supervision, by a supervisor of cotton inspection, of the inspection, weighing, or sampling of cotton when any two or more of these operations are performed together.—$1.15 per bale.

(f) Supervision, by a supervisor of cotton inspection, of the inspection, weighing, or sampling of cotton when any one of these operations is performed individually—$1.15 per bale.

(g) Supervision, by a supervisor of cotton inspection, of transfers of cotton to a different delivery point, including issuance of new cotton class certificates

in substitution for prior certificates—$2.20 per bale.

(h) Supervision, by a supervisor of cotton inspection, of transfers of cotton to a different warehouse at the same delivery point, including issuance of new cotton class certificates in substitution for prior certificates—$1.50 per bale.

* * * * *

(90 Stat. 1841–1846; (7 U.S.C. 15b))

PART 28—COTTON CLASSING, TESTING, AND STANDARDS

2. Section 28.116 is amended by revising paragraph (a) to read as follows:

§ 28.116 Amounts of fees for classification; exemption.

(a) For the classification of any cotton or samples, the person requesting the services shall pay a fee, as follows, subject to the additional fee provided in paragraph (c) of this Section:

(1) Grade, staple, and micronaire reading—$1.05 per sample.

(2) Grade and staple only—90 cents per sample.

(3) Grade only or staple only—65 cents per sample.

(4) Micronaire reading only—20 cents per sample.

* * * * *

3. Section 28.117, 28.120, 28.122, 28.148, and 28.149 are revised to read as follows:

§ 28.117 Fee for new memorandum or certificate.

For each new memorandum or certificate issued in substitution for a prior memorandum or certificate at the request of the holder thereof, on account of the breaking or splitting of the lot of cotton covered thereby or otherwise for his business convenience, the person requesting such substitution shall pay a fee of $1.90 per sheet.

§ 28.120 Expenses to be borne by party requesting classification.

For any samples submitted for Form A or Form D determinations, the expenses of inspection and sampling, the preparation of the samples, and the delivery of such samples to the classification room or other place specifically designated for the purpose by the Director shall be borne by the party requesting the classification. For samples submitted for Form C determininations, the party requesting the classification shall pay the fees prescribed in this subpart and, in addition, a fee of $14.65 per hour, or each portion thereof, plus the necessary traveling expenses and subsistence, or per diem in lieu of subsistence, incurred on account of such request, in accordance with the fiscal regulations of the Department applicable to the Division employee supervising the sampling.

§ 28.122 Fee for practical classing examination.

The fee for the complete practical classing examination for cotton or cotton linters shall be $95. Any applicant who passes both parts of the examination may be issued a certificate indicating this accomplishment. Any person who passes one part of the examination, either grade or staple, and fails to pass the other part may be reexamined for that part that was failed. The fee for this partial reexamination is $52.

§ 28.148 Fees and costs; classification; reviews; other.

The fee for the classification, comparison, or review of linters with respect to grade, staple, and character or any of these qualities shall be at the rate of 95 cents for each bale or sample involved. The provisions of §§ 28.115 through 28.126 relating to other fees and costs shall, so far as applicable apply to services performed with respect to linters.

§ 28.149 Fees and costs; Form C determination.

For samples submitted for Form C determination, the party requesting the classification shall pay the fees prescribed in this subpart and, in addition, a fee of $14.65 per hour, or each portion thereof, plus the necessary traveling expenses and subsistence, or per diem in lieu of subsistence, incurred on account of such request, in accordance with the fiscal regulations of the Department applicable to the Division employee supervising the sampling.

(Sec. 10, 42 Stat. 1519; 7 U.S.C. 61, unless otherwise noted)

4. Section 28.184 is revised to read as follows:

§ 28.184 Cotton linters; general.

Requests for the classification or comparison of cotton linters pursuant to this subpart and the samples involved shall be submitted to the Cotton Division. All samples classed shall be on the basis of the official cotton linters standards of the United States. The fee for classification or comparison and the issuance of a memorandum showing the results of such classification or comparison shall be 95 cents per sample.

(Sec. 205, 60 stat. 1090, as amended; 7 U.S.C. 1624.)

PART 61—COTTONSEED SOLD OR OFFERED FOR SALE FOR CRUSHING PURPOSES (INSPECTION SAMPLING AND CERTIFICATION)

5. Sections 61.43, 61.44, 61.45, and 61.46 are revised to read as follows:

§ 61.43 Fee for sampler's license.

In the examination of an applicant for a license to sample and certificate official samples of cottonseed the fee shall be $15, but no additional charge shall be made for the issuance of a license. For each renewal of a sampler's license the fee shall be $13.

§ 61.44 Fee for chemist's license.

For the examination of an applicant for a license as a chemist to analyze and certificate the grade of cottonseed the fee shall be $300, but no additional charge shall be made for the issuance of a license. For each renewal of a chemist's license the fee shall be $100.

§ 61.45 Fee for certificates to be paid by licensee to Service.

To cover in part the cost of administering the regulations in this part each licensed cottonseed chemist shall pay to the Service $1.15 for each certificate of the grade of cottonseed issued by him. Upon receipt of a statement from the Service each month showing the number of certificates issued by the licensee, such licensee will forward the appropriate remittance in the form of a check, draft, or money order payable to the "Agricultural Marketing Service Service, USDA."

§ 61.46 Fees for the review of grading of cottonseed.

For the review of the grading of any lot of cottonseed, the fee shall be $39. Remittance to cover such fee, in the form of a check, draft, or money order payable to the "Agricultural Marketing Service, USDA" shall accompany each application for review. Of each such fee collected, $13 shall be disbursed to each of the two licensed chemists designated to make reanalysis of such seed.

* * * * *

(Sections 203 and 205, 60 Stat. 1087 and 1090, as amended; 7 U.S.C. 1622–1624)

Dated: July 12, 1982.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 82-19224 Filed 7-15-82; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 46

Increase of License Fees Under the Perishable Agricultural Commodities Act and Clarification of Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service proposes to increase its fee for licenses issued under the Perishable Agricultural Commodities Act from the current $150 basic fee, plus $50 for each branch in excess of nine with a maximum fee of $1,000 to a $180 basic fee, plus $72 for each branch in excess of nine with a maximum fee of $1,200. The license fees recovered thru this program are used to defray all program costs except those for certain legal services.

The regulation relating to license requirements for dealers who purchase potatoes for processing is also being revised to reflect a statutory amendment.

DATE: Written comments must be received on or before September 10, 1982.

ADDRESS: Written comments should be sent to: Michael D. Price, Regulatory Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Michael D. Price (202) 447–4180.

SUPPLEMENTARY INFORMATION: These proposed actions have been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and have not been classified as major because they do not meet any of the criteria identified under the Executive Order. These actions will not have an annual effect on the economy of $100 million or more nor will they have a major increase in costs of prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. These actions will not 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 or export markets. This rule has also been reviewed with regard to the requirements of Pub. L. 96–354. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that these proposed rules do not have a significant economic impact on a substantial number of entities.

The Perishable Agricultural Commodities Act (PACA) was enacted by Congress, in 1930, to curb abuses in the marketing of perishable agricultural commodities in interstate and foreign commerce. The Act establishes a code of fair trade and provides for the enforcement of contracts. The law is enforced through a system of licensing. Commission merchants, dealers and brokers are required to be licensed. The license fees recovered thru this program are used to defray all program costs except those for certain legal services.

License Fee

The PACA program, except for costs of certain legal services, is funded thru license fees. In 1980, it was determined that the reserve fund was being seriously depleted and that program costs would exceed income, thus, jeopardizing service to the fruit and vegetable industry. On December 22, 1981, the statutory ceiling on license fees was amended by Pub. L. 97–98 to authorize the establishment of fee levels that would permit sufficient revenues to cover operational costs for at least four years. The present level is $150 basic fee, plus $50 for each branch in excess of nine with a $1,000 ceiling. The proposed increase to a $180 basic fee, plus $72 for each branch in excess of nine with a $1,200 ceiling is expected to provide sufficient funds to cover operational costs thru fiscal year 1983. The proposed increase is substantially below the new statutory ceiling of $300, $150, and $3,000 respectively.

Dealer

The term dealer defines persons engaged in the business of buying or selling produce in wholesale or jobbing quantities in commerce who are subject to license. However, there has been a specific exemption for persons buying produce for canning and/or processing within the State where grown, whether or not the canned or processed product is to be shipped in interstate or foreign commerce, unless such product is frozen or packed in ice, or consists of cherries in brine. On November 1, 1978, that exemption was removed by Pub. L. 95–562, for persons buying potatoes for processing within the State where grown. The change became effective January 1, 1982. These persons are now subject to license as dealers. Persons who purchase commodities *other than potatoes* as defined under the exemption are still not subject to license for those transactions.

List of Subjects in 7 CFR Part 46

Administrative practice and procedure, Perishable Commodities Act.

PART 46—REGULATIONS (OTHER THAN RULES OF PRACTICE) UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930

It is proposed that 7 CFR 46.2 and 46.6 be amended as follows:

1. 7 CFR 46.2 is amended by revising paragraph (m)(3) and adding paragraph (m)(4).

§ 46.2 [Amended]

* * * * *

(m) "Dealer" means any person engaged in the business of buying or selling in wholesale or jobbing quantities in commerce and includes:

* * * * *

(3) Growers who market produce grown by others.

(4) The term "dealer" does not include persons buying produce, other than potatoes, for canning and/or processing within the State where grown, whether or not the canned or processed product is to be shipped in interstate or foreign commerce, unless such product is frozen, or packed in ice, or consists of cherries in brine.

* * * * *

2. 7 CFR § 46.6 is revised to read as follows:

§ 46.6 License fee.

The annual license fee is one hundred and eighty (180) dollars plus seventy-two (72) dollars for each branch or additional business facility operated by the applicant exceeding nine. In no case, shall the aggregate annual fees paid by any applicant exceed one thousand two-hundred (1,200) dollars. The Director may require that the fee be submitted in the form of a money order, bank draft, cashier's check, or certified check made payable to Agricultural Marketing Service. Authorized representatives of the Division may accept fees and issue receipts therefor.

Done at Washington, D.C. on July 12, 1982.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 82–19406 Filed 7–15–82; 8:45 am]

BILLING CODE 3410–02–M

Food and Nutrition Service

7 CFR Parts 210, 220, and 245

Child Nutrition Regulatory Review Task Force Recommendations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the National School Lunch and School Breakfast Program regulations and the regulations on determining eligibility for free and reduced price meals and free milk in schools to implement a series of recommendations of the Child Nutrition Regulatory Review Task Force. The Task Force included members from FNS National and Regional Offices, State and local school food service officials and the public. It was the goal of this Task Force to: (1) Increase State and local flexibility in Program administration; (2) reduce Program administrative complexities; (3) reduce Program costs; and (4) eliminate fraud, waste, and abuse. The Department is proposing this rule to facilitate program administration for States and School Food Authorities.

DATES: To be assured of consideration, comments must be postmarked no later than September 14, 1982.

ADDRESS: Comments should be sent to Stanley C. Garnett, Branch Chief, Policy and Program Development Branch, School Programs Division, USDA, Food and Nutrition Service, Alexandria, Virginia 22302. All written submissions will be available for public inspection in Room 509, 3101 Park Center Drive, Alexandria, Virginia 22302, during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett at the address listed above or call (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification.—This proposed rule has been reviewed under Executive Order 12291 and has been classified as "not major" because it does not meet any of the three criteria identified in the Executive Order. The rule will not have an annual effect on the economy of $100 million or more; it is expected to decrease administrative costs by providing States and School Food Authorities with more flexibility in administering the National School Lunch and School Breakfast Programs; and it is not expected to have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign export markets.

This proposed rule has been reviewed with regard to the requirements of Public Law 96-354, the Regulatory Flexibility Act. The Administrator of the Food and Nutrition Service has certified that this proposed rule does not have a significant economic impact on a substantial number of small entities. This rule is expected to simplify the regulatory requirements in the administration of the School Lunch and School Breakfast Programs. In addition, this rule will reduce the reporting and recordkeeping burden facing local and State agencies.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting and recordkeeping requirements contained in this proposed rule will be submitted to the Office of Management and Budget (OMB) for approval. They are not effective until OMB approval has been obtained.

Background

Food Service Management Companies

On December 29, 1978, the Department published a final rule (43 FR 60861) which imposed requirements upon School Food Authorities (SFAs) entering into contractural agreements with commericial enterprises for the preparation and service of program meals. That rule was developed to increase the regulatory control over contracting due to the increase in the number of School Food Authorities contracting with food service management companies.

The Child Nutrition Regulatory Review Task Force recommended a reduction in the regulatory requirements for SFA's contracting with food service management companies; elimination of the requirement to monitor at least 20 percent of the SFA's contracting with food service management companies; and elimination of the requirement that an Advisory Board assist food service management companies in menu planning. The Task Force also recommended that the School Breakfast Program regulations be amended to make the food service management company requirements consistent with those for the School Lunch Program. Since monitoring requirements and procedures are adequately covered in AIMS, and student and parent involvement are addressed elsewhere in Program regulations, the Department has accepted these recommendations and proposes to simplify the requirements for SFA's contracting with food service management companies.

Procurement Standards

The procurement standards are proposed to be revised to implement the Department's Uniform Federal Assistance Regulations—Part 3015 (46 FR 55636, November 10, 1981) which prescribe Department-wide policies and standards for administration of grants and cooperative agreements. To date, for each of the school programs the Department issued individual program regulations on the administration of grants and cooperative agreements.

Such regulations created duplication and complexity in the management of Federal assistance provided by USDA. Therefore, the Child Nutrition Regulatory Review Task Force recommended adoption of Part 3015 for all programs. Additionally, Public Law 95-224, "The Federal Grant and Cooperative Agreement Act of 1977", and the implementing guidance and study issued by OMB emphasized the need for uniform policy and standardization of guidance for all assistance programs.

Technical Changes

The Child Nutrition Regulatory Review Task Force also recommended some changes in the administrative requirements of the National School Lunch and School Breakfast Programs regulations and in the regulations on Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools. Those Task Force Recommendations were:

- Delete the Federal requirement for parent and community involvement in the School Lunch Program.
- Allow State agencies to define poor management, but continue State agency and FNSRO involvement in correcting poor management problems;
- Rewrite portions of the regulations to eliminate unnecessary provisions and redundant language, e.g. maintenance of Storage Facilities; and
- Delete the provision of the Breakfast Program regulations which requires commodity assistance based upon the number of breakfasts served to children. While the Department continues to believe it is important to involve parents in the program, and recommends such involvement, this proposal shifts the responsibility for the determining the need and extent of parental involvement to the local level, which is in a better position to make such decisions. In addition, the deletion of the requirement to maintain necessary facilities for storing and preparing food does not reflect the lack of importance of the maintenance of such facilities. However, since this area is already covered by local health and sanitation requirements, it is not necessary in a Federal regulation.

In regard to use of commodities in the breakfast program, although schools no longer earn commodities based on School Breakfast Program participation, schools may use commodities earned on the basis of lunch participation and

bonus commodities in preparing breakfasts under the School Breakfast Program.

List of Subjects

7 CFR Part 210

Food assistance programs, National School Lunch Program, Grant programs—social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 220

Food assistance programs, School Breakfast Program, Grant programs—social programs, Nutrition, Children, Reporting and recordkeeping requirements.

7 CFR Part 245

Food assistance programs, Grant programs—social programs, National School Lunch Program, School Breakfast Program, Special Milk Program, and Reporting and recordkeeping requirements.

Accordingly, Parts 210, 220 and 245 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

§ 210.8 [Amended]

1. In § 210.8, paragraph (b) is amended by removing the words "and extent of the need for Program payments." and placing a period after the word "Program.".

2. In § 210.8, paragraphs (c) and (e)(12) are removed and reserved.

3. In § 210.8, paragraph (e)(7) is revised to read as follows:

§ 210.8 Requirements for participation.

* * * * *

(e) * * *

(7) Claim reimbursement at the assigned rates only for lunches served in accordance with the agreement;

* * * * *

§ 210.8a [Amended]

4. In § 210.8a, paragraph (a) is amended by removing the fourth and fifth sentences; paragraphs (b), (c), and (e) are removed, and paragraphs (d) and (f) are redesignated as paragraphs (b) and (c), respectively.

5. In § 210.9a, paragraphs (c), (d), and (e) are removed, and the first sentence in paragraph (a) is revised to read as follows:

§ 210.9a Student, parent, and community involvement.

(a) School Food Authorities shall promote activities to involve children in the Program for the purpose of diminishing the waste of food. * * *

* * * * *

6. In § 210.9a, paragraph (b) is amended by inserting the word "parents," after the phrase "to involve the" and before the word "school."

§ 210.14 [Amended]

7. In § 210.14, paragraph (c) is removed and reserved.

8. In § 210.14, paragraph (f) is amended by removing the remainder of the paragraph after the first sentence.

§ 210.19 [Amended]

9. In § 210.19, the title "Miscellaneous provisions." is revised to read "Grant closeout procedures."

10. In § 210.19, paragraph (a) the title "Grant closeout procedures." is removed.

11. In § 210.19, paragraph (a)(1) the first sentence is removed.

12. In § 210.19, paragraph (a)(2) the title *"Grant closeout report."* is revised to read *"Submission of reports."* and the second sentence is amended by removing the words "Food Service Equipment Assistance Program and" and the word "Programs." and a period is inserted after the word "Funds."

13. In § 210.19, paragraphs (a)(3) and (a)(4) are removed.

§§ 210.8 and 210.19 [Amended]

14. In § 210.19, paragraph (b) is redesignated as § 210.8, paragraph (f).

15. In § 210.19, a new paragraph (b) is added after paragraph (a)(2) to read as follows:

§ 210.19 Grant closeout procedures.

* * * * *

(b) *Final closeout procedures.* FNS and the State agency shall comply with the requirements of 7 CFR Part 3015, Uniform Federal Assistance Regulations, Subpart N, § 3015.124 *Termination* when grants to State agencies are terminated.

* * * * *

16. Section 210.19a is revised to read as follows:

§ 210.19a Procurement standards.

(a) *Requirements.* State agencies and School Food Authorities administered by State agencies shall comply with the requirements of the Office of Management and Budget (OMB) Circular A–102 and the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, Subpart S (46 FR 55658) concerning the procurement of supplies, food, equipment and other services with Program funds. These requirements are adopted by FNS to ensure that such materials and services are obtained for the Program efficiently and economically and in compliance with applicable Federal law and Executive Orders.

(b) *Contractual Responsibilities.* The standards contained in A–102 and 7 CFR Part 3015 do not relieve the State agency, School Food Authority, or FNSRO, as applicable, of any contractual responsibilities under its contract. The State agency, School Food Authority, or FNSRO, as applicable, is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to: source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State or Federal authority that has proper jurisdiction.

(c) *Procurement Procedure.* The State agency, School Food Authority, or FNSRO, as applicable, may use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with Program funds adhere to the standards set forth in OMB Circular A–102 and 7 CFR Part 3015.

PART 220—SCHOOL BREAKFAST PROGRAM

§ 220.7 [Amended]

1. In § 220.7, paragraphs (d) and (e)(11) are removed and reserved.

2. In § 220.7, paragraph (e)(6) is revised to read as follows:

§ 220.7 Requirements for participation.

* * * * *

(e) * * *;

(6) Claim reimbursement at the assigned rates only for breakfasts served in accordance with the agreement;

* * * * *

3. Part 220 is amended by adding a new § 220.7a after § 220.7 to read as follows:

§ 220.7a Food service management companies.

The food service management company requirements for the Program shall be in accordance with 7 CFR Part 210, § 210.8a, Food service management companies.

4. In § 220.13, paragraph (h) is revised to read as follows:

§ 220.13 Special responsibilities of State agencies.

* * * * *

(h) *Food service management companies.* Each State agency, or FNSRO, where applicable, shall annually review each contract between any School Food Authority and a food service management company to ensure compliance with all the provisions and standards set forth in § 220.7a.

* * * * *

5. § 220.16 is revised to read as follows:

§ 220.16 Procurement standards.

(a) *Requirements.* State agencies and School Food Authorities administered by State agencies shall comply with the requirements of the Office of Management and Budget (OMB) Circular A–102 and the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, Subpart S (46 FR 55658) concerning the procurement of supplies, food, equipment and other services with Program funds. These requirements are adopted by FNS to ensure that such materials and services are obtained for the Program efficiently and economically and in compliance with applicable Federal law and Executive Orders.

(b) *Contractual Responsibilities.* The standards contained in A–102 and 7 CFR Part 3015, do not relieve the State agency, School Food Authority, or FNSRO, as applicable, of any contractual responsibilities under its contract. The State agency, School Food Authority, or FNSRO, as applicable, is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to: source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State or Federal authority that has proper jurisdiction.

(c) *Procurement Procedure.* The State agency, School Food Authority, or FNSRO, as applicable, may use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with Program funds adhere to the standards set forth in OMB Circular A–102 and 7 CFR Part 3015.

§§ 220.7 and 220.18 [Amended]

6. In § 220.18, paragraph (c) is redesignated as paragraph (f) of §220.7 and § 220.18 is reserved.

7. Section 220.20 is revised to read as follows:

§ 220.20 Grant closeout procedures.

(a)(1) *General.* State agencies shall submit final grant closeout reports for each fiscal year or part thereof that the State agency administered the Program. All obligations shall be liquidated before final closure of a fiscal year grant. Obligations shall be reported for the fiscal year in which they occur.

(2) *Submission of reports.* State agencies shall submit to FNS, within 150 days after the end of any fiscal year, final fiscal year closeout reports (FNS–10's and SF–269). FNS shall not be responsible for reimbursing unpaid obligations reported later than 150 days after the close of the fiscal year in which they were incurred except for those obligations incurred under the State Administrative Expense Funds.

(b) *Final closeout procedures.* FNS and the State Agency shall comply with the requirements of 7 CFR Part 3015, Uniform Federal Assistance Regulations, Subpart N, § 3015.124 *Termination* when grants to State Agencies are terminated.

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

1. In § 245.5, paragraph (b) is revised to read as follows:

§ 245.5 Public announcement of the eligibility criteria.

* * * * *

(b) Copies of the public release shall be made available upon request to any interested persons. Any subsequent changes in school's eligibility criteria during the school year shall be publicly announced in the same manner as the original criteria were announced.

(Pub. L. 79–396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89–642, 80 Stat. 885–890 (42 US.C. 1773); Pub. L. 91–248, 84 Stat. 207 (42 U.S.C. 1759))

Dated: July 12, 1982.

Samuel J. Cornelius,

Administrator, Food and Nutrition Service.

[FR Doc. 82–19320 Filed 7–15–82; 8:45 am]

BILLING CODE 3410–30–M

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7 CFR Part 282

[Amdt. No. 218]

Food Stamp Program; Expanded Cash-Out Demonstration Project

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking establishes procedures for conducting a demonstation project involving the payment of cash, in lieu of food stamps, to specific categories of eligible food stamp households. This demonstration is expected to produce cost savings and is authorized by Subsection 17(b)(1) of the Food Stamp Act of 1977, as amended. States and their local counterpart agencies wishing to participate in the project are encouraged to submit contract proposals for project sponsorship in accordance with the Request for Proposal (RFP) which is available from FNS.

DATES: Comments on the proposed rulemaking must be received on or before August 16, 1982 to be assured of consideration. Applications for project sponsorship must be submitted in accordance with the RFP requirements.

ADDRESS: Comments should be submitted to Claire Lipsman, Director, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia; 22302. All written comments will be open to public inspection at the offices of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at Room 716, 3101 Park Center Drive, Alexandria, Virginia. Copies of the RFP are available from Robert Dickson, Contracting Officer, Room 903, at the same address.

FOR FURTHER INFORMATION CONTACT: Questions regarding this demonstration should be directed to Ms. Lipsman at the above address or by telephone at (703) 756–3414. Mr. Dickson can be reached by telephone at (703) 756–3250.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1, and has been classified not major because the provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. These provisions will not significantly raise the Food Stamp Program's total benefit and administrative expenses. It is anticipated that the operation of these projects will demonstrate the feasibility

of future administrative cost savings in the Food Stamp Program. The project evaluation will determine the extent of the savings. Because these provisions deal only with the administration of the Food Stamp Program, they will not affect industry or trade in any substantive manner.

Regulatory Flexibility Act

This proposed action has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). The Administrator, Food and Nutrition Service, has certified that the action does not have a singificant economic impact on a substantial number of small entities. The rule would establish procedures under which State and local agencies would operate Expanded Cash-out Demonstration Projects. These projects are expected to demonstrate the feasibility of future administrative cost savings in the Food Stamp Program. As participation is voluntary and some additional administrative funding will be forthcoming, there should be no significant adverse impact on the workload, staffing needs, or paperwork of particpating State or county agencies.

Public Participation

In order to expedite the implementation of this demonstration project, Mr. Samuel J. Cornelius, Administrator of the Food and Nutrition Service, has established a 30 day comment period on the proposed regulations. Concurrently with the comment period entities which desire to be project sponsors may submit their applications. If significant changes are made in project regulations as a result of public comment, applicants for project sponsorship will be given an opportunity to either modify their applications (based on the final rules) or withdraw their applications. A longer comment period would significantly delay the selection process and thus hinder the exploration of the cost-saving features of cash-out for a larger segment of the food stamp population. The interests of Congress, FNS, and interested States would be best served by enabling project operator selection and implementation to occur as soon as possible.

Paperwork Reduction Act

This proposed regulation does not contain any reporting or recordkeeping requirements that come under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Introduction

Section 17(b)(1) of the 1977 Food Stamp Act (Pub. L. 95–113) established the Department of Agriculture's authority to undertake demonstration projects for purposes of improving benefit delivery or the efficiency of program administration. That same legislation authorized the Department to conduct a demonstration involving the payment of cash, instead of coupons, to households comprised solely of supplementary security income (SSI) recipients or persons 65 years of age or older. Congress believed that such a demonstration might improve the participation rates of eligible elderly and disabled households. (Participation rates for these categories of households were estimated at 40–50 percent of eligibles.) (See The House Committee on Agriculture Report on the Food Stamp Act of 1977, House Report No. 95–464, 95th Congress, 1st Session, p. 97–101.) This demonstration, known operationally as the SSI/Elderly Cash-Out Demonstraton Project, began in April 1980 at eight sites across the country. Evaluation of the project focused on three major areas: (1) participation impact; (2) dietary and food expenditure impact; and (3) administrative costs.

Since 1977, there has been increased interest in learning about the impact of cash-out on other segments of the food stamp eligible population. As a result of these interests, in the 1981 Farm Bill (Public Law 97–98, 95 Stat. 1282, December 21, 1981) Congress amended Section 17(b)(1) of the Food Stamp Act in two ways. First, Congress allowed those State agencies operating an SSI/Elderly Cash-Out Demonstration on October 1, 1981, to continue those projects until September 30, 1985. Second, the Department was authorized to undertake an expanded version of the original cash-out demonstration to include not only those households in the original demonstration but also "mixed households" having at least one member receiving either aid to families with dependent children (AFDC) under Part A of Title IV of the Social Security Act or supplemental security income SSI) benefits under Title XVI of the Social Security Act.

The new language of Subsection 17(b)(1) also allows the Secretary to test a simplified method of determining household benefits. While some sites will be issuing cash in the amount of the household's normal food stamp allotment, other sites will issue cash equal to an average allotment amount based primarily on household size. Sites choosing to issue average allotments by household size will be able to streamline both administration and benefit issuance.

The 1977 Food Stamp Act had allowed the Secretary to grant waivers necessary for the operation of demonstration projects. The waiver authority was limited in that no project could be undertaken which would have the effect of lowering or further restricting the established income or resource standards or benefit levels. This restriction was intended to protect the eligibility and allotment levels of participant households. With respect to demonstration projects testing the use of average allotments, the 1981 Farm Bill removed this restriction from the Secretary's waiver authority. However, even though the waiver restriction has been removed, the Department wishes to ensure that such a demonstration project feature does not have a serious adverse effect on participants. To achieve this, average allotment levels will have to be constructed to consider factors other than household size, i.e., category of aid, income and allowable deductions. The project will be operated in a maximum of 16 sites for up to 15 months.

Subsection 17(f) of the Food Stamp Act of 1977, as amended, added by the 1981 Farm Bill, authorizes the Department to conduct a Simplified Application Demonstration Project. This project involves the use of simplified food stamp application procedures for recipients of certain types of categorical aid. To allow the testing of a wide range of program changes, in some sites operating a Simplified Application Demonstration Project, benefits may be issued in the form of cash. Proposed regulations for this demonstration will be published in the **Federal Register** shortly.

List of Subjects in 7 CFR Part 282

Food stamps, Government contracts, Grant programs—social programs, Research.

Accordingly, the Department proposes that 7 CFR Part 282 be amended as follows:

PART 282—DEMONSTRATION, RESEARCH, AND EVALUATION PROJECTS

In Part 282, a new § 282.20 is added to read as follows:

§ 282.20 Expanded cash-out demonstration project.

(a) *Purpose.* This section establishes procedures under which the Expanded Cash-Out Demonstration Project shall operate. This project is authorized by

Subsection 17(b)(1) of the Food Stamp Act of 1977, as amended. Under this project, households consisting entirely of members 65 years of age or older and households containing at least one member receiving aid to families with dependent children (AFDC) under Part A of Title IV of the Social Security Act or supplemental security income (SSI) benefits under Title XVI of the Social Security Act may be provided with cash instead of food stamp coupons. In some sites, the cash benefit will be equal to the food stamp allotment the household would otherwise receive. In other sites, the cash benefit will be an average allotment amount based on household size, category of aid, income, and other such factors. The purpose of the Expanded Cash-Out Project is to determine the impact of providing cash, instead of food stamps, on administrative costs, participation, and household food expenditures. The project will also examine the impact of providing average allotments instead of normally determined allotments. The project will be operated for up to fifteen months.

(b) *Effect of project on normal program requirements.* Subsection 17(b)(1) of the 1977 Food Stamp Act, as amended, establishes certain project requirements which, for the purposes of the project, override normal requirements contained in other sections of the Act. For the purpose of operating the Expended Cash-Out Demonstration Project, the following provisions of the Act shall be deemed modified or inapplicable.

(1) The definition of a food stamp allotment (Subsection 3(a) of the law) is modified to the extent that benefits will be provided in the form of cash.

(2) Because subsection 17(b)(1) provides for average allotments, subsection 8(a) of the Act, related to the value of allotments, shall be inapplicable in those sites which provide average allotments.

(c) *Regulatory requirements.* All current Food Stamp Program regulations, except where inconsistent with any rules governing this project, shall be in force during the operation of this project.

(d) *Areas of operation.* The Expanded Cash-Out Demonstration Project will be operated in no more than sixteen sites. The selection of these sites will be made by the Department based on proposals submitted in response to the Request for Proposal (RFP) by State and local welfare agencies wishing to participate in the project.

(e) *Project eligible households.* Each sponsoring agency shall decide which of the following categories of households will be eligible to participate in the project:

(1) Households all of whose members are 65 years of age or older;

(2) Households all of whose members receive AFDC benefits;

(3) Households all of whose members receive SSI benefits;

(4) Households all of whose members receive either AFDC or SSI benefits (multiple benefit households); and/or

(5) Households containing at least one member receiving AFDC and/or SSI benefits (mixed households).

(f) *Household participation and notification.* (1) All certified project eligible households residing in the selected project sites shall receive cash representing the value of their allotment. The State agency shall provide these households with a notice, prior to project inauguration, informing them that during the course of the project they will receive their food stamp benefits in the form of cash instead of coupons. In sites that provide average allotments, this notice will provide specific information on the value of the newly computed benefit and the formula used to calculate the benefit. This notice shall meet the requirements of a notice of adverse action, as set forth in § 273.13(a)(2).

(2) Newly applying project eligible households shall have their eligibility for food stamps determined according to standard program rules. The State agency shall also inform newly applying project eligible households that their benefits will be provided in the form of cash during the course of the project.

(3) In the month prior to the last month of project operation, the State agency shall notify all project participants of the termination of the project, the reinstitution of coupon issuance and, in areas where average allotments are used, the requirement that the household be recertified.

(g) *Benefit determination.* Benefit levels for project eligible households shall be determined in one of two ways, depending on the project design approved for each site:

(1) Standard procedures for calculating allotments, as prescribed in § 273.10(e), shall be used to determine each household's benefit level; or

(2) Project sponsors shall develop average allotments, by household size, for those categories of households which they designate as project eligible, and assign allotments on the basis of these average allotment tables.

(i) Subcategories of households and corresponding average allotments shall be developed, as appropriate, to consider the presence or absence of either earned income or an elderly or disabled household member.

(ii) The methodology to be used in developing average allotments shall be determined by the sponsoring agency, but shall be subject to FNS approval. The allotment level for each category and subcategory, by household size, shall be no less than the average allotment would have been were the project not in operation.

(iii) FNS may require sponsors to revise average allotments during the course of the project to reflect changes in areas such as Thrifty Food Plan levels, the benefit reduction rate, or benefit levels in AFDC or SSI.

(h) *Delivery of benefits.* Project participants shall be provided with program benefits by the State or local agency in the form of cash in accordance with the benefit delivery standards, and, where appropriate, expedited service standards afforded all other Food Stamp Program participants.

(1) Cash benefits shall be issued based on the benefit entitlement of each project eligible household.

(2) Check mailings, if used, shall be conducted in accordance with procedures established for the mail issuance of public assistance checks. The State agency shall provide project participants whose checks are lost or stolen in the mail with an opportunity to receive a replacement check. Check replacement shall be conducted in accordance with regulatory procedures governing coupons lost in the mail. Controls shall be applied to safeguard against repeated replacements in individual cases and an alternative delivery system used after two consecutive reports of nondelivery.

(i) *Quality control.* The State agency shall be responsible for handling households correctly classified for participation under the rules of this demonstration in accordance with the provisions of § 275.11(g) for quality control purposes. FNS has determined that the use of average allotments significantly modifies current procedures for determining allotments. Therefore, these cases will be excluded from the State's active and negative case error rates and the cumulative allotment error rate. The State's error rates will be based on the reviews of cases not included in such a demonstration project. Demonstration cases in sites issuing cash allotments based on standard program rules will not be excluded from the State's error rates.

(j) *Funding.* Sponsoring agencies shall be reimbursed at the usual rate of 50 percent for allowable costs associated

with administration of the demonstration projects which exceed the normal costs of program operations.

(k) *Monitoring and evaluation.* FNS shall establish procedures for monitoring sponsoring agencies' operation and administration of the Expanded Cash-Out Demonstration Project. The evaluation of the project shall be conducted by an independent contractor. The sponsoring agency shall, upon reasonable notification, provide the evaluation contractor with access to all information pertaining to project operations.

(91 Stat. 958 (7 U.S.C. 2011–2029); and Sec. 1330 of Public Law 97–98, 95 Stat. 1290 (7 U.S.C. 2026))

Dated: July 12, 1982.

Samuel J. Cornelius,

Administrator.

[FR Doc. 82–19302 Filed 7–15–82; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 1030

[Marketing Agreements and Orders; Milk]

Milk in the Chicago Regional Marketing Area; Temporary Revision of Shipping Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This notice invites written comments on a proposal that the supply plant shipping requirements under the Chicago Regional milk order be decreased temporarily for the months of September through December 1982. This action was requested by cooperative associations representing a majority of producers supplying the market to prevent uneconomic shipments of milk from the production area to distributing plants.

DATE: Comments are due on or before August 2, 1982.

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

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202–447–7311.

SUPPLEMENTARY INFORMATION: It has been determined that this action is not a major rule under the criteria set forth in Executive Order 12291.

Also, it has been determined that the potential need for adjusting 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 completion of the procedure in time to give interested parties timely notice that supply plant shipping requirements for September 1982 would be modified. The initial request for the action was received on June 28, 1982.

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 assure that the market would be adequately supplied with milk for fluid use with a smaller proportion of milk shipments from pool supply plants.

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.*), and the provisions of § 1030.7(b)(5) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Chicago Regional marketing area is being considered for the months of September through December 1982.

All persons who desire to submit written data, views or arguments in connection with the proposed revision should file the same with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250 not later than August 2, 1982. Please submit two copies of the document filed. The period for filing views is being somewhat limited to enable the timely consideration of this matter since the proposed action would be applicable to milk shipments made during September. Further, the proposed change provides some reduction of pooling standards and will not require extensive preparation or substantial alteration in the method of operation for handlers.

All written submission made pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The provisions proposed to be revised are the supply plant shipping percentages set forth in § 1030.7(b) that are applicable during the months of September through December 1982. Currently, the minimum shipping percentage of total producer receipts for pool supply plants and units of supply plants is 30 percent, 35 percent, 35 percent and 25 percent for September, October, November and December, respectively. In response to a public hearing held March 30, 1982, at Madison, Wisconsin, the Department issued a recommended decision on June 30, 1982, to amend the Chicago Regional order to permanently reduce by 5 percentage points the minimum shipping percentage for each month of September through December. It has been requested that the minimum percentages be reduced temporarily by an additional 10 percentage points for each month of September through December 1982.

Pursuant to the provisions of § 1030.7(b)(5) the supply plant shipping percentages set forth in § 1030.7(b) may be increased or decreased by up to 10 percentage points during the months of September through March to encourage additional milk shipments to pool distributing plants or to prevent uneconomic shipments.

The cooperative associations requesting the temporary revision indicate that their producer receipts for the September through December 1982 period will continue to be at a high level and be approximately the same as the similar period in 1981. They contend that with the high levels of milk supply in the market less milk will be needed to be delivered from supply plants to distributing (bottling) plants. The cooperatives ask that the shipping requirements be reduced 10 percentage points for each of the months of September, October, November and December 1982 on a temporary basis from the level the cooperative requested at the March 30 public hearing.

Also, the cooperatives said that with the possible curtailment of fluid sales by a Chicago pool distributing plant, the ability of a supply plant unit to pool its milk receipts in the coming months of September through December may be affected adversely.

Because of the continued high level of milk supply in the market, it may be appropriate to reduce the pool supply plant shipping percentages for these months. The proposed reduction in shipping percentages could prevent uneconomic movements of milk. Also, the reduction could assure that producers who have been regularly associated with the fluid market can continue to share in the pool proceeds of the market.

List of Subjects In 7 CFR Part 1030

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on July 13, 1982.

Joel L. Blum,

Acting Director, Dairy Division.

[FR Doc. 82-19301 Filed 7-15-82; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1701

Public Information; Appendix A—REA Bulletins REA Specification for Filled Buried Service Wire, PE-86

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: REA proposes to amend Appendix A—REA Bulletins by issuing a new REA Bulletin 345-86, REA Specification for Filled Buried Service Wire, PE-86. This new specification will cover a two-pair 22 AWG filled core armored single jacket wire for use as a service drop in lengths not to exceed 500 feet (150 m).

REA, in its constant effort to provide the best, most cost-effective telecommunications for rural America has developed a specification for improved drop wire. This action will allow REA borrowers to take advantage of current wire technology while conserving petroleum raw materials. The improved wire will provide equivalent service at reduced costs.

DATE: Public comments must be received by REA no later than September 14, 1982.

ADDRESS: Submit written comments to Joseph M. Flanigan, Director, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Harry M. Hutson, Chief, Outside Plant Branch, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 1342, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382-8667. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to amend Appendix A—REA Bulletins by issuing a new REA Bulletin 345-86, REA Specification for Filled Buried Service Wire, PE-86. This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity and therefore has been determined to be "not major." This action does not fall within the scope of the Regulatory Flexibility Act and is not subject to OMB Circular A-95 review. This program is listed in the Catalog of Federal Domestic Assistance as 10.851—Rural Telephone Loans and Loan Guarantees.

Copies of the draft bulletin are available upon request from the address indicated above. All written submissions made pursuant to this action will be made available for public inspection during regular business hours, above address.

List of Subjects in 7 CFR Part 1701

Loan programs—communications, Telecommunications, Telephone.

Dated: July 9, 1982.

Jack Van Mark,

Acting Administrator.

[FR Doc. 82-19208 Filed 7-15-82; 8:45 am]

BILLING CODE 3410-15-M

Animal and Plant Health Inspection Service

9 CFR Parts 112 and 113

[Docket No. 82-018]

Viruses, Serums, Toxins, and Analogous Products; Revision of Autogenous Biologics Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would revise the requirements for autogenous biologics. As proposed, the amendments would remove restrictions on these products to permit recommendations for use in herds or flocks other than the one from which the organisms were isolated. Samples furnished for Veterinary Services testing would be increased for serials authorized to be prepared in large quantities. This reflects current practice for serials exceeding stated size limits. The time for initiating preparation of a product would be increased to 12 months from date of isolation. Maximum expiration date would be increased to 18 months from harvest. Observation periods for purity and safety tests would be increased to correspond to other licensed products, although shipment would continue to be permitted before tests are concluded.

DATE: Comments must be received on or before September 14, 1982.

ADDRESS: Interested parties are invited to submit written data, views, or arguments regarding the proposed regulations to: Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 828-A, Federal Building, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. R. J. Price, Senior Staff Veterinarian, Veterinary Biologics Staff, USDA, APHIS, VS, Room 827, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8245.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 to implement Executive Order 12291 and has been classified as a "Nonmajor Rule."

The proposed rule would not have a significant effect on the economy and would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign based enterprises, in domestic or export markets. These revisions would reduce regulatory requirements.

Additionally, Dr. Harry C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action would not result in an adverse economic impact on a substantial number of small entities. Small entities are defined as independently owned firms not dominant in the field of veterinary biologics manufacturing. This action would result in a beneficial effect to all licensed producers by enabling production of larger serials to be used over larger geographical areas.

Current regulations restrict the volume of a serial of an autogenous biologic to 100,000 doses for poultry and 1,000 doses for other animals (9 CFR 113.98). The regulations also state that autogenous biologics must be made

using isolates from the herd or flock in which the biologic will be used and prohibit label recommendations for use of the product in a herd or flock which is different from the one where the isolates were obtained (9 CFR 113.98 and 112.7).

This proposal would amend the above requirements by providing a mechanism for allowing the use of autogenous biologics in herds or flocks which are different from those where the isolate was obtained. It would also delete the prohibition against labels recommending such use in different herds or flocks. The reason for the proposed amendment is that experience has shown that organisms from one herd or flock can be effectively used to prepare autogenous biologics to combat the diseases at other locations.

In conjunction with the proposed amendment making provision for the use of autogenous biologics in other herds or flocks, the 100,000 and 1,000 dose limitation for autogenous biologics would be deleted since more doses might be needed if the product is used at additional locations. For similar reasons, this amendment proposes to extend the expiration dating of autogenous biologics from 6 months to 18 months. The maximum period permitted for use of a culture would also be extended from the current period of 30 days to 12 months since such longer period would be necessary if cultures are used to make product to be used at more than one location.

Finally in light of the other changes being proposed, this amendment would add a provision in 9 CFR 113.3 of the regulations which would specifically provide for the sampling of autogenous biologics other than bacterins. This proposal would also reduce the number of samples required if a serial of autogenous vaccine does not exceed 50 containers.

Lists of Subjects in 9 CFR Parts 112 and 113

Animal biologics, Exports, Imports, Labeling, Packaging and containers, Transportation.

PART 112—PACKAGING AND LABELING

Section 112.7(g) would be revised to read:

§ 112.7 Special additional requirements.

* * * * *

(g) In the case of autogeneous biologics, labels shall include the recommended dose, the number of repeat doses, if any, and the interval recommended between doses; *Provided,* That, the label shall not show:

(1) The identity of the herd or flock from which the culture was isolated; or

(2) The name(s) of the person(s) responsible for making the isolations.

* * * * *

PART 113—STANDARD REQUIREMENTS

Section 113.3(b) (2) and (10) would be revised to read:

§ 113.3 Sampling of biological products.

* * * * *

(b) * * *

(2) *Bacterins and bacterin-toxoids.* (i) Twelve samples of single-fraction bacterins and bacterin-toxoids.

(ii) Thirteen samples of double-fraction bacterins and bacterin-toxoids.

(iii) Fourteen samples of triple-fraction bacterins and bacterin-toxoids.

(iv) Fifteen samples of bacterins and bacterin-toxoids containing more than three fractions.

* * * * *

(10) *Autogenous biologics.* Two samples from each serial of autogenous biologics shall be selected; *Provided,* That, if the serial exceeds 50 containers, 12 samples shall be selected.

* * * * *

Section 113.98 (a) (2), (b), and (c) would be revised to read:

§ 113.98 Autogenous biologics

(a) * * *

(2) Under normal circumstances, isolates from one herd or flock shall not be used to prepare an autogenous biologic for another herd or flock. However, the Deputy Administrator may authorize preparation of an autogenous biologic for use in adjacent herds or flocks which are considered to be at risk. The Deputy Administrator may authorize preparation of an autogenous biologic for use in other herds or flocks (not adjacent) which he considers to be at risk, with written concurrence from proper State authorities.

* * * * *

(b) Unless otherwise authorized by the Deputy Administrator, each serial of an autogenous biologic shall be subject to the following restrictions:

(1) Autogenous biologics shall be prepared for emergency use only. Organisms shall not be used for production more than 12 months from isolation.

(2) The expiration date shall not exceed 18 months from harvest.

(c) *Testing Requirements.* Final container samples of completed product from each serial and subserial shall be tested for purity as prescribed in § 113.26, and for safety as prescribed in § 113.33(b) or § 113.38 except that:

(1) Serials which are satisfactory after the third day observation of purity test cultures and safety test animals may be released for shipment to the customer and the tests continued throughout the required period; and

(2) Serials released on the basis of satisfactory results of third day observations shall be immediately recalled if evidence of contamination occurs in test cultures or if any of the safety test animals sicken or die during the observation period.

All written submissions made pursuant to this notice will be made available for public inspection at the address listed in this document during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 12.7(b)).

Done at Washington, D.C. this 12th day of July 1982.

R. L. Rissler,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 82-19207 Filed 7-15-82; 8:45 am]

BILLING CODE 3410-34-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 270

[Release Nos. 33-6415, IC-12542, S7-938]

Examination of Issues Presented by Investment Policies of Money Market Funds That Relate the Purchase of Securities Issued by Financial Institutions to Sales of Fund Shares to Customers of Those Institutions

AGENCY: Securities and Exchange Commission.

ACTION: Publication of issues to be considered at hearings and order of hearing.

SUMMARY: The Commission today published (1) a list of issues to be considered at public hearings concerning investment policies of money market funds that relate the purchase of securities issued by financial institutions to sales of fund shares to customers of those institutions, and (2) an order that specifies procedures for the hearings. The schedule of appearances will be announced by the Commission shortly before the hearings commence.

DATE: Hearings will commence on September 20, 1982, at 10:00 a.m.

ADDRESS: Hearings will be held in Room 1C40 of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

Any written submissions not prepared in connection with an oral presentation should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and should refer to File No. S7–938.

All witnesses desiring to make oral presentations should submit copies of their prepared statements to the Commission. Such materials should be directed to the attention of either Jane A. Kanter or Sandra M. Molley, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

All written submissions, including the written texts submitted in connection with oral presentations and transcripts of such oral presentations, will be available for public inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Jane A. Kanter, Special Counsel (202–272–2107), Susan P. Hart, Attorney (202–272–2098), or Sandra M. Molley, Law Clerk (202–272–7317), Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The public hearings that are scheduled to commence on September 20, 1982, are for the purpose of giving the Commission the benefit of the views of interested members of the public concerning money market funds' investment policies that relate the purchase of securities issued by financial institutions to sales of fund shares to customers of those institutions. As discussed below, a money market fund has requested acceleration of the effective date of its registration statement which discloses its intention to implement an investment policy that would involve purchase by the fund of certificates of deposit of certain banks and other financial institutions in amounts that approximated the value of shares sold to customers of those institutions. At least one other fund has filed a registration statement describing a similar policy. Two other funds now disclose in their prospectuses that they intend to implement, if permitted by the Commission, a policy of giving preference in portfolio selections to securities of financial institutions whose customers purchase fund shares. The Commission considers it appropriate to defer its determination of whether to declare effective the registration statement of any investment company proposing to implement such a policy until such time as it has had the benefit of a public hearing on the legal and policy issues involved.

Visa Money Fund, Inc.

The request for acceleration currently before the Commission is that of Visa Money Fund, Inc. ("Visa Fund" or "Fund"), which has also requested that its representatives be permitted to make an oral presentation on the matter directly to the Commission. Visa Fund is registered as a no-load, open-end, diversified management investment company that will invest in short-term money market instruments, primarily certificates of deposit having 14-day maturities. Visa Fund proposes to make its shares available through banks and other financial institutions ("participating institutions") and to implement an investment policy whereby it would purchase certificates of deposit issued by the participating institutions. Visa Fund's registration statement states:

> This investment policy is designed to result in the Fund's holding certificates of deposit issued by banks and other financial institutions which typically do not receive deposits from money market funds, thus supplying monies to institutions which serve a broad range of local communities.

Visa Fund will invest in short-term money market securities, primarily certificates of deposit having 14-day maturities, issued daily by financial institutions which are members of Visa U.S.A., Inc.,[1] or Visa International Service Association (collectively referred to as "Visa Institutions"), provided that such institutions have assets of more than $300 million and meet Visa Fund's credit worthiness criteria. If a Visa Institution met these tests, Visa Fund would invest in its certificates of deposit in an amount that closely approximated the value of Visa Fund shares purchaed by customers of that institution.[2] A Visa Institution that did not meet these tests could, nevertheless, take advantage of Visa Fund's reciprocal investment policy by designating as its correspondent a Visa Institution that did satisfy these tests.[3] When customers supplied money to a participating institution for the purchase of Visa Fund shares, the institution would not have to transmit those funds to Visa Fund (although it would have the option of doing so). Instead, the institution could immediately issue and transmit its certificate of deposit in the amount of its customers' orders. Such certificates of deposit would bear an interest rate equal to the 30-Day Composite Rate for Primary Certificates of Deposit that is made available by the Federal Reserve Bank of New York.

Persons desiring more information regarding Visa Fund are invited to examine its registration statement (File No. 2–74889), available at the Commission's public reference room.

The Commission's Decision To Hold Hearings

The Commission's procedures do not provide for an opportunity for registrants or other interested persons to be heard on the question of whether a specific registration statement should be declared effective, and, while it appears to be within the Commission's authority to provide such an opportunity, the Commission is not doing so in this instance. The Commission believes, however, for the reasons set forth below, that it is appropriate to hold public hearings relating to the general issues presented by an investment policy of the type Visa Fund proposes to follow before making a determination whether to declare effective the registration statement of Visa Fund or any other investment company with an investment policy presenting similar issues.

The principal reason for holding public hearings on this matter is that the Commission's decision on the investment policy in question is one that might have a significant effect on the development of the money market fund industry. The Commission is not aware of any registered investment company now operating that relates its selection of port-folio securities to sales of fund shares. If Visa Fund goes forward with the implementation of this policy, it is

[1] Visa U.S.A., Inc., is a membership organization comprising over 12,000 United States financial institutions, including commercial banks, mutual savings banks, savings and loan associations, and credit unions.

[2] In addition to the size and credit worthiness tests, Visa Fund has a $10 million insurance policy which allows the Fund to indemnify shareholders against losses of principal in excess of $500,000 per year due to failure of a Visa Institution to redeem its certificates of deposit or other deposit obligations upon maturity.

[3] In situations in which Visa Fund cannot purchase certificates of deposit from Visa Institutions whose customers purchase fund shares, or Visa institutions designated as correspondents, then Visa Fund will invest in (1) issues of, or guaranteed by the U.S. Government, its agencies or instrumentalities, and (2) repurchase agreements with respect to such issues.

possible that similar policies will become widespread in the industry. The Commission wishes to consider the extent to which such a development would be likely to occur and the effect, if any, that such a development could have on the interests of investors in money market funds.

Second, the element of reciprocity present in an investment policy that relates fund portfolio investments to sales of fund shares raises significant legal and policy questions under the Investment Company Act of 1940 ("1940 Act") (15 U.S.C. 80a–1—80a–64).

Third, in addition to Visa Fund's request to be heard with respect to acceleration of the effective date of its registration statement, a substantial number of persons have come forward to give the Commission their views on this matter, and some of these persons have also requested that the Commission conduct a hearing on the matter. Both supporting and opposing views have been expressed. In all cases, however, it appears that the issue of central interest to the commentators has been the Fund's policy calling for sales-related investment in certificates of deposit issued by participating institutions.

Fourth, the Commission wishes to offer interested persons an opportunity to present their views as to whether an arrangement such as that proposed by Visa Fund raises questions under the banking laws, whether such an arrangement would benefit the public by providing funds to local and regional banks, and to what extent the Commission should consider such matters in carrying out its responsibilities under the securities laws.

In light of the foregoing, the Commission has decided to hold public hearings to explore the legal and policy implications of the implementation by a money market fund of a sales-related investment policy and to receive the comments of all interested parties in the context of a public proceeding. This proceeding will provide those persons who have chosen to express their views on the matter to the Commission with a forum for making their views known as a matter of record. In this connection, the Commission is including in the public comment file relating to this proceeding, all third party letters received by it expressing views on Visa Fund's registration statement. Such views will not have to resubmitted in order to be considered by the Commission.

Persons interested in testifying or furnishing a written submission for the record should consult the procedural instructions contained under the heading "Procedures" at the conclusion of this release. During the period prior to the commencement of the hearings, interested investors, issuers, and members of the securities or banking industries may wish to form groups to organize and prepare their presentations.

Issues To Be Considered at the Hearings

General: Is it consistent with the purposes, policies, and provisions of the 1940 Act for a money market fund to follow an investment policy relating the purchase of securities issued by financial institutions to sales of fund shares to customers of those institutions (hereinafter referred to as a "Sales-Related Investment Policy")?

A. Questions under Section 36(a) of the 1940 Act [15 U.S.C. 80a–35(a)]

1. Would persons having fiduciary duties to the fund recognized by Section 36(a) of the 1940 Act breach those duties by permitting the fund to employ a Sales-Related Investment Policy?

2. Would such persons be deemed to have properly discharged their fiduciary duties to a fund if such a Sales-Related Investment Policy had been approved by the board of directors and by shareholders?

3. To what extent would the question of whether any such fiduciary duties have been properly discharged be affected by the nature and extent of prospectus disclosure of a Sales-Related Investment Policy?

B. Questions Under Section 17(d) of the 1940 Act [15 U.S.C. 80a–17(d)]

1. Would implementation of a Sales-Related Investment Policy involve participation in a joint enterprise or a joint arrangement between the fund and its affiliated persons, principal underwriter, or affiliated persons thereof within the meaning of Section 17(d) of the 1940 Act or Rule 17d–1 thereunder (17 CFR 270.17d–1)?

2. If so, are there conditions under which the Commission could properly issue an order pursuant to Rule 17d–1 permitting the use of such a policy? Should the Commission consider such a fund's expected rate of return in determining whether to grant such approval?

3. To what extent should the Commission consider prospectus disclosure of a Sales-Related Investment Policy in deciding whether to grant an application under Section 17(d) and Rule 17d-1 thereunder permitting the use of such a policy?

C. Questions under section 12(d)(3) of the 1940 Act [15 U.S.C. 80a-12(d)(3)]

1. Would a financial institution that made shares of a fund that had a Sales Related Investment Policy available to its customers be an underwriter of such shares within the meaning of Section 2(a)(40) of the 1940 Act (15 U.S.C. 80a-2(a)(40))?

2. If so, would the provisions of Section 12(d)(3) of the 1940 Act that makes it unlawful for a registered investment company to purchase any security issued by or other interest in the business of a person who is engaged in the business of underwriting prohibit the fund from purchasing certificates of deposit or other securities from such a financial institution?

3. If the financial institutions involved are deemed to be underwriters, would Rule 12d–1 under the 1940 Act (17 CFR 270.12d–) nonetheless permit the fund to purchase their securities, or would purchases made pursuant to a Sales-Related Investment Policy be deemed purchases not "solely for investment purposes"? If the exemption provided in Rule 12d–1 is not available, are there conditions under which the Commission could properly issue an order pursuant to Section 6(c) of the 1940 Act (15 U.S.C. 80a–6(c)) permitting the use of such a policy?

4. To what extent should the Commission consider prospectus disclosure of a Sales-Related Investment Policy in deciding whether to issue an order pursuant to Section 6(c) permitting the use of such a policy?

D. Other issues under the Securities Laws

Does a Sales-Related Investment Policy present issues under any other provisions of the 1940 Act or the securities laws generally?

E. Legal and Policy Questions Involving Banks

1. What, if any, questions does the use by a fund of a Sales-Related Investment Policy raise under the Glass-Steagall Act or other banking laws and regulations, and to what extent should the Commission consider such matters in carrying out its responsibilities under the securities laws?

2. What, if any, public benefit would be provided by a fund's use of a Sales-Related Investment Policy?

3. What, if any, public detriment would result from a fund's use of a Sales-Related Investment Policy?

Procedures

A. Written Submissions

Interested persons are invited to submit their views on the foregoing questions in writing by August 25, 1982. Written submissions should be made in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and refer to File No. S7–938.

B. Oral Presentations

Any interested person desiring to make an oral presentation of his views at the hearings is requested to write or call Jane A. Kanter (202–272–2107), Susan P. Hart (202–272–2098) or Sandra M. Molley (202–272–7317), Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, not later than August 25, 1982. The hearings will begin at 10 a.m. on September 20, 1982 and will be held in Room 1C40 at the above address.

It has been tentatively determined to limit oral statements to 30 minutes each plus such further time as may be necessary to answer questions. Depending upon the number of persons requesting to be heard, appearances may be more limited. Additional time may be granted at the discretion of the hearing officer upon written request timely submitted with copies of the witness's prepared statement. All witnesses shall be required to submit 25 copies of their prepared statements at least 5 business days in advance of their scheduled date of appearance.

It is requested that persons making oral statements be prepared to respond to specific inquires from the Commission and its staff. Any person may submit in writing to the hearing officer questions that he wishes to have directed to a particular witness or group of witnesses, but the hearing officer will determine in his sole discretion whether, or to what extent, to direct those questions to any witnesses.

The Commission has designated Joel H. Goldberg, Richard W. Grant, Anthony A. Vertuno, and Edward F. Greene or his designee as hearing officers. The hearings will be conducted for the Commission by the Division of Investment Management.

IV. Statutory Authority

The public hearing has been ordered by the Commission pursuant to sections 6(a), 8(a), 10(a), 19(a) and 21 of the Securities Act of 1933 [15 U.S.C. 77f(a), 77h(a), 77j(a), 77s(a), 77u]. Section 41 of the Investment Company Act of 1940 (15 U.S.C. 40) and rule 21 of the Commission's Rules of Practice (17 CFR 201.21).

By the Commission.

List of Subjects

17 CFR Part 230

Reporting requirements, Securities.

17 CFR Part 270

Investment companies, Reporting requirements, Securities.

George A. Fitzsimmons,

Secretary.

July 9, 1982.

[FR Doc. 82–19295 Filed 7–15–82; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 299

[Docket No. 81N–0263]

Designated Names; Revocation of List of Official Names of Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revoke the existing list of official names of drugs designated by the agency. Nonproprietary drug names adopted by the U.S. Adopted Name (USAN) Council will serve as "established names" under section 502(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(e)) unless FDA designates an official name for a drug because it finds the USAN to be unduly complex or not useful. This action will make it unnecessary for FDA to publish routinely as official names those names of drugs adopted by the USAN Council, and it will not affect the availability to the public of current information on acceptable "established names" of drugs.

DATE: Comments by September 14, 1982.

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

FOR FURTHER INFORMATION CONTACT: Ed Farha, National Center for Drugs and Biologics (HFD–30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6490.

SUPPLEMENTARY INFORMATION: Section 502(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(e)) requires that the label of a drug product bear its "established name," if there is one, to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or chemical formula). The term "established name" is defined in the same sections (1) an official name designated by the agency under section 508 of the act (21 U.S.C. 358), or (2) if an official name has not been designated, then the offical title of a drug recognized in an official compendium, or (3) if neither (1) nor (2) applies, then the common or usual name of a drug.

Thus, an official name designated by the agency is the "established name" for purposes of the labeling requirements in section 502(e) of the act. The Commissioner of Food and Drugs has the authority under section 508 of the act to designate an official name of a drug. Exercising this authority is not mandatory, but is to be done if deemed necessary or desirable in the interest of usefulness and simplicity. Under this authority the agency began publishing in 1967 official names of drugs in Title 21 of the Code of Federal Regulations. This list, which has been updated periodically as new official names have been designated, currently comprises over 450 official names of drugs. The agency has selected these names almost entirely from those names adopted by the USAN Council, although the agency's policy has been to omit the word for the salt, ester, or other chemical combinations when publishing this list.

The USAN Council was established in 1964 to provide a systematic method for selecting and assigning scientifically acceptable nonproprietary names for drugs. The three organizations that sponsor the USAN program—the American Medical Association, the U.S. Pharmacopeial Convention, and the American Pharmaceutical Association—do so through representation on the USAN Council. In addition, FDA has been represented on the Council since 1967, and has voting power in the Council's selection of drug names.

The USAN Council becomes involved very early in the selection of a nonproprietary drug name. A request to the USAN Council to establish a U.S. Adopted Name (USAN) originates usually from a manufacturer who has developed a substance of potential therapeutic utility to the point where there is a distinct possibility of its being marketed in the United States. Occasionally, the initiative is taken by the USAN Council in the form of a request to parties interested in a substance for which a nonproprietary name appears to be lacking. For a

substance that is regarded as an "Investigational New Drug" under the act, the process of selecting a USAN is usually initiated by the manufacturer during the period of investigation when the substance is under clinical study, so that the adoption of the USAN will be complete by the time the relevant new drug application (NDA) is filed.

Once general agreement by the Council has been reached on a name, the name is published in the Trademark Bulletin of the Pharmaceutical Manufacturers Association as a "Proposed USAN." This informs interested persons of the Council's intention to adopt the name, and serves as an invitation for comments or objections. If no objections are received, the tentatively adopted USAN is then submitted for consideration to several cooperating agencies, including the World Health Organization, the British Pharmacopeia Commission, the Nordic Pharmacopeia Council, as well as the United States Pharmacopeia and the National Formulary, and FDA. If no objections are raised, adoption is considered final and the USAN is published in the "New Names" section of the *Journal of the American Medical Assocation,* copies of which are distributed widely to the American pharmaceutical press.

A cumulative list of drug names which have been selected and released by the USAN Council since June 15, 1961 is published yearly by the U.S. Pharmacopeial Convention, Inc., as the *USAN and the USP Dictionary of Drug Names.* Copies of this publication may be obtained from the U.S. Pharmacopeial Convention, Inc., 12601 Twinbrook Parkway, Rockville, MD 20852.

Because of the skill and expertise the USAN Council has shown in deriving useful nonproprietary names for drugs, the wide publicity each USAN quickly receives, and because the drug names which FDA has designated in the past as official names have been almost identical to those in USAN, the agency believes that FDA's routine publication of these official names is duplicative and unnecessary. Therefore, the agency proposes to stop routinely publishing official names of drugs. It would instead publish official names only in those instances specifically listed in section 508(c) of the act as appropriate for such action: (1) When the USAN or other official or common or usual name is unduly complex or not useful; (2) when two or more official names have been applied to a single drug, or to two or more drugs which are substantially identical in strength, quality, and purity; or (3) when no official name has been applied for a medically useful drug.

The effect of the proposal would be that unless FDA takes positive action by publishing an official name under section 508 of the act, a drug name adopted by the USAN Council will be the drug's "established name." For a compendial drug, a USAN will be the "established name" because it will likely be the name recognized in the compendia. For noncompendial drugs, a USAN will be the "established name" because it is likely to be the drug's common and usual name because of the Council's early involvement in the selection of a drug name, the manner in which a proposed USAN is extensively reviewed by cooperating agenices, including the FDA and the USP, and the wide publicity a USAN quickly receives after being officially adopted.

Accordingly, the agency proposes to revoke the existing list of official names in § 299.20 *Drugs; official names* (21 CFR 299.20). The section will serve as the locus, in the future, if needed, for only those official names of drugs for which the agency determines the drug name is unduly complex or otherwise unuseful, or for the other reasons listed in section 508(c) of the act. For such cases, FDA will designate an official name under section 508(a) of the act and in turn, publish it in § 299.20, as it has done in the past.

The agency believes that this policy is consistent with the intent of section 508(a) of the act, which provides the Commissioner with discretionary authority to designate an official name of a drug when deemed desirable in the interest of usefulness and simplicity. Further, revoking the list in § 299.20 will eliminate the need for FDA to update periodically the list of official drug names. Current information on acceptable "established names" of drugs will continue to be readily available to the general public through the *USAN and the USP Dictionary of Drug Names,* which is republished annually.

A proposal was published in the **Federal Register** of September 13, 1977 (42 FR 45938) to update the list of official names of drugs to reflect changes in chemical structure and the addition of new official names. Therefore, pending final determination of this action to revoke the list of designated official names in § 299.20, no further action will be taken on the September 13, 1977 proposal.

The agency has determined pursuant to 21 CFR 25.24(b)(12) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA has carefully analyzed the regulatory impact and regulatory flexibility of the proposed regulation in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354). The agency has determined that the proposed regulation would not affect the availability to the public of current information on acceptable established names of drugs. Further, it would not result in any significant increase in cost for obtaining this information. Information concerning established names of drugs would be available in the *USAN and the USP Dictionary of Drug Names* instead of the Code of Federal Regulations. *The USAN and the USP Dictionary of Drug Names* are republished annually and can be found in most medical libraries. Most interested persons needing this information, however, would probably already possess a current copy of this volume because it has been widely used in the past as a reliable and up-to-date source for nonproprietary names of drugs. This is particularly true of drug manufacturers from whom a request to the USAN Council to designate a drug name normally originates. For these reasons, therefore, the agency has determined that the proposed rule is not a "major rule" as defined in Executive Order 12291. Further, the agency certifies that the proposed rule, if implemented, will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

List of Subjects in 21 CFR Part 299

Drugs, Official names.

PART 299—DRUGS: OFFICIAL NAMES AND ESTABLISHED NAMES

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 301, 501, 502, 505, 508, 701(a), 52 Stat. 1042–1043 as amended, 1049–1053 as amended, 1055 (21 U.S.C. 331, 351, 352, 355, 358, 371(a))) and under 21 CFR 5.11 (see 47 FR 16010; April 14, 1982), it is proposed that Part 299 be amended as follows:

1. In § 299.4 by revising the second sentence of paragraph (d) and by adding new paragraphs (e) and (f), to read as follows:

§ 299.4 Established names for drugs.

* * * * *

(d) * * * In addition, the Food and Drug Administration agrees with the "Guiding Principles for Coining U.S.

Adopted Names for Drugs," published in the *USAN and the USP Dictionary of Drug Names.* * * *

(e) The Food and Drug Administration will not routinely designate official names under section 508 of the act. As a result, the established name under section 502(e) of the act will ordinarily be either (1) the compendial name of the drug, or (2) if there is no compendial name, the common and usual name of the drug. Interested persons, in the absence of the designation of an official name in § 299.20 of this chapter, may rely on as the established name for any drug the name listed in the *USAN and the USP Dictionary of Drug Names.* The Food and Drug Administration, however, will continue to publish official names under the provisions of section 508 of the act when it is determined that (i) the USAN or other official or common or usual name is unduly complex or is not useful for any other reason, (ii) when two or more official names have been applied to a single drug, or to two or more drugs which are identical in chemical structure and pharmacological action and which are substantially identical in strength, quality, and purity, or (iii) when no such name has been applied to a medically useful drug. Any official name published under section 508 of the act will, or course, be the established name of the drug.

(f) A cumulative list of U.S. adopted names selected and released since June 15, 1961, is published yearly by the U.S. Pharmacopeial Convention, Inc., as the *USAN and the USP Dictionary of Drug Names.* Copies may be purchased from: U.S. Pharmacopeial Convention, Inc., 12601 Twinbrook Parkway, Rockville, MD 20852.

§ 299.20 [Removed and reserved]

2. By removing § 299.20 *Drugs; official names* and designating it "[Reserved]."

Interested persons may, on or before September 14, 1982, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 13, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

Dated: June 24, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

[FR Doc. 82–19346 Filed 7–15–82; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

29 CFR Part 519

Employment of Full-Time Students at Subminimum Wages

AGENCY: Wage and Hour Division, ESA, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The regulations governing the employment of full-time students at subminimum wages currently limit the effective period of a certificate authorizing such employment to a period of not more than one year. Consequently, employers are required to submit renewal applications annually in order to retain the authority to pay full-time students at subminimum wages. In order to alleviate the burden this requirement places on employers and to permit greater flexibility in fixing the duration of these certificates, the Department proposes to amend the regulations to allow for certification periods of a longer duration, which will be determined at the discretion of the Administrator of the Wage and Hour Division. This change will not affect any other terms or conditions of employment under the regulations.

Interested persons are invited to submit written comments on this proposal.

DATE: Comments should be received on or before August 16, 1982.

ADDRESS: Send written comments to William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, Room S–3502, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: James L. Valin, director, Division of Minimum Wage and Hour Standards, Wage and hour Division, U.S. Department Labor, Washington, D.C. 20210, (202) 523–7043. This is not a toll-free number

SUPPLEMENTARY INFORMATION:

Classification

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulation, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

Furthermore, the Department believes that amendment of 29 CFR Part 519 will have no "significant economic impact * * * upon a substantial number of * * * small [business] entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 91 Stat. 1164, 5 U.S.C. 605(b). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect.

This conclusion is based upon all information presently available to the Department. Accordingly, no initial regulatory flexibility analysis is required.

Background

Section 14(b) of the Fair Labor Standards Act provides that the Secretary of Labor "shall by special certificate issued under a regulation or order provide * * * for the employment [at subminimum wages] of full-time students * * * in retail or service establishments." This section also provides for such employment in agriculture and institutions of higher education.

Pursuant to this authority, the Secretary has issued regulations, published as Part 519 of Title 29 of the Code of Federal Regulations. Part 519 in §§ 519.6(a) and 519.16(a) provides that "A full-time student certificate will not be issued for a period longer than one year." The administrative burden upon employers of full-time students resulting from annual certificate renewals is not required by the statute. Although this requirement has been a part of the regulations for 20 years, the Department has no evidence to conclude that limiting the effective period of a certificate to one year has in any way led to greater compliance with the terms and conditions of the statute or the

regulations. Nor has the requirement for annual renewal, in itself, helped to insure that the section 14(b) partial exemption from the minimum wage "will not create a substantial probability of reducing the full-time employment opportunities" of persons other than those employed under special certificates as required by the statute.

List of Subjects in 29 CFR Part 519

Agriculture, Colleges and universities, Minimum wages, Students, Retail, Wage and Hour Division.

PART 519—EMPLOYMENT OF FULL-TIME STUDENTS AT SUBMINIMUM WAGES

§ 519.6 [Amended]

§ 519.16 [Amended]

Accordingly, the following action is proposed: 29 CFR 519.6(a) and 519.16(a) are amended by removing the first two sentences of each subsection and substituting the following in lieu thereof: "A full-time student certificate shall be effective for a period to be designated by the Administrator or his authorized representative. A certificate will not be issued retroactively."

This document was prepared under the direction and control of William M. Otter, Administrator, Wage and Hour Division, U.S. Department of Labor.

Signed at Washington, D.C., this 12th day of July, 1982.

Robert B. Collyer,

Deputy Under Secretary for Employment Standards.

William M. Otter,

Administrator, Wage and Hour Division.

Regulatory Flexibility Act Certification:

I, Raymond J. Donovan, Secretary of Labor, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendment of 29 CFR Part 519, Employment of Full-Time Students at Subminimum Wages regulations, will not have significant economic impact on a substantial number of small entities. This conclusion is based upon all information available to the Department.

Dated: July 1, 1982.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 82-19317 Filed 7-15-82; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 9

Mining and Mining Claims; Petition for Rulemaking and Request for Comments; Extension of Comment Period

AGENCY: National Park Service, Interior.

ACTION: Extension of the comment period.

SUMMARY: On June 1, 1982 (47 FR 23768) the National Park Service published a notice of petition, received from American Borate Co., Cyprus Industrial Minerals, Pfizer, Inc., and U.S. Borax, to amend the regulations governing mining activities on patented and valid unpatented mining claims within units of the National Park System. This notice extends the comment period on that petition for rulemaking.

DATES: Written comments will be accepted until August 10, 1982.

ADDRESS: Comments should be addressed to: Associate Director, Management and Operations, National Park Service, 18th and C Streets, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Willis Kriz, Land Resources Division, National Park Service, Telephone (202) 523-5252.

SUPPLEMENTARY INFORMATION: On June 1, 1982, the National Park Service published a petition for rulemaking and request for comments on the regulations governing mining activities within units of the National Park System. The petitioners noted in their submission that the four-year moratorium on surface disturbance expired on September 28, 1980, and has not been renewed or extended. This rendered obsolete portions of 36 CFR Part 9, Subpart A. The Department agrees some changes are required because the moratorium has expired. The petitioners also submitted numerous specific amendments to the existing regulations, which were published in full. They maintain the amendments better balance the need to protect valid existing rights and efficient resource production with the need to protect park values.

Several individuals and organizations have requested an additional period of time in which to comment. Because of the interest expressed in the petition for rulemaking and to ensure maximum public involvement, the Service is extending the comment period until August 10, 1982.

Dated: July 12, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-19319 Filed 7-15-82; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 2162-5]

Illinois; Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: EPA is proposing rulemaking on a revision to the Illinois State Implementation Plan (SIP) for Sulfur Dioxide (SO_2). The revision pertains to SO_2 Emission Limits for Solid Fuel Combustion Sources within Major Metropolitan Areas (MMAs) other than Chicago, Peoria and St. Louis (Illinois portion.) EPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of Part D of the Clean Air Act (Act).

DATE: Comments on this revision and on the proposed EPA action must be received by August 16, 1982.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Randolph O. Cano at (312) 886-6635 before visiting the Region V Office.)

Environmental Protection Agency, Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to: (Please submit an original and thirteen copies if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air Programs Branch, Region V, Environmental Protection Agency Chicago, Illinois, (312) 886-6035.

SUPPLEMENTARY INFORMATION: On July 29, 1981, the State submitted a May 8, 1981 Illinois Pollution Control Board (IPCB) Final Order (R78-14) as a proposed revision to the Illinois SIP. This final Order repeals Rule 204(c)(1)(D) and amends Rule 204(h) to delete reference to Rule 204(c)(1)(D). Rule 204(c)(1)(D) was incorporated into the Illinois SIP on May 3, 1972 (37 FR

10862) as IPCB Rule 204(c)(B)(ii). This action also incorporated Rule 204(h).

Rule 204(c)(1)(D) requires existing solid fuel combustion sources within MMA's other than the Chicago, Peoria and St. Louis (Illinois portion) MMA's to meet a 1.8 lbs SO_2/MMBTU emission limit, if any Illinois Environmental Protection Agency (IEPA) monitor within the MMA records an annual arithmetic average SO_2 level greater than 60 $\mu g/M^3$ (0.02 ppm) for any year ending prior to May 30, 1976 or 45 $\mu g/M^3$ (0.015 ppm) for any year ending after May 30, 1976.

Rule 204(h) contains a compliance date for Rule 204(c)(1)(D) of three years from the date upon which the IPCB promulgates an Order of Compliance under the provisions of Rule 204(c)(1)(D). Rule 204(c)(1)(D) was promulgated in order to protect a 60 $\mu g/M^3$ annual average secondary National Ambient Air Quality Standard (NAAQS); this standard was subsequently withdrawn.

At the IPCB hearings, the following facts were presented in support of the deletion of these rules. Rule 204(c)(1)(D) has never been implemented since it was promulgated in April 1972. This rule was designed to protect a NAAQS which no longer exists. IEPA, in the event of a potential SO_2 problem in any MMA, could bring about necessary changes more expeditiously without resorting to using this rule since this rule requires at least three years to produce a new emission limit.

EPA proposes to approve the deletion of these rules from the Illinois SIP since it is not necessary to assure attainment and maintenance of the SO_2 NAAQS. All interested parties are invited to comment on the proposed SIP revision and EPA's proposed approval of it. Comments should be submitted to the address listed in front of this notice. Public comments received on or before August 16, 1982, will be considered in EPA's final rulemaking on this proposed SIP revision. All public comments received will be available for inspection at Region V Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

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

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

List of Subjects in 40 CFR Part 52

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

(Secs. 110, 172 and 301(a), Clean Air Act, as amended (42 U.S.C. 7410, 7502 and 7601(a))

Dated: June 22, 1982.

Alan Levin,

Acting Regional Administrator.

[FR Doc. 82-19298 Filed 7-15-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 60

[AD-FRL-2145-3]

Standards of Performance for New Stationary Sources; Alternative Sampling Procedures for Sulfuric Acid Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The purpose of this action is to propose an alternative procedure for determining the SO_2 or sulfuric acid mist emission rate based on measurements of O_2 and SO_2 or acid mist concentrations in the plant exhaust.

These revisions would apply to all sources subject to the standards of performance for sulfuric acid plants.

DATE: *Comments.* Comments must be received on or before September 14, 1982.

Public Hearing. A public hearing will be held, if requested. Persons wishing to request a public hearing must contact EPA by August 16, 1982. If a hearing is requested, an announcement of the date and place will appear in a separate Federal Register notice.

ADDRESS: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (A-130), Attention: Docket Number A-82-03, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Public Hearing. Persons wishing to present oral testimony should notify Mrs. Naomi Durkee, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

Docket. Docket No. A-82-03, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Shigehara, Emmission Measurement Branch (MD-19), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2237.

SUPPLEMENTARY INFORMATION: Subpart H of 40 CFT Part 60 contains standards of performance for the sulfuric acid manufacturing plant industry including sulfur dioxide (SO_2) and sulfuric acid mist emission rate limits and continuous monitoring requirements. Data from emission measurement tests and continuous monitoring systems must be converted from units of SO_2 or sulfuric acid mist concentrations to the units of the standard in kg per metric ton of acid produced (lb per short ton). The present procedure for this conversion requires the measurement of the inlet SO_2 to the plant converter and the calculation of a production rate factor in kg per metric ton per ppm (lb per short ton per ppm) for each 8-hour period.

The proposed revisions allow the source to measure O_2 concentrations in the exhaust gas as an alternative to measurements of SO_2 inlet concentrations and process production rates in obtaining SO_2 or sulfuric acid mist emission rates from sulfuric acid plants. The procedure is applicable for plants that oxidize elemental sulfur or oxidize ore that contains elemental sulfur. The procedure does not apply to plants which use spent acid or use gas streams containing hydrogen sulfide in the production of acid.

The alternative procedure is based on a sulfur mass balance determination of the sulfuric acid production progress. It is accurate to the accuracy level of the measurements. The revision is appropriate for the applicable plants as it provides a means of reducing the testing requirements without loss of emissions data.

These revisions would apply to all sources subject to the standards of performance for sulfuric acid plants. This rulemaking would not impose and additional emission measurement requirements on any facilities. Rather, the rulemaking would simply revise the emission measurement calculation procedures allowing an alternative to procedures that would apply irrespective of this rulemaking.

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

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

(Sec. 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a))

Dated: July 7, 1982.

Anne M. Gorsuch,

Administrator.

Lists of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroluem, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

It is proposed that Subpart H of 40 CFR Part 60 be amended as follows:

1. By adding a paragraph (d) to § 60.84 as follows:

§ 60.84 Emission monitoring.

* * * * *

(d) Alternatively, a source that processes elemental sulfur or an ore that contains elemental sulfur may use the following continuous emission monitoring approach and calculation procedures in determining SO_2 emissions rates in terms of the standard. Continuous emission monitoring of SO_2, O_2, and CO_2 (if required) shall be installed, calibrated, maintained, and operated by the owner or operator according to this procedure in Performance Specifications 2 and 3. This calibration procedure and span value for this SO_2 monitor shall be as specified in paragraph (b) of this section. This span value for CO_2 (if required) shall be 10 percent and for O_2 shall be 20.9 percent (air). A conversion factor based on process rate data is not necessary. Calculate the SO_2 emission rate as follows:

$$E_{SO2} = C_{O2}\, S \frac{1}{0.263 - 0.0126(O_2) - A(CO_2)}$$

Where:

E_{SO2} = SO_2 emission rate, kg/t acid (1b/ton acid).

E_{SO2} = SO_2 concentration, kg/dscm (1b/dscf) (see Table below).

S = Acid production rate factor.
- = 368 dscm/t acid for metric units.
- = 11800 dscf/ton acid for English units.

O_2 = O_2 concentration, percent.

A = Auxiliary fuel factor.
- = 0.00 for no fuel.
- = 0.0226 for methane.
- = 0.0217 for natural gas.
- = 0.0196 for propane.
- = 0.0172 for #2 oil.
- = 0.0161 for #6 oil.
- = 0.0148 for coal.
- = 0.0126 for coke.

CO_2 = CO_2 concentration, percent.

Note.—It is necessary in some cases to convert measured concentration units to other units for these calculations:

Use the following Table for such conversions:

From—	To—	Multiply by—
g/scm	kg/scm	10^{-3}
mg/scm	kg/scm	10^{-6}
ppm(SO_2)	kg/scm	2.660×10^{-6}
ppm(SO_2)	lb/scf	1.660×10^{-7}

2. By adding a paragraph (e) to § 60.85 as follows:

§ 60.85 Test methods and procedures.

* * * * *

(e) Alternatively, a source that processes elemental sulfur or an ore that contains elemental sulfur may use the SO_2, acid mist, O_2, and CO_2 (if required) measurement data in determining SO_2 and acid mist emission rates in terms of the standard. Data from the reference method tests as specified in (a) of this part are required; that is, Method 8 for SO_2 and acid mist and Method 3 for O_2 and CO_2. No determinations of production rate or total gas flow rate are necessary. Calculate the SO_2 and acid mist emission rate as described in § 60.84(d) substituting the acid mist concentration for C_{SO2} as appropriate.

[FR Doc. 82-19406 Filed 7-15-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

Medicaid Program; Interest on Disputed Medicaid Claims

Correction

In FR Doc. 82-18194, appearing at page 29275, in the issue of Tuesday, July 6, 1982, make the following changes:

On page 29276, in the second column, the middle of the column, the equation should read:

"$4.035 divided by 91 × 365 divided by $95.965 = 16.185 (true discount rate)".

On page 29277, in the second column, change the Part Heading to read "PART 433—STATE FISCAL ADMINISTRATION".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 82-358; RM-4057]

FM Broadcast Station in Anchorage and Wasilla, Alaska; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign Channel 289 to Wasilla, Alaska, as its first FM channel assignment and substitute Channel 285A for Channel 288A at Anchorage, Alaska, in response to a request from Snow Peak Corporation. The license for Station KNIK-FM at Anchorage is proposed to be modified to specify the substitute channel.

DATES: Comments must be filed on or before August 16, 1982, and reply comments on or before August 31, 1982.

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

FOR FURTHER INFORMATION CONTACT: Phil Cross, Broadcast Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making and Order To Show Cause

Adopted: June 28, 1982.

Released: July 7, 1982.

By the Chief, Policy and Rules Division.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Anchorage and Wasilla, Alaska); BC Docket No. 82-358, RM-4057.

1. Snow Peak Corporation ("petitioner") requests that FM Class C Channel 289 be assigned to Wasilla, Alaska, as its first FM channel assignment. This proposal would require the substitution of Channel 285A for Channel 288A at Anchorage, Alaska. Petitioner further requests that the license of Station KNIK-FM on Channel 288A be so modified.

2. Petitioner submitted demographic and preclusion data in support of a Class C assignment which is no longer considered in FM assignment cases in accordance with the action taken in the

Second Report and Order (BC Docket 80–130) 47 FR 26624, published June 21, 1982.

3. Petitioner affirms that it would reimburse the licensee of Station KNIK–FM for reasonable costs incident to the modification of its facilities to Channel 285A. We are herein issuing an *Order to Show Cause* to the licensee of Station KNIK to permit the substituition of channels. The petitioner also states that, if the licensee of Station KNIK–FM declined to modify its operation, other alternative channel changes could be made.

4. The Commission believes that the provision of a first FM service to Wasilla warrants our proposing an amendment to the FM Table of Assignments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Anchorage, Alaska	263, 267, 271, *276A, 281, 288A, 293, 298.	263, 267, 271, *276A, 281, 285A, 293, and 298.
Wasilla, Alaska		289.

5. It is ordered, That pursuant to section 316(a) of the Communications Act of 1934, as amended, Station KNIX, Anchorage, Alaska, shall show cause why its license should not be modified to specify operation on Channel 285A, as proposed herein instead of the present Channel 288A.

6. Pursuant to § 1.87 of the Commission's Rules, the licensee of Station KNIX may, not later than August 31, 1982, request that a hearing be held on the proposed modification. If the right to request a hearing is waived, Station KNIX may, not later than August 31, 1982, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. In this case, the Commission may call on the licensee of Station KNIX to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an Order modifying the license as provided in the *Order to Show Cause*. If the right to request a hearing is waived and no written statement is filed by the date referred to above, the licensee of Station KNIX, will be deemed to have consented to the modification as shown in the *Order to Show Cause* and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

7. The Commission's authority to institute rule making proceedings, showings required, cut-off precedures and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before August 16, 1982, and reply comments on or before August 31, 1982, and are advised to read the Appendix for the proper procedures.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

10. It is further ordered, That the Secretary of the Commission shall send a copy of this *Notice and Order to Show Cause* by Certified Mail, Return Receipt Requested, to Northern Television, Inc., licensee of Station KNIX, P.O. Box 2200, Anchorage, Alaska, 99501, the party to whom the *Order to Show Cause* is addressed.

11. For further information concerning this proceeding, contact Phil S. Cross, Broadcast Bureau, (202) 632–5414. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 134, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions

by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-19335 Filed 7-15-82; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-361; RM-4093]

FM Broadcast Station in Muskogee, Oklahoma; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of Class C Channel 246 to Muskogee, Oklahoma, in response to a petition filed by Parrish Broadcasting Systems, Inc. The proposed assignment could provide Muskogee with its second FM service.

DATES: Comments must be filed on or before August 16, 1982, and reply comments on or before August 31, 1982.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

Adopted: June 28, 1982.

Released: July 6, 1982.

By the Chief, Policy and Rules Division.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Muskogee, Oklahoma); BC Docket No. 82-361, RM-4093.

1. A petition for rule making was filed March 26, 1982, by Parrish Broadcasting Systems, Inc. ("petitioner") proposing the assignment of Class C FM Channel 246 to Muskogee, Oklahoma, as that community's second FM assignment. Petitioner states that it will apply for the channel, if assigned. [1] The assignment can be made in compliance with the Commission's minimum distance separation requirements.

2. The proposed assignment of Channel 246 to Muskogee will require a transmitter site restriction of 30 miles south of the city [2] due to Station KMRJ, Pittsburg, Kansas, and KMOD-FM and KRAV, Tulsa, Oklahoma.

3. In view of the fact that the proposal could provide a second local FM broadcast service to Muskogee, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Muskogee, Oklahoma	295	246, 295

4. The Commission's authority to institute rule making proceedings showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before August 16, 1982, and reply comments on or before August 31, 1982, and are advised to read the Appendix for the proper procedures.

6. The Commission's authority to institute rulemaking proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before August 16, 1982, and reply comments on or before August 31, 1982, and are advised to read the Appendix for the proper procedures.

[1] Petitioner submitted demographic, economic, and engineering data. However, in view of the action taken in the *Second Report and Order* in BC Docket No. 80-130, 47 FR 26624, published June 21, 1982, this information is no longer required.

[2] Petitioner states that a transmitter located this far from the community can provide a 70 dBu signal over Muskogee.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rulemaking proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rulemaking to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rulemaking other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former

pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanid by a certificate of service (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-19338 Filed 7-15-82; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-357; RM-4103]

FM Broadcast Station in Terrell Hills, Texas; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action herein proposes the substitution of Class C FM Channel 294 for Channel 292A at Terrell Hills, Texas, and modification of the Class A license for Station KESI (FM), in response to a petition filed by S I T Broadcasting Corporation. The assignment could provide Terrell Hills with a first Class C FM station.

DATES: Comments must be filed on or before August 16, 1982, and reply comments must be filed on or before August 31, 1982.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

Adopted: June 28, 1982.

Released: July 7, 1982.

By the Chief, Policy and Rules Division.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Terrell Hills, Texas); BC Docket No. 82-357, RM-4103.

1. A petition for rule making has been filed by S I T Broadcasting Corporation ("petitioner"), licensee of FM Station KESI (Channel 292A) in Terrell Hills, Texas. Petitioner seeks the substitution of Class C Channel 294 for Channel 292A and modification of its license to specify operation on the Class C channel. Alternatively, petitioner proposes that Channel 292A be deleted from Terrell Hills and Channel 294 assigned to San Antonio, Texas.

2. Terrell Hills, in Bexar County, is located entirely within the urbanized area of San Antonio. It is served by full-time AM Station KCCW and FM Station KESI (Channel 292A).

3. Although petitioner submitted demographic and preclusion information in support of its petition, that information is no longer considered in view of the Commission's recent adoption of the *Second Report and Order* in BC Docket No. 80-130, regarding *Revisions of FM Assignment Policies and Procedures*, 47 Fed. Reg. 26624, published June 21, 1982.

4. In justification for its proposal, petitioner states that the predominance of nine Class C stations in San Antonio has effectively precluded its successful Class A existence. Petitioner asserts that since acquiring KESI earlier this year, the station has experienced a continuous diminution of its financial viability. Therefore, it claims that in light of the plethora of Class C stations in San Antonio, it finds the proposed substitution necessary to enable its station to become competitive with those high-power stations.

5. In support of its alternative proposal for a San Antonio assignment, petitioner cites the Commission's action in *Marco, Florida, et al.*, 54 F.C.C. 2d 1145 (1975), aff'd 39 R.R. 2d 887 (1977), as justifying a modification of license to specify a new city. In that case, the Commission granted a requested to modify insofar as the channel of operation was concerned, but did not likewise modify the station's city of license on the newly assigned channel, as requesed herein. The Commission granted a request to delete a Class A channel at Atlantic Beach, Florida, to accommodate a new Class C assignment at Jacksonville. The license of the Atlantic Beach Class A station was modified to specify operation on the newly-assigned Class C channel at Jacksonville, but the license continued to specify Atlantic Beach consistent with the provisions of § 73.203(b) of the Commission's Rules, the "15-mile" rule. Additionally, the Commission therein stated that is could consider the modification of Atlantic Beach station's city of license to specify Jacksonville in the future, in connection with the filing of an application to change location.

6. As in *Marco, supra*, we could assign the Class C channel to San Antonio and modify Station KESI's license to specify the Class C channel, but Terrell Hills would remain as its city of license under the "15-mile" rule. However, we do not understand petitioner to request a San Antonio assignment without also a modification of license to specify San Antonio. That result would open the channel for competing applications at San Antonio involving the risk of a comparative application proceeding to determine which applicant would best serve the public interest. See, *Ashbacker Radio* v. *F.C.C.*, 326 U.S. 327 (1945); *Riverside and Santa Ana, California*, 65

F.C.C. 2d 920 (1977), *recons. den.* 68 F.C.C. 2d 557 (1978).

7. We do not believe petitioner intended to face such risk factors when it proposed the alternative assignment to San Antonio. Rather, as we interpret petitioner's request, its desire is to achieve a Class C assignment for its station at Terrell Hills in order to be more competitive with the San Antonio Class C stations. Petitioner may wish to clarify its request on this issue by filing a counterproposal to that effect.

8. Petitioner's engineering showing, as noted earlier, indicates that a Class C channel at Terrell Hills would expand its present service contour to a substantial area and population. Accordingly, we shall propose the substitution of channels at Terrell Hills and the modification of Station KESI's license to specify operation on Channel 294 in lieu of Channel 292A in Terrell Hills, Texas. However, in conformity with Commission precedent, as expressed in *Cheyenne, Wyoming,* 62 F.C.C. 2d 63 (1976), should another interest in the assignment be shown, the proposed modification could not be made and the channel, if assigned, would be open to competing applications.

9. An *Order to Show Cause* to the petitioner is not required since consent to the modification of its license is indicated by its request for the Class C channel.

10. A site restriction approximately 17 miles south of Terrell Hills is required to accommodate this proposal to avoid short-spacing to Station KMFM (Channel 241) in San Antonio and the unused assignment of Channel 292A in Gonzales, Texas.

11. The Commission must obtain approval by the Mexican Government to the proposed assignment since Terrell Hills is located within 320 kilometers (199 miles) of the common border.

12. In consideration of the above, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Terrell Hills, Texas	292A	294

13. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

14. Interested parties may file comments on or before August 16, 1982, and reply comments on or before August 31, 1982, and are advised to read the Appendix for the proper procedures.

1. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

16. For further information concerning this proceeding, contact Nancy V. Joyner, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested

parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-19336 Filed 7-15-82; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-356; RM-4106]

FM Broadcast Station in Anson, Texas; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign Channel 276A to Anson, Texas, as its first commercial FM channel in response to a request from Lilly Amador.

DATES: Comments must be filed on or before August 16, 1982, and reply comments on or before August 31, 1982.

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

FOR FURTHER INFORMATION CONTACT: Phil Cross, Broadcast Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

Adopted: June 28, 1982.

Released: July 6, 1982.

By the Chief, Policy and Rules Division:

In the matter of Amendment of § 73.202(b) Table of Assignments, FM Broadcast Stations (Anson, Texas); BC Docket No. 82-356, RM-4106.

1. Lilly Amador ("petitioner") requests that the FM Table of Assignments be amended to add Channel 232A as the first local broadcast service in Anson, Texas. The request was submitted as a counterproposal in BC Docket No. 81-779, RM-3870, which proposed the assignment of Channel 232A to Abilene, Texas. To avoid a conflict with that proceeding, we have substituted Channel 276A for consideration herein. Petitioner states that she would submit an application for a construction permit to build a new station if the channel is assigned to Anson.

2. In view of the fact that the proposed FM channel assignment would provide for a first local broadcast service to Anson, Texas, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Commission's Rules as follows:

City	Channel No.	
	Present	Proposed
Anson, Texas		276a

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.— A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before August 16, 1982, and reply comments on or before August 31, 1982, and are advised to read the Appendix for the proper procedures.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, §73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Philip S. Cross, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in section 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showing Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed.

Such comment and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-19337 Filed 7-15-82; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-360; RM-4115]

TV Broadcast Station in Fajardo, Puerto Rico; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of UHF Television Channel 34 to Fajardo, Puerto Rico, as its second commercial television assignment in response to a petition filed by Michael L. Carter and Hector Nicolau.

DATES: Comments must be filed on or before August 16, 1982, and reply comments on or before August 31, 1982.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television.

Notice of Proposed Rule Making

Adopted: June 28, 1982.

Released: July 6, 1982.

By the Chief, Policy and Rules Division.

In the matter of Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Fajardo, Puerto Rico); BC Docket No. 82-360, RM-4115.

1. The Commission herein considers a petition for rule making filed May 7, 1982, by Michael L. Carter and Hector Nicolau ("petitioners"), seeking the assignment of UHF Television Channel 34 to Fajardo, Puerto Rico. Petioners expressed an interest in applying for the channel, if assigned.

2. Fajardo (population 18,249)[1] is in the municipio of Fajardo, population 23,032.[2] The town of Fajardo, Puerto Rico, is located on the northeast coast of Puerto Rico, approximately 48 kilometers (30 miles) east-southeast of San Juan, Puerto Rico. Also, according to petitioners, there are two television channels allocated to Fajardo, neither of which is on the air. VHF Channel 13 has a pending construction permit, and UHF Channel* 40, reserved for noncommercial educational use, is not currently being utilized. Fajardo is served by one AM and one FM radio station and by a daily newpaper. Also, there is some television penetration from television stations based in San Juan, and in St. Thomas and St. Croix, Virgin Islands.

We are told by petitioners that Fajardo is a vital, growing shoreline town deserving of, and capable of supporting an additional television service. With regard to Fajardo's government, it has a Superior Court, legal services office, and has regional offices of the Puerto Rico Electrical and Water authorities. Petitioners set forth other demographic information which demonstrates a need for an additional channel.

4. The Commission finds that it would be in the public interest to seek comments on the proposal to amend the Television Table of Assignments (§ 73.606(b) of the Rules) with regard to the city of Fajardo, Puerto Rico, as follows:

City	Channel No.	
	Present	Proposed
Fajardo,Puerto Rico	13+, *40	13+, 34, *40

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before August 16, 1982, and reply comments on or before August 31, 1982, and are advised to read the Appendix for the proper procedures.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer

[1] This figure is taken from the 1970 U.S. Census.

[2] Petitioner indicates that the 1980 population of the municipio is 32,011.

whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-19339 Filed 7-15-82; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 94

[PR Docket No. 82-373; RM-3887; and RM 3994; FCC 82-303]

Amendment of the "Grandfathering" Provisions for Transmitter and Antenna Standards in Private Operational-Fixed Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes that the FCC permit all transmitting equipment (including antennas) authorized in the Private Operational-Fixed Microwave Radio Service before July 1, 1976 to be continued in use indefinitely, provided that the equipment does not cause harmful interference to other private microwave systems. The purpose of this proposal is to ease licensee burdens.

DATE: Comment must be received on or before August 16, 1982 and reply comments must be received on or before August 31, 1982.

FOR FURTHER INFORMATION CONTACT: Fred Day, Private Radio Bureau, (202) 632-6497.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 94

Private operational-fixed microwave radio service communications equipment.

Notice of Proposed Rulemaking

Adopted: July 1, 1982.

Released: July 9, 1982.

By the Commission.

In the matter of amendment of the "grandfathering" provisions for transmitter and antenna standards in Part 94; PR DOCKET 82-373, RM-3887, RM-3994.

1. The Commission has received three petitions for rulemaking requesting relief from certain technical standards in Part 94, Private Operational-Fixed Microwave Service,[1] adopted in Docket No. 19869,[2] which established tighter interference criteria for private microwave systems. The petition were filed by the Association of American Railroads (AAR), The Central Committee on Telecommunications of the American Petroleum Institute (API) and the Southern Railway System (SRS). The petitions request that the "grandfather" provisions in Part 94, which apply to microwave systems licensed prior to adoption of the Part 94 technical standards, be extended or modified. Under the temporary "grandfather" provisions now contained in Part 94, such systems must comply with the new technical standards by August 1, 1985.

Background

2. In Docket No. 19869, we established a separate radio service, the Private Operational-Fixed Microwave Radio Service (OFS), to standardize and consolidate the rules for fixed private operations in the microwave spectrum above 952 MHz. At that time, we recognized the growing demand for private microwave facilities and incorporated into the new rules provisions designed to increase usage of the existing private spectrum by reducing the level of interference between microwave systems. Specifically, under Subpart C of Part 94, we adopted technical standards setting out more stringent frequency tolerances for transmitters and limitations on maximum effective radiated power and on radiation patterns for directional antennas.

3. Regarding radiation patterns for antennas, we established two sets of standards. Category A standards apply to antennas operating in areas with a high concentration of microwave stations and provide for antennas with high-front-to-back discrimination ratios, which can be particularly effective in permitting more systems to operate in these areas. Category B standards afford acceptable performance in areas with lower concentations of microwave stations and are permitted until the growth of microwave stations in an area would necessitate upgrading systems to category A standards. In Public Notice 64123, issued on April 28, 1976, we listed

[1] Part 94 of the Commission's rules governs the licensing and operation of private operational-fixed microwave systems, including control and fixed relay, in frequency bands at 928-929 MHz and above 952 MHz. The radio stations in these systems are licensed by the Commission as Operational-Fixed Stations, which are fixed stations not open to public correspondence, operated by and for the sole use of those persons or agencies operating their own radiocommunication facilities (§ 94.3 of the Commission's rules). Eligibility in Part 94 is limited to persons qualified for licensing in a radio service under either Part 81, Stations on Land in the Maritime Service and Alaska-Public Fixed Stations; Part 87, Aviation Services; or Part 90, Private Land Mobile Radio Services (§ 94.5 of the Commission's rules).

[2] Rules to Establish a Private Operational-Fixed Microwave Radio Service (Part 94), *Report and Order,* Docket No. 19869, 52 FCC 2d 894 (1975).

the areas that are considered congested and which thus require Category A antennas. The new directional antenna standards apply to periscope antennas[3] as well as all other types of antennas. This requirement prevents, for all practical purposes, the use of periscope antennas after July 31, 1985, since no satisfactory method has been developed to ascertain the radiation pattern envelope of periscope antennas. Ascertaining the radiation pattern envelope is an essential step in determining whether transmitting antennas meet the new technical standards.

4. When adopting the new rules, we provided for "grandfathering" provisions under which existing systems not meeting these new technical standards could continue operating until August 1, 1985. This date provided for a ten-year period from the effective date of the new rules during which existing systems were to be modified to conform to the new technical standards. We felt that this period would allow licensees to maximize the use-potential of their then existing systems and yet set a reasonable future date for all systems to conform to the state-of-the-art technical standards, which were intended to improve spectrum efficiency. Under the rules, any equipment used in modifying or expanding these "grandfathered" systems had to conform to the new rules.

The Petitions

5. All three of the petitioners complained of the heavy financial costs that would be necessary to convert existing systems to the new standards. SRS stated that the total cost of upgrading their system to conform to the new technical standards would be $18 million, of which $7.5 million represents the cost of replacing periscope antennas. AAR stated that, based on a survey of eighteen railroads, it would cost an estimated $40 million for the railroad industry as a whole to comply. API said that the cost to twenty-eight petroleum and natural gas companies who were surveyed would be $34 million. All petitioners indicated that the offsetting benefits to these costs are insignificant since the antennas and transmitters to be replaced do not currently interfere with any present systems and are unlikely to interfere with any future systems.

6. All three petitioners requested relief from the technical standards. SRS requested that systems utilizing periscope antennas be allowed to operate indefinitely along paths not located in congested microwave areas. In the alternative, SRS requested that the period of compliance be extended to August 1, 2010. If neither request could be granted, the SRS asked for a waiver of Section 94.61 of the Commission's rules to allow continued operation of its periscope antennas located in noncongested areas past the present date of compliance, August 1, 1985.

7. AAR requested that the rules be amended to allow microwave systems authorized before adoption of the new technical standards to operate indefinitely under the previous technical standards unless they caused interference to stations which were in compliance with the new standards. (Section 94.92(a) of the Commission's rules and regulations details the technical standards which were in effect before Part 94 was adopted.) In that case, the nonconforming systems would also be required to comply with the new standards. AAR also requested that we re-examine our methodology and the criteria for arriving at the list of areas considered to be congested and, if appropriate, issue a revised list.[4]

8. Similarly, API requested an extension of the "grandfather" provisions to allow the continued use of nonconforming transmitters and antennas, both parabolic and periscope, except where it can be demonstrated on a case-by-case basis that continued use of nonconforming transmitters and antennas would significantly degrade the performance of either existing or new systems beyond the degradation which would result from equipment fully complying with Part 94 technical standards. In addition, API recommended that the Commission establish criteria for pre-1976 installed antennas which would specify the minimum diameter of parabolic antennas determined to be "conditionally acceptable" for each frequency band. According to API's petition, when it can be demonstrated that changing a "conditionally acceptable" antenna to one which fully complies with the Part 94 standards would result in substantially less interference to an existing or proposed system, the "conditionally acceptable" antenna would have to be replaced. The criteria for "conditionally acceptable" parabolic antennas recommended by API are as follows:

MINIMUM DIAMETER OF "CONDITIONALLY ACCEPTABLE" PARABOLIC ANTENNAS

Frequency	Category B (feet)	Category A (feet)
952 to 960	4	6
1850 to 1990	6	8
2130 to 2690	6	6
6525 to 6875	6	8
12,200 to 12,700	4	6

This table of criteria for "conditionally acceptable" parabolic antennas is suggested as a replacement for the list published by the Commission of pre-1976 antennas which we considered to comply with the Category A and Category B antenna standards. API recommended the use of specific criteria, expressed in terms of minimum diameter, because it believes that it would be impossible to compile a totally conclusive list of older antenna models which would be considered "conditionally acceptable." API also proposed a new method of determining frequency congestion which would redefine the areas designated as congested in the microwave bands. API's proposal would reduce the areas where Category A antennas are required. API believes that the criteria used by the Commission in defining the congested areas could be refined by simulation techniques and by revising the assumed radiation pattern of an antenna to more closely approximate the actual antenna radiation patterns. To this end API has provided the Commission with a mathematical model for determining congestion in the microwave frequency bands. The model was developed by Compucon, Inc. of Dallas, Texas, and, in the view of API, provides a more refined method for (1) determining microwave frequency congestion, (2) stipulating antenna requirements, and (3) demonstrating the effect in congested areas of changing from Category B to Category A antennas. The model involves the use of a computer program designed to calculate a "Congestion Level Index" (CLI) for a given area by taking into consideration frequency usage levels, more realistic antenna patterns, off-axis discrimination and propagation models, etc. (A detailed explanation of the mathematical model developed by Compucon is contained in the official

[3] A periscope antenna uses a passive reflector to deflect radiation from or to a directional transmitting and/or receiving antenna which is orientated vertically or near vertically.

[4] In its petition for rulemaking, AAR urged that its petition and SRS's petition be considered together since they are consistent with each other. We are adopting this recommendation and also including API's petition, which is consistent with the other two petitions. Both AAR's petition and API's petition have been placed on public notice; SRS's petition was not placed on public notice since we had not yet decided whether to grant some relief to SRS by waiver or through a more lengthy rulemaking proceeding when we received the other petitions. Moreover, we are not placing SRS's petition for rulemaking on public notice since it would serve no useful purpose.

Commission records for this docket. Persons wish to examine Compucon's suggested methodology may either consult the official docket records in Room 239, 1919 M St. NW., Washington, D.C. or visit the Rules Branch, Land Mobile and Microwave Division, Room 5126, 2025 M St. NW., Washington, D.C. Copies of the mathematical model may also be obtained by contacting the Downtown Copy Center, 1114 21st St., NW., Washington, D.C. 20037, telephone (202) 452–1422.)

9. In response to AAR's petition, the Utilities Telecommunications Council (UTC) and M/A–COM Laboratories (M/A–COM) filed comments. The UTC supported AAR's petition but raised questions regarding the procedures that would be used to permit nonconforming equipment and antennas. UTC urged the adoption of virtually self-executing procedures that would address interference and similar problems inherent in the continued use of nonconforming equipment. UTC is concerned that the licensing of new systems which comply with existing technical standards might be delayed because of the existence of nonconforming systems. They further stated that any burden should be placed on the licensees with nonconforming systems. M/A–COM stated similar concerns, especially regarding the possibility that new applicants could be denied access to spectrum while existing licensees disputed whether their nonconforming systems would interfere with the new system.

10. In response to API's petition, UTC and the Satellite Television Corporation (STC) filed comments. UTC generally supported API's petition. STC, however, objected to it. STC believes that increased spectrum efficiency is necessary at this time due to the spectrum requirements associated with new technologies and services and with the possible displacement of licensees from the 12 GHz band because of the direct broadcast satellite service. They opposed the Commission initiating a rulemaking proceeding which would permit continued use of spectrally inefficient transmitters and antennas. In addition, STC believed that any separate rulemaking regarding technical standards is inappropriate considering the Commission's present intention to initiate a proceeding to establish rules for use of higher OFS bands and to re-examine the rules governing use of lower OFS bands. Finally, STC expressed concern that the burden would be shifted to licensees using conforming equipment to prove that the performance of their system would be degraded by an existing nonconforming system beyond the degradation that would be caused if the existing system used conforming equipment.

Proposal

11. After considering these petitions and the comments submitted thereon, we believe that there is substantial merit in the proposal to "grandfather" nonconforming equipment and antennas indefinitely so long as undue interference is not imposed upon a conforming system. We wish to emphasize that this finding is motivated solely by our desire to prevent the premature and wasteful scrapping of equipment in environments where continued use of that equipment will not impair the operation of other microwave systems. We note that, under our proposal, the technical standards detailed in Section 94.92(a) of our Rules and Regulations would continue to apply to transmitting equipment authorized between July 20, 1961 and July 1, 1976. Many of the microwave systems utilizing nonconforming equipment are in remote areas, and no benefit would be gained by making them conform to the new technical standards if they are not interfering with another system. It is still our goal to use the Part 94 technical standards to promote the overall utility and efficiency of the private microwave frequencies.

12. We are concerned about appropriate procedures to follow when a conforming system is to be built near a nonconforming system. As three of the commenters indicated, the burden to prove interference would seem to rest on the licensee of the new system. This seems unavoidable since only the designer and builder of the new system would have the information such as site locations, antenna azimuths, etc., necessary to determine whether interference will exist and to what degree. Moreover, it is easier to prove the existence of interference rather than its non-existence. In view of this, we are proposing to adopt the following procedure:

We will allow an applicant who plans to construct a new station or modify an existing station to plan its system using interference calculations which assume that all systems in the area, whether "grandfathered" or not, are using conforming equipment and antennas. Then, if a nonconforming system in the vicinity of the new or modified, conforming system were found to interfere with the new system and such interference would not result if conforming equipment were in use, the nonconforming system will have to be modified to prevent interference. The licensee of the new system will be required to give notice of the possible interference to both the licensee of the nonconforming system and the Commission. The licensee of the nonconforming system will be given six months to substitute conforming equipment and antennas that do not interfere. The proposed rules are set forth in the appendix.

13. This proposal will have no adverse impact on DBS systems which may be authorized pursuant to our action on June 23, 1982 in Gen. Docket 80–603. If any nonconforming equipment used by Private Operational-Fixed licensees operating at 12 GHz causes interference to DBS systems during the five-year period in which the Operational-Fixed Service has co-primary status with DBS, nonconforming OFS equipment will have to be upgraded to comply with the current Part 94 technical standards. In this time period, a complaint from a DBS licensee is equivalent to a complaint from another terrestrial user. After the five-year period, of course, OFS licensees will be required to avoid all interference to DBS service areas, relocating, if necessary, to other authorized frequency bands.

14. Regarding the new method proposed by API for determining congested areas, it has the same objective in mind as the method adopted by the Commission in its 1976 Public Notice. In that Public Notice, the Commission listed areas of the country which, because of high frequency usage levels, required additional standards for microwave system planning and operation. While both techniques for determining congested areas compute a maximum number of frequencies which can be assigned within a given geographical area, the CLI method appears to compute a maximum frequency usage level which is more near optimum than the 1976 techniques. In addition, the CLI method relates the level of microwave usage in an area to the probability of being blocked on the assignment of a frequency on a microwave path through simulation. By relating the percentage of the maximum microwave frequency usage in an area and the probability of being blocked on an attempt at assignment of a frequency, it is possible to establish a percentage of maximum usage which defines congestion in a given area.

15. In our efforts to promote efficient frequency utilization, we are always interested in improved frequency assignment techniques. Therefore, we are inviting comments regarding the merit of the methodology recommended by API for computing congested areas,

as explained in the materials which appear in the official docket records for this proceeding. Additionally, we request comments on API's plan for applying minimum diameter standards to pre-1976 parabolic antennas to determine which antennas could be considered "conditionally acceptable."

Regulatory Flexibility Act of 1980; Initial Analysis

16. *Reason for action:* This proceeding is in response to petitions for rulemaking which request relaxation of the August 1, 1985 deadline for complying with the transmitter and antenna technical standards of Part 94.

17. *The objectives:* The Commission desires comments on its proposal to permit licensees in the Private Operational-Fixed Microwave Radio Service to continue using equipment authorized prior to July 1, 1976 in situations where such equipment does not cause harmful interference to other authorized stations.

18. *Legal basis:* The action proposed is in furtherance of Sections 4(i), 303(f), and 303(r) of the Communications Act of 1933, as amended, which empower the Commission to make such rules and regulations, not inconsistent with law, as may be necessary in the execution of its functions.

19. *Description, potential impact, and number of small entities affected*: The aim of this proposed rule is to alleviate, to the extent possible, the financial burden which Part 94 imposes upon private operational-fixed licensees, both large and small entities alike. We seek to relax burdensome technical standards in situations where the granting of exceptions to these technical standards will not subject other licensees to harmful interference. Implementation of the proposed rules would, therefore, provide relief to licensees, rather than impose any burden of either an administrative or financial nature. The Commission is unable to determine with any reasonable degree of accuracy the number of small entities which might be affected by the rule changes proposed, but any such effect would be beneficial.

20. *Recording, record-keeping, and other compliance requirements*: No additional requirements would be imposed if the proposed rule changes are adopted.

21. *Federal rules which overlap, duplicate, or conflict with these proposed rules*: None.

22. *Any significant alternatives minimizing impact on small entities and consistent with the stated objective*: None.

23. We encourage all interested parties to respond to this Notice since such information as they may provide often forms the basis for further Commission action. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who initiates an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

24. Authority for issuance of the Notice is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i) and 303(r). Pursuant to procedures set out in §1.415 of the Commission's Rules and Regulations, 47 CFR 1.415, interested persons may file comments on or before: August 16, 1982 and reply comments on or before: August 31, 1982. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into account information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

25. In accordance with the provisions of §1.419 of the Commission's rules and regulations, 47 CFR 1.419, formal participants shall file an original and five (5) copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and eleven (11) copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one (1) copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters located at 1919 M Street, NW, Washington, DC.

26. For further information concerning procedures to follow with respect to this rulemaking proceeding, contact Fred Day, FCC, Private Radio Bureau, Land Mobile and Microwave Division, Washington, D.C. 20554, telephone (202) 634–2443. A summary of the Commission's procedures governing *ex parte* contacts in rulemaking proceedings is available from the Commission's Consumer Assistance and Information Division, Room 258, 1919 M St., N.W., Washington, D.C. 20554, (202) 632–7000.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 94—PRIVATE OPERATIONAL—FIXED MICROWAVE SERVICE

Chapter I, Part 94 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. Section 94.61(a) is amended by revising paragraph (a) to read as follows:

§ 94.61 Applicability.

(a) The technical standards of this subpart shall govern the issuance of authorizations for new stations and changes in authorized stations as specified in § 94.45. Except as provided for in § 94.65, licensees of transmitting equipment (including antennas) authorized prior to July 1, 1976, including their successors or assigns in business, will be permitted to utilize such equipment indefinitely, in accordance with the standards indicated in § 94.92, provided that the operation of this equipment does not cause interference to another station or system in excess of the levels specified in § 94.63.

* * * * *

2. Section 94.63 is amended by adding a new paragraph (f) to read as follows:

§ 94.63 Interference protection criteria for operational-fixed stations.

* * * * *

(f) Effective August 1, 1985, when a proposed new station will receive interference in excess of the levels specified in this section as a result of an existing licensee's use of nonconforming equipment authorized under § 94.61(a), or when an existing station, as a result of a proposed modification to its facility, will receive interference resulting from such equipment *and* the interference would not result if the interfering station's equipment complied with current technical standards, the nonconforming licensee shall be required to take whatever measures are necessary to alleviate the interference. In such cases, if the engineering analysis performed in accordance with § 94.15(b) demonstrates that (1) the proposed new station or the station proposed to be modified will receive interference from a nonconforming station in excess of the levels specified in this section, and (2) the interference would be alleviated if the nonconforming equipment were replaced with equipment complying with the technical standards of this subpart, the licensee (or prospective licensee) of the station which would receive interference shall provide written notice to both the nonconforming licensee and the Commission of the potential interference.

The nonconforming licensee shall make all equipment changes necessary to conform to the current technical standards within 180 days from the date on which the Commission grants the application submitted for a new station or for midification to an existing station. If a nonconforming licensee, having received notice from the Commission of the need to upgrade its equipment, shall fail to make all necessary changes within the specified period of time, the Commission may require the nonconforming licensee to suspend operation until the necessary changes are completed.

3. Section 94.77 is amended by deleting the second sentence in the first paragraph and adding a new clause to read as follows:

§ 94.77 Interference to geo-stationary satellites.

* * * Stations authorized prior to July 1, 1976 which exceed the power levels in subparagraphs (a) and (b) of this section are permitted to operate indefinitely, provided that the operation of such stations does not result in harmful interference to reception in the bands 2655–2690 MHz and 12,500–12,700 MHz on board geo-stationary space stations in the fixed satellite service.

* * * * *

[FR Doc. 82-19303 Filed 7-15-82; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Review of Special Rule on the American Alligator

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Service hereby notifies all parties of its intent to review Special Rule 50 CFR 17.42(a) on the American alligator to determine whether changes are appropriate. All parties are invited to submit pertinent written comments.

DATE: Comments on this notice must be received by August 16, 1982.

ADDRESS: Please address correspondence to the U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, P.O. Box 3654, Arlington, Virginia 22203. Information on this notice is available for review during the hours of 7:45 a.m. to 4:00 p.m., Monday through Friday in Room 601, 1000 N. Glebe Road, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: Mr. Larry LaRochelle, Staff Biologist, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, P.O. Box 3654, Arlington, Virginia 22203 (703/235–1903).

SUPPLEMENTARY INFORMATION: It is the intent of the Service, upon its own motion as well as that of certain Federal, State and private parties, to review the Special Rule 50 CFR 17.42(a) on commercial activities with the hides, meat, and parts of American alligators including for example, present prohibitions on export of meat and parts other than hides, need for serially numbering each tag applied to hides, need for a Federal permit to kill alligators legally held under State Alligator Farmer permits, use of data collected from reports required of permittees as well as other aspects of this rule in order to determine whether to revise or revoke certain probibitions and procedures. The purpose of this notice is to give interested parties an opportunity to submit comments and suggestions on the changes outlined above or alternatives thereto, before the issuance of any notice of proposed rulemaking. Also, the Service hereby requests information on environmental and economic impacts, as well as any effects on small entities (including small businesses, small organizations and small governmental jurisdictions) that would result from the changes outlined above. Similar information on possible alternatives to the changes is also requested. This information will aid the Service in complying with the requirements of the National Environmental Policy Act, Executive Order 12291 on Federal Regulation and the Regulatory Flexibililty Act.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: July 1, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-19252 Filed 7-15-82; 8:45 am]
BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 47, No. 137
Friday, July 16, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Proposed Determinations With Regard to the 1983 Upland Cotton Program

AGENCY: Agricultural Stabilization and Conservation Service, USDA

ACTION: Proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1983 crop of upland cotton: (a) The loan rate for Strict Low Middling (SLM) one-and-one-sixteenth-inch cotton, micronaire 3.5 through 4.9, at average location in the U.S.; (b) the established (target) price; (c) the national program acreage (NPA); (d) whether a voluntary reduction percentage should be proclaimed and, if so, the amount of such percentage reduction; (e) whether an acreage reduction program (ARP) should be established and, if so, the percentage of such reduction; (f) whether a land diversion program should be estabished and, if so, the extent of such diversion and the level of payment; and (g) the loan level for seed cotton. These determinations are being made in accordance with the provisions of Section 103(g) of the Agricultural Act of 1949, as added by the Agriculture and Food Act of 1981 (hereinafter referred to as the "Act").

DATE: Comments must be received on or before September 13, 1982, in order to be assured of consideration.

ADDRESS: Dr. Howard Williams, Director, Analysis Division, USDA–ASCS, Room 3741 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Acting Deputy Director, Analysis Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013, or call (202) 447–7954. The Draft Impact Analysis describing the options considered in developing these proposed determinations and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been designated as "major". These determinations have been designated as "major" because they are expected to affect the supply and price of upland cotton during the 1983/84 marketing year, which will, in turn, impact upon producers, processors, exporters, and consumers of cotton and cotton products.

The titles and numbers of the federal assistance programs that this notice applies to are: TITLE—Cotton Production Stabilization; number 10.052 and TITLE—Commodity Loans and Purchases; number 10.051, as found in the Catalog of Federal Domestic Assistance.

These actions will not have a significant impact specifically on area and community development. Therefore, a review as established by OMB Circular A–95 was not used to assure that units of local Government are informed of these actions.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since there is no requirement that a notice of proposed rulemaking be published with respect to the subject matter of these determinations in accordance with 5 U.S.C. 553 or any other provisions of law.

The following proposed program determinations with respect to the 1983-crop of upland cotton are to be made by the Secretary:

Proposed Determinations

A. Loan Rate for Upland Cotton

Section 103(g)(1) of the Act requires the Secretary to determine and announce the loan rate for the 1983 crop by November 1, 1982. The loan rate must reflect for Strict Low Middling one-and-one-sixteenth inch upland cotton (micronaire 3.5 through 4.9) at average location in the United States the smaller of (1) 85 percent of the average price (weighted by market and month) quoted in the designated United States spot markets for Strict Low Middling one-and-one-sixteenth inch cotton during three years of the five-year period ending July 31 in the year in which the loan level is announced, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period (hereinafter referred to as the "spot market calculation"), or (2) 90 percent of the average, for the fifteen-week period beginning July 1 of the year in which the loan level is announced, of the five lowest-priced growths of the growths quoted for Middling one-and-three-thirty-seconds-inch cotton, C.I.F. Northern Europe (adjusted downward by the average difference during the period April 15 through October 15 of the year in which the loan rate is announced between such average Northern Europe price quotations and the quotations in the designated United States spot markets for Strict Low Middling one-and-one-sixteenth-inch cotton (micronaire 3.5 through 4.9)) (hereinafter referred to as the "Northern European calculation"). The loan rate cannot be less than 55 cents per pound. Further, if the Northern European calculation results in a price which is less than the price derived from the spot market calculation, the Secretary may increase the loan level to such level as the Secretary deems appropriate, but not in excess of the level which is determined based upon the spot market calculation.

The spot market calculation cannot be completed until after August 1, 1982. Based upon quotations through April 1982, the spot market calculation is as follows:

(1) Weighted average spot market prices for Strict Low Middling one-and-one-sixteenth-inch upland cotton, micronaire 3.5 through 4.9:

August 1977 through July 1978—51.15 cents
August 1978 through July 1979—61.01 cents
August 1979 through July 1980—68.87 cents
August 1980 through July 1981—83.77 cents
August 1981 through April 1982[1]—57.01 cents

(2) Average of the five years, excluding the highest and lowest years: 61.01+68.87+57.01=62.30 cents.

[1] Not complete.

(3) Loan rate based on U.S. spot market calculations through April 1982: 62.30×.85=52.96 cents.

Since the spot market calculation is less than the statutory minimum, the loan rate would be established at the minimum level of 55 cents per pound, which is 2.08 cents per pound less than the 1982 loan rate. The decline results from the fact that the 1976–77 spot market average of 71.59 cents per pound has been dropped from the calculation and the 1981–82 average through April of 57.01 cents per pound has been added to the calculation.

The Northern European calculation cannot be performed at this time since the Act provides that the calculation must be based upon market quotations through October 15, 1982. However, since the spot market calculation results in a loan rate that is less than the minimum level of 55 cents per pound, the Northern European calculation is not likely to affect the final loan rate determination. If the Northern European calculation is less than the spot market calculation, the resulting calculation will also be below the minimum and the loan rate will still be 55 cents per pound. If the Northern European calculation is more than the spot market calculation, it will not be used to determine the loan rate.

Comments on the upland cotton loan rate, along with supporting data, are requested from interested persons.

B. The Established (Target) Price

Section 103(g)(3) of the Act provides that the established price for 1983-crop upland cotton shall not be less than the higher of (i) 76.0 cents per pound plus any adjustments for changes in production costs or (ii) 120 percent of the loan level determined in accordance with section 103(g)(1) of the Act. The Act provides that the minimum price of 76.0 cents per pound may be adjusted in such manner as the Secretary determines to be appropriate to reflect any change in (1) the average adjusted cost of production per acre for the two crop years immediately preceding the year for which the determination is made (1981–1982) from (2) the average adjusted cost of production per acre for the two crop years immediately preceding the year previous to the one for which the determination is made (1980–1981). The adjusted cost of production for each of such years may be determined by the Secretary on the basis of such information as the Secretary finds necessary and appropriate for the purpose and may include variable costs, machinery ownership costs, and general farm overhead costs, allocated to the crops involved on the basis of the proportion of the value of the total production derived from each crop.

Comments are requested on the level of the established (target price) for the 1983 crop of upland cotton.

C. National Program Acreage

Section 103(g)(5) of the Act requires the Secretary to announce a national program acreage (NPA) for the 1983 crop by November 1, 1982. Such NPA may, however, be revised for the purpose of determining the allocation factor if the Secretary determines it necessary based upon the latest information. Any revision shall be announced as soon as it has been made. The NPA shall be the number of harvested acres the Secretary determines necessary, based on the estimated weighted national average of the farm program payment yields for the 1983 crop, to produce the estimated quantity (less imports) that will be utilized domestically and for export during the 1983–84 marketing year. The Secretary may make such adjustments in the NPA as he determines necessary, taking into consideration the estimated carryover supply, to provide for an adequate but not excessive total supply of cotton for the 1983–84 marketing year. In no event shall the national program acreage be less than 10 million acres. If an acreage reduction program is established for the 1983 crop of upland cotton, the NPA determination will not be applicable.

A carryover of 4.5 million bales is generally considered to provide an adequate, but not excessive, supply. If required, the likely national program acreage for the 1983 crop of upland cotton is estimated to be:

(a) Estimated domestic consumption, 1983–84 (480 lb. net wt. bales)	6,200,000
(b) Plus estimated exports, 1983–84 (480 lb. net wt. bales)	7,600,000
(c) Minus estimated imports, 1983–84 (480 lb. net wt. bales)	10,000
(d) Minus adjustment to bring stocks to desired level (480 lb. net wt. bales) [1]	1,200,000
(e) Times 480 lbs. per bale	6,043,200,000
(f) Divided by estimated national average of farm program yield (lbs./acre)	500
(g) Equals 1983 National Program Acreage (acres)	12,086,400

[1] The 1983 beginning stock level is estimated to be 5.7 million bales. Therefore, the stock adjustment is 5.7 million bales minus 4.5 million bales equals 1.2 million bales.

A NPA was not announced for the 1982 crop of upland cotton since an acreage reduction program was implemented for such crop.

Comments from interested persons on the NPA and the appropriate stock adjustment for the 1983 crop of upland cotton, along with appropriate supporting data, are requested.

D. Voluntary Reduction Percentage

Section 103(g)(7) of the Act provides that the 1983 individual farm program acreages of upland cotton shall not be further reduced by application of an allocation factor if producers reduce the acreage of cotton planted for harvest on the farm from the acreage base established for the farm by at least the percentage recommended by the Secretary in the announcement of the national program acreage. If an acreage reduction program is implemented for the 1983 crop of upland cotton, the voluntary reduction percentage shall not be applicable to such crop. If required, the likely national recommended reduction percentage for the 1983-crop of cotton would be:

(a) 1983 estimated upland cotton acreage base	15,300,000
(b) Minus 1983 NPA	12,086,400
(c) Equals reduction needed from acreage base	3,213,600
(d) Divided by 1983 upland cotton acreage base	15,300,000
(e) Equals 1983 crop reduction percentage	21 percent

Comments from interested persons with respect to the voluntary reduction percentage, if any, are requested.

E. Whether an Acreage Reduction Program (ARP) Should Be Established and, if so, the Percentage of Such Reduction

Section 103(g)(9)(A) of the Act provides that the Secretary may establish a limitation on the acreage planted to upland cotton if the Secretary determines that the total supply of upland cotton will, in the absence of such limitation, be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. Such limitation shall be achieved by applying a uniform percentage reduction to the acreage base for each cotton-producing farm. Producers who knowingly produce cotton in excess of the permitted cotton acreage shall be ineligible for cotton loans and payments with respect to that farm. The acreage base for any farm for the purpose of determining any reduction required to be made for any year shall be the acreage planted on the farm to upland cotton for harvest in the immediately preceding year or, at the discretion of the Secretary, the average acreage planted to upland cotton for harvest in the two crop years immediately preceding the year for which the determination is made. For the purpose of determining the acreage base, the acreage planted to upland cotton for harvest shall include any

acreage which producers were prevented from planting to cotton or other nonconserving crop because of a natural disaster or other condition beyond the control of the producers. The Secretary may make adjustments to reflect crop-rotation practices and other factors as the Secretary determines necessary to establish a fair and equitable base. A number of acres on the farm determined by dividing (a) the product obtained by multiplying the number of acres required to be withdrawn from the production of upland cotton times the number of acres actually planted to upland cotton, by (b) the number of acres authorized to be planted to upland cotton in accordance with the acreage limitation established by the Secretary shall be devoted to approved conservation uses in accordance with regulations issued by the Secretary. If an acreage limitation is in effect for any crop, the national program acreage, program allocation factor, and voluntary reduction provisions of section 103(g) of the Act are not applicable to such crop. The individual farm program acreage shall be the acreage planted on the farm to upland cotton for harvest within the permitted upland cotton acreage established for the farm under the acreage reduction program.

The need for an acreage reduction program for upland cotton will depend on production and use of the 1982 crop. Total production is projected to be 12.4 million bales under average weather conditions, down approximately 20 percent from the near-record 1981 crop. However, the carrying from the 1981 crop is expected to be 6.4 million bales.

Thus, the total supply would be 18.8 million bales. Domestic use is projected at 5.7 million bales, up from an estimated 5.2 million bales in 1981–82. Exports are projected at 7.5 million bales, up from the 6.8 million bales estimated to be exported in 1981–82. Ending stocks for 1982–83 are projected at 5.7 million bales given the above supply and use. This amount is well in excess of the 4.5 million bales of upland cotton which is generally considered to be a desirable carryover.

It is estimated that 14.0 million acres would be planted and 13.2 million acres would be harvested without an acreage reduction program. With a yield of 495 pounds per harvested acre, 1983 crop production would be 13.6 million bales. This level of production, plus estimated imports of 10 thousand bales plus estimated beginning stocks of 5.7 million bales, would equal a total supply of cotton for 1983–84 of 19.3 million bales.

Domestic use is expected to increase to 6.2 million bales from 5.7 million and exports are projected to increase from 7.5 million to 7.6 million bales. Total estimated use, therefore, is expected to be 13.8 million bales.

By subtracting total estimated use of 13.8 million bales from the total estimated supply, it is estimated that ending stocks would be about 5.6 million bales. This amount is considered excessive when compared to the 4.5 million bale carryover generally considered desirable.

The above outlook suggests that an acreage reduction program will be needed for the 1983–84 crop. However, changes in worldwide weather and economic conditions could materially affect this outlook.

Options under consideration at this time include (1) No ARP, (2) a 15 percent ARP, and (3) a 20 percent ARP.

Comments on the need for an acreage reduction program and the desirable percentage reduction, if any, are requested from interested persons.

F. Whether a Land Diversion Program Should Be Established and, if so, the Extent of Such Diversion and the Level of Payments

Section 103(g)(9)(B) of the Act provides that the Secretary may make land diversion payments to producers of upland cotton, whether or not an acreage limitation for upland cotton is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage to desirable goals. Such land diversion payments shall be made to producers who devote to conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with producers. The amounts payable to producers under land diversion contracts may be determined through the submission of bide for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretry determines appropriate. In the past, land diversion payments have been made based upon an offer rate system (*i.e.*, specific rate per pound times the farm program payment yield.)

If land diversion payments are determined to be necessary for the 1983 crop of upland cotton, such payments will likely be based on an offer rate system. Diversion payment options under consideration include: (1) a 15 percent ARP with a 5 percent land diversion program (LDP); (2) a 20 percent ARP with a 5 percent LDP; and (3) a 20 percent ARP with a 10 percent LDP.

Interested persons are encouraged to address the need for a land diversion program either in lieu of, or in conjunction with, an acreage reduction program, and the appropriate terms and conditions.

G. Loan Level for Upland Seed Cotton

Section 103(g)(18) of the Act provides that in order to assist producers in the orderly ginning and marketing of their cotton production, the Secretary shall make recourse loans available to such producers on seed cotton in accordance with authority vested in the Secretary under the Commodity Credit Corporation Charter Act. Consideration is being given to the level at which loans should be made available for seed cotton under the 1983 program. The loan level which is presently being considered for seed cotton is 100 percent of the loan level which is applicable for that location for lint cotton adjusted to a lint basis.

Comments from interested persons are requested on the appropriate loan level for seed cotton and the method of adjustment to a lint basis for the purpose of determining loan value.

Consideration will be given to any data, views and recommendations that may be received relating to the above items.

(Secs. 4, 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); Secs. 103, 401, 63 Stat. 1051, as amended (7 U.S.C. 1421, 1444))

Signed at Washington, D.C. on July 9, 1982.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

FR Doc. 82-18972 Filed 7-15-82; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

[Docket No. 82-068]

General Conference Committee of the National Poultry Improvement Plan Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

SUMMARY: The purpose of this document is to give notice of a meeting of the general conference committee of the National Poultry Improvement Plan (NPIP), subject to the approval of the renewal of the committee's charter by the Secretary of Agriculture and the administrator of the General Services Administration.

PLACE, DATE, AND TIME OF MEETING: Park Hilton Hotel, 6th Avenue and Seneca Streets, Seattle, Washington, August 2, 1982 (9 a.m.—5 p.m.), August 3 and 4, 1982 (9 a.m.—4 p.m.), and August 5, 1982 (8 a.m.—12 noon). The sessions on August 3, 4, and 5, 1982, will include the delegates to the biennial National Plan Conference, who represent State officials and poultry industry personnel from the 47 cooperating States.

SUPPLEMENTARY INFORMATION: The General Conference Committee of the NPIP was established via Secretary's Memorandum No. 1891, Revised July 29, 1980. The purpose of the Committee is to make recommendations to the Department relative to the successful operation of the NPIP. The purpose of this meeting of the Committee is to advise the Department concerning adoption of recomendations proposed by industry, State, and Federal agencies for amendments to the NPIP provisions.

Proposed changes to be considered include alternatives to fumigation as a means of sanitizing hatching eggs and hatchery equipment, required banding at blood testing time for certain classes of poultry, and "sanitizing" of poultry litter prior to removal from the poultry house. Three new Mycoplasma control programs are being proposed for egg- and meat-type started poultry and a *Mycoplasma synoviae* blood testing and classification program will be considered for turkey breeding flocks. A change in the size of sample and frequency of testing breeding turkeys for *M. gallisepticum* will also be on the agenda. It is also proposed that primary chicken breeding stock with no previous *M. gallisepticum* status have a 100 percent test for two generations before the flock can qualify on a sample test. Procedures are being recommended for diagnostic laboratories to follow when they are conducting various tests which lead to an official Mycoplasma classification of a flock. In addiiton, a number of recommendations are being made which would provide additional service to the poultry industry and the Official State Agencies.

The meeting will be open to the public. Written statements concerning matters to be taken up by the committee may be filed with the committee before or at the time of the meeting.

Further information concerning the agenda for the meeting and proposed changes to be considered may be obtained from, and written statment may be forwarded to Mr. R. D. Schar, Senior Coordinator, National Poultry Improvement Plan, APHIS, VS, Bldg. 263, BARC-East, Beltsville, MD 20704, 301–344–2227.

Dated: July 15, 1982.

Gerald J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 82-19514 Filed 7-15-82; 10:04 am]

BILLING CODE 3410-34-M

Food and Nutrition Service

Food Stamp Program; Demonstration Project; Alternative Methods of Delivering Benefits

AGENCY: Food and Nutrition Service, USDA.

ACTION: Cancellation of notice of intent.

SUMMARY: The Department hereby cancels its solicitation of proposals for alternative benefit delivery systems, announced in the **Federal Register** Notice of Intent of May 29, 1981 (46 FR 28885–28888).

EFFECTIVE DATE: July 16, 1982.

FOR FURTHER INFORMATION CONTACT: Marilyn Carpenter, Chief, Program Research and Analysis Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, Alexandria, Virginia. 22302.

SUPPLEMENTARY INFORMATION: Subsequent to publication of the May 29, 1981, Notice of Intent, the Department decided to limit its alternative issuance research efforts, at this time, to demonstrations involving electronic benefit transfer EBT-type systems. This alternative method involves retail food stores directly. It eliminates paper food stamps and "Authorization to Participate" Cards, and relies instead, on a computerized system. The computerized system would allow a household to obtain food products by presenting a credit type card (intelligent card, smart card, computer card, chip-in-card) at a retail food store.

Restricting consideration to EBT shifts the focus of the solicitation toward private vendors, and away from the funding of State and local agencies. The Department is, therefore, cancelling the invitation to such agencies and will proceed with an alternate approach.

Private vendors in related areas of technology will be asked, in the near future, to provide the Department with proposals to design, develop and test EBT-type systems of benefit issuance. This solicitation will be announced in the Commerce Business Daily, rather than the **Federal Register.** Such vendors will be expected to obtain the cooperation of State and/or local agencies to provide the testing environment. To facilitate this task, the Department will share with interested vendors a list of States and localities which have expressed interest in sponsoring EBT demonstrations. Interested States and localities should contact the Program Development Division at the above address to have their areas added to that list. The name and phone number of a contact person should be included.

It should be noted that despite re-focusing this solicitation on EBT systems, the Department continues to be interested in pursuing other types of alternatives or improvements to current systems. States are encouraged to explore alternatives to or innovations in the current system, such as modifications or improvements in food coupons, and other possible paper alternatives. FNS will be happy to work with individual State agencies that want to test some of these systems and to assist in identifying needed waivers.

Such activity will be supported by FNS as part of State administrative operations on the same basis as States are supported now. However, if future circumstances warrant, the agency may initiate a formal solicitation targeted towards non-EBT types of alternative issuance systems.

(91 Stat. 958)(7 U.S.C. 2011–2029)

(Catalog of Federal Domestic Assistance Program No. 10–551 Food Stamps)

Dated: July 12, 1982.

Samuel J. Cornelius,

Administrator.

[FR Doc. 82-19128 Filed 7-15-82; 8:45 am]

BILLING CODE 3410-30-M

Rural Electrification Administration

Alabama Electric Cooperative; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500), and REA Bulletin 20–21:320–21, Environmental Policies and Procedures, has made a Finding of No Significant Impact with respect to proposed financing assistance to Alabama Electric Cooperative, (AEC) of Andalusia, Alabama, for the construction of the Gantt Hydro Power Plant Capacity Expansion (Gantt Project) in Covington County, Alabama.

FOR FURTHER INFORMATION CONTACT:

REA's Finding of No Significant Impact and Environmental Assessment (EA) and AEC's Borrower's Environmental Report (BER) may be reviewed in the Office of the Director, Power Supply Division, Room 0230, South Agriculture Bldg., Rural Electrification Administration, Washington, D.C. 20250, telephone (202) 382–1400, or at the office of Alabama Electric Cooperative, P.O. Box 550, Andalusia, Alabama 36420, telephone (205) 222–2571, during regular business hours.

SUPPLEMENTARY INFORMATION: REA, in connection with a request for financing assistance from AEC, reviewed AEC's BER and determined that it is an accurate assessment of the environmental aspects of the Gantt Project.

The Gantt Project will increase the capacity of the Gantt hydroelectric plant from 2100 kW to 3110 kW by replacing and rehabilitating existing turbines and associated equipment. Based upon the BER, REA prepared an EA and concluded that the proposed financing assistance would not be a major Federal action significantly affecting the quality of the human environment.

The Gantt Project will not affect prime farmlands, threatened or endangered species or known cultural resources. Wetlands and floodplains adjacent to the Gantt Project will be temporarily affected during drawdowns. The drawdowns are unavoidable, but will be timed so that adverse effects will be minimized. In REA's judgment, construction, operation and maintenance of the Gantt Project will not cause any unacceptable environmental impacts.

Alternatives examined include the Gantt Project, no action and alternate unit sizes. REA determined that the Gantt Project is an acceptable alternative because it will meet AEC's needs with minimal environmental impact.

(This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees)

Dated: July 8, 1982.

Jack Van Mark,

Acting Administrator.

[FR Doc. 82–19222 Filed 7–15–82; 8:45 am]

BILLING CODE 3410–15–M

Soil Conservation Service

Pond Run Watershed, West Virginia

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Supplemental Watershed Work Plan No. 2, Pond Run Watershed, Wood County, West Virginia.

FOR FURTHER INFORMATION CONTACT:

William D. Goddard, Acting State Conservationist, Soil, Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia 26505, telephone 304 291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, William D. Goddard, Acting State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control along a small unnamed tributary of Pond Run. The planned works of improvement include 3,500 feet of channel work.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting William D. Goddard.

No administrative action on implementation of the proposal will be taken until August 16, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

[FR Doc. 82–19230 Filed 7–15–82; 8:45 am]

BILLING CODE 3410–16–M

Summit Subwatershed, Rock Creek Watershed, Idaho; Finding of No Significant Impact

AGENCY: Soil Conservation Service,USDA.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT:

Mr. Amos I. Garrison, Jr., State Conservationist, Room 345, 304 North 8th Street, Boise, Idaho 83702, telephone 208–334–1601.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Summit Subwatershed, Rock Creek Watershed, Power County, Idaho.

The environmental assessment of this federally assisted action indicates that the measure will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Amos I. Garrison, Jr., State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this action.

The project concerns a plan for land treatment to maintain or increase agricultural production, to reduce sediment damage, to improve water quality, and to protect the quality of the land resource. The planned works of improvement include conservation practices such as conservation tillage systems, permanent vegetation, and terraces.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Amos I. Garrison, Jr. The FONSI has been sent to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse

review of Federal and federally assisted programs and projects is applicable)

Dated: July 6, 1982.

John L. Hopkins,

Acting State Conservationist.

[FR Doc. 82-19162 Filed 7-15-82; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

Order Concerning Mail Rates

Order 82-7-45, July 12, 1982, Docket 37294, establishes final domestic service mail rates for the last half of calendar year 1982 at the same level as proposed in Order 82-6-95.

Copies of the order are available from the CAB Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-19308 Filed 7-15-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket 40828]

Central Zone-Caracas/Maracaibo Venezuela Service Case; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-titled matter is assigned to be held on July 23, 1982, at 10:00 a.m. (local time), in Room 1003, Hearing Room A, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and prospective party and six copies to the Judge of (1) proposed statements of issues; (2) proposed stipulations; (3) proposed requests for information and for evidence; (4) statements of positions; (5) proposed procedural dates. The Bureau of International Aviation will circulate its material on or before July 16, 1982, and the other parties on or before July 21, 1982.[1] The submissions of the other parties shall be limited to points on which they differ with the Bureau of International Aviation, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

[1] July 16 and July 21 are delivery dates and not mailing dates.

Dated at Washington, D.C., July 12, 1982.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 82-19309 Filed 7-15-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket 40827]

Dallas/Fort Worth-London Case; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-titled matter is assigned to be held on July 26, 1982, at 10:00 a.m. (local time), in Room 1003, Hearing Room A, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and prospective party and six copies to the Judge of (1) proposed statements of issues; (2) proposed stipulations; (3) proposed requests for information and for evidence; (4) statements of positions; and (5) proposed procedural dates. The Bureau of International Aviation will circulate its material on or before July 16, 1982, and the other parties on or before July 21, 1982. The submissions of the other parties shall be limited to points on which they differ with the Bureau of International Aviation, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Dated at Washington, D.C., July 12, 1982.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 82-19307 Filed 7-15-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket 40462]

Sea Coast Airways Fitness Investigation; Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference and hearing in the above-entitled proceeding are assigned to be held on July 27, 1982, at 10 a.m. (local time), Room 1027, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., July 13, 1982.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 82-19306 Filed 7-15-82; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Tennessee Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 9:00a and will end at 1:00p, on July 30, 1982, at the Ramada Inn, in the Caucus Room, Capitol Hill 1/ 840 James Robertson Parkway, Nashville, Tennessee, 37203. The purpose of the meeting is for subcommittee reports on Meharry Medical College; police-community relations in Nashville; efforts to meet with the Tennessee Governor Regarding block grant programs; follow-up to recently released affirmative action report and discuss program plans for Fiscal Year 1983.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mattie Crossley, 351 Fay Avenue, Memphis, Tennessee, 38109 (910) 276-4461 or the Southern Regional Office, Citizens Trust Bank Building, 75 Piedmont Avenue, North East, Room 362, Atlanta, Georgia, 30303 (404) 221-4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 12, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-19249 Filed 7-15-82; 8:45 a.m.]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Anhydrous Sodium Metasilicate From France; Preliminary Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. The review covers the only known exporter of this merchandise to the United States, Rhone-Poulenc, S.A., and the period June 1, 1981 through December 31, 1981. There were no known shipments of this

merchandise to the United States during the period and there are no known unliquidated entries.

As a result of the review, the Department has preliminarily determined to require cash deposits of estimated duty on future entries equal to the calculated margins on the last known shipments. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 16, 1982.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk or William Matthews, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–3601).

SUPPLEMENTARY INFORMATION:

Background

On April 12, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 15620) the final results of its first administrative review of the antidumping duty order on anhydrous sodium metasilicate ("ASM") from France (46 FR 1667–8, January 7, 1981) and announced its intent to conduct the next administrative review by the end of January 1983. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

The review covers imports of anhydrous sodium metasilicate, a crystalline silicate (NA_2SiO_3) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. ASM is currently classifiable under item 421.3400 of the Tariff Schedules of the United States Annotated (TSUSA).

The only known exporter of French ASM to the United States is Rhone-Poulenc, S.A. The review covers the period June 1, 1981 through December 31, 1981. There were no known shipments to the United States during this period and there are no known unliquidated entries.

In the absence of actual sales, the respondent requested an adjustment to the present rate of cash deposit of estimated antidumping duties, to be based on a *statement of intent* to offer for sale. A statement of intent to offer for sale, however, is an insufficient basis under the applicable law for calculation of United States price or foreign market value.

Preliminary Results of the Review

It is the Department's policy in cases of no shipment by particular firms to use the most recent rate calculated for those firms as the deposit rate. The Department has preliminarily determined not to adjust the present rate of cash deposit of estimated dumping duties, in the absence of shipments during the period of review. Therefore, as provided for in § 353.48(b) of the Commerce Regulations, we preliminarily determine that a cash deposit of estimated dumping duties of 60%, based upon the last known shipments by Rhone-Poulenc, S.A., shall be required on any shipments of French ASM entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results on or before August 16, 1982 and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

July 12, 1982.

[FR Doc. 82–19293 Filed 7–15–82; 8:45 am]

BILLING CODE 3510–25–M

Pig Iron From East Germany; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of antidumping finding.

SUMMARY: On May 11, 1982 the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on pig iron from East Germany. The review covered the only known exporter of pig iron from East Germany to the United States and the time period from October 1, 1980 through September 30, 1981.

There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

Interested parties were given an opportunity to submit oral or written comments on these preliminary results. We received no comments.

EFFECTIVE DATE: July 16, 1982.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or David R. Chapman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–2923).

SUPPLEMENTARY INFORMATION:

Background

On October 29, 1968 a dumping finding with respect to pig iron from East Germany was published in the **Federal Register** as Treasury Decision 68–263 (33 FR 15904). On May 11, 1982 the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 20172) the preliminary results of its second administrative review of the finding. The Department has now completed that review.

Scope of the Review

Imports covered by the review are shipments of pig iron, which is used in steel production and in the iron foundry industry for making iron castings such as pipe, automobile castings, and machinery parts. Pig iron is currently classifiable under item numbers 606.1300 and 606.1500 of the Tariff Schedules of the United States Annotated (TSUSA).

The review covers the only known exporter of pig iron from East Germany to the United States, Deutsche Stahl-Metall, and the period October 1, 1980 through September 30, 1981.

Final Results of the Review

Interested parties were invited to comment on the preliminary results. The Department received no written comments or requests for disclosure or a hearing. Therefore, the final results of our review are the same as those presented in the preliminary results of review. There were no known shipments to the United States during this period and there are no known unliquidated entries.

As provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the most recent margin calculated for the firm shall be required on all shipments of pig iron from East Germany entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Deutsche Stahl-Metall failed to respond to our questionnaire for the review period. The most recent margin calculated for Deutsche Stahl-Metall is the rate of 70 percent calculated during the original fair value investigation. This rate shall remain in effect until publication of the final results of our next administrative review. The Department intends to conduct the next administrative review by the end of September 1983. The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information in the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

July 12, 1982.

[FR Doc. 82-19292 Filed 7-15-82; 8:45 am]

BILLING CODE 3510-25-M

American Museum of Natural History; Decisions on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No.: 82-00032. Applicant: American Museum of Natural History, Center Park W. at 79th Street, New York, NY 10024. Article: Imax Projection System. Manufacturer: Imax Systems Corporation, Canada. Intended use of article: See Notice on page 60045 in the **Federal Register** of December 8, 1981.

Comments: No comments have been received with respect to this application. Decision: Application denied. Because the article possesses no scientific value for the purposes for which it is intended, a prima facie case is not presented upon which to base a finding of scientific equivalency. Reasons: Item 851.60 of the Tariff Schedules of the United States (TSUS) provides, *inter alia,* for duty-free treatment with respect to "Articles entered for the use of any nonprofit institution, whether public or private, established for educational or scientific purposes * * * if no instrument or apparatus of *equivalent scientific value for the purposes for which the instrument or apparatus is intended to be used* is being manufactured in the United States" (Italics supplied). The law provides that the Secretary of Commerce, whose authority has been delegated to this office, is to determine "whether an instrument or apparatus of equivalent scientific value to such (the foreign) article, for the purposes for which the instrument or apparatus is intended to be used, is being manufactured in the United States" (headnote 6(c), Schedule 8, Part 4, TSUS). In order to make the determination of scientific equivalency, it is clear that some scientific use for the foreign article, whether educational or research, must be intended. Although the foreign article falls within the tariff items eligible for duty-free entry consideration, it is intended to be used for permanent exhibition within a museum. In connection with this use, the National Bureau of Standards (NBS) advises in a memorandum dated March 19, 1982, that the foreign article does not qualify for duty-free entry under Pub. L. 89-651 (item 851.60, TSUS) because it is not related to scientific research or science-oriented educational purposes but is an article for permanent exhibition within the museum (i.e., it is not a tool actually used in research such as a microscope, a telescope or a spectrometer). In view of the intended use of the article and the above stated requirements of Pub. L. 89-651, the Department cannot make the finding on scientific equivalency upon which duty-free entry must be conditioned. Therefore, the application is denied.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-19324 Filed 7-15-82; 8:45 am]

BILLING CODE 3510-25-M

Geophysical Institute; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No.: 82-00085. Applicant: Geophysical Institute, University of Alaska, Fairbanks, AK 99701. Article: EM 38 Shallow Sounding Magnetic Induction Tool. Manufacturer: Geonics Ltd., Canada. Intended use of article: See Notice on page 9259 in the **Federal Register** of March 4, 1982.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (April 18, 1980). Reasons: This application is a resubmission of Docket Number 81-00033 which was denied without prejudice to resubmission on July 15, 1981 for informational deficiencies. The National Bureau of Standards advises in its memorandum dated June 3, 1982 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use which was available at the time the foreign article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the foreign article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-19323 Filed 7-15-82; 8:45 am]

BILLING CODE 3510-25-M

Leather Wearing Apparel From Uruguay; Termination of Suspension Agreement and Issuance of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of termination of suspension agreement and issuance of countervailing duty order.

SUMMARY: The Department of Commerce has reviewed the agreement

to suspend the countervailing duty investigation on leather wearing apparel from Uruguay and has determined that the suspension agreement no longer meets the statutory requirements for suspension. Therefore, the Department is terminating the suspension agreement and issuing a countervailing duty order with regard to this merchandise.

EFFECTIVE DATE: July 16, 1982.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202, 377-3691/2786).

SUPPLEMENTARY INFORMATION:

Background

On March 16, 1981, the Department of Commerce ("the Department") published in the **Federal Register** (46 FR 16921) a notice of suspension of countervailing duty investigation regarding imports of leather wearing apparel from Uruguay. In that notice, we stated that the Government of Uruguay had agreed to eliminate completely any net subsidy on exports to the United States, in accordance with section 704(b) of the Tariff Act of 1930 ("the Tariff Act").

On March 11, 1981, the Government of Uruguay requested that the investigation be continued. As a result of this request both the Department and the International Trade Commission ("the ITC") continued the respective investigations.

On March 30, 1981, we published a notice of final affirmative countervailing duty determination in the **Federal Register** (46 FR 19288). In that notice we stated that the Government of Uruguay had provided subsidies, as defined in section 701 of the Tariff Act, to manufacturers, producers and exporters of leather wearing apparel.

On May 22, 1981, the ITC published (46 FR 28044) its determination that an industry in the United States was being threatened with material injury by reason of the importation of the subsidized merchandise. On the basis of these two final affirmative determinations, the suspension agreement remained in effect, in accordance with section 704(g) of the Tariff Act.

Scope of the Review

The merchandise covered by this review is leather wearing apparel and parts and pieces thereof, currently classifiable under items 791.7620, 791.7640, and 791.7660 of the Tariff Schedules of the United States Annotated.

Analysis of Programs

Under the terms of the suspension agreement, the Government of Uruguay agreed to "eliminate completely" the subsidy which we had determined to exist. The subsidy was comprised of benefits from three programs. These programs were: The rebate of both direct and indirect taxes under the "Reintegro" program, an income tax forgiveness program, and an additional benefit conferred by virtue of the Government of Uruguay's not collecting 1980 social security taxes from the leather wearing apparel industry.

In accordance with its commitment, the Government of Uruguay issued a decree imposing export taxes on all leather wearing apparel exported to the United States on or after June 16, 1981 (the date by which it had agreed to eliminate all such subsidies). The rates of the export taxes in the decree were based on the total net subsidy amounts which we had found during our investigation for the three programs.

(1) *Rebates under the Reintegro Program.* Under the Reintegro program, exporters must apply for and receive certificates in order to receive the rebates. The decree delegated the responsibility for collecting the export taxes to the Banco de la Republica Oriental del Uruguay ("the central bank"), an independent banking institution which is also responsible for issuing the Reintegro certificates. The Government of Uruguay had anticipated that the central bank would be able to collect the export taxes at the time exporters applied for their Reintegro certificates. However, since the tax rate was higher than the Reintegro amount, the exporters ceased applying for these certificates. Therefore, no Reintegro certificates were issued on or after June 16, 1981 for exports of leather wearing apparel to the United States. Additionally, the Government of Uruguay in January 1982 forbade any further issuance of these certificates on shipments of leather wearing apparel destined for the United States. As the Reintegro accounted for the preponderance of the benefits conferred on such merchandise, eliminating the issuance of these certificates has resulted in the elimination of well over 95 percent of the total subsidy amount.

(2) *Uncollected Social Security Taxes.* For purposes of the suspension agreement, we determined that the Government of Uruguay intended to collect the 1980 social security taxes that the leather wearing apparel industry had not paid, and the uncollected taxes therefore should be treated as an interest-free loan. The amount of the principal of such a loan is not countervailable as long as it continues to be considered an outstanding debt. However, in the notice of final affirmative countervailing duty determination we had included in our net subsidy calculation an amount equal to the interest which would have been charged for such a loan, using for the comparable commercial rate the prime rate of interest available in Uruguay at the time. The Government of Uruguay included this latter amount in the export taxes it subsequently imposed via the central bank. As mentioned, when the central bank stopped receiving applications for Reintegro certificates, its ability to collect export taxes (and the component for the interest subsidy) ceased.

With regard to the uncollected taxes themselves (the principal), the Uruguayan Department of Taxation sent repeated notices to all the firms involved, even though such retroactive collection of taxes is not provided for under Uruguayan law. Since 1980, a substantial number of the affected firms have disappeared due to export decline. Some firms have merged and a significant number have filed for bankruptcy. For these reasons, the Government of Uruguay determined that it would be unable to collect the 1980 social security taxes and, on May 11, 1982, the government officially notified the Department that it had ceased in its attempts to collect these taxes from the leather wearing apparel industry.

Because the Government of Uruguay will not be able to collect these taxes, the Department no longer considers these taxes to be a loan. We now consider the uncollected taxes to be a grant to the leather wearing apparel industry bestowed by the Government of Uruguay on May 11, 1982, the date it officially declared these taxes uncollectable.

Thus, the benefits to leather wearing apparel exports under this program are the total amount of the uncollected taxes and the uncollected interest which would have been due from June 16, 1981, the date by which the Government of Uruguay had agreed to eliminate all subsidies, to May 11, 1982.

At the time of the original investigation, we had determined that the amount of the uncollected social security taxes was 2 percent of the f.o.b. value of the merchandise. However, there was a clerical error in the calculation. We have corrected this error and found that the actual amount of the social security taxes during 1980 was 2.37 percent of the f.o.b. value of the merchandise. This error caused a

corresponding error in the calculation of interest due on the unpaid social security tax amount. This amount should have been 0.48 percent, not the 0.41 percent published in our final affirmative determination.

(3) *Income Tax Forgiveness.* We determined that the amount of the benefit to exports of leather wearing apparel from this program includes all income taxes forgiven from the date by which the Government of Uruguay had agreed to eliminate all such subsidies (june 16, 1981), to the date the income tax forgiveness program ended (December 31, 1981). The amount of the benefit conferred under this program was determined at the time of the investigation to be 0.02 percent of the f.o.b. value of the merchandise. We have determined that there were no residual benefits from this program since the only merchandise which received any benefits from the income tax forgiveness program was that merchandise exported from Uruguay on or after June 16, 1981, through December 31, 1981.

Determination

The Government of Uruguay requested, and was afforded, the opportunity to renegotiate the terms of the agreement. However, the statutes requires that, in order for a suspension agreement to remain in force, the subsidy amount must be eliminated completely. As the Government of Uruguay started that it would be unable to accomplish this, there were no grounds for satisfactorily altering or amending the agreement.

Thus, while the Government of Uruguay has fulfilled the majority of its commitments in the agreement, the government has been unable to "eliminate completely" the total net subsidy. The Department therefore determines that the suspension agreement between the Department and the Government of Uruguay with regard to leather wearing apparel exports to the United States no longer meets the criteria of section 704(b) of the Tariff Act and therefore terminates the suspension agreement.

Since a final affirmative countervailing duty determination has been reached, since the ITC has determined that an industry in the United States is threatened with material injury, and since the suspension agreement is terminated, the Department issues this countervailing duty order with regard to shipments of leather wearing apparel exported from Uruguay on or after June 16, 1981. The estimated net amounts of the subsidies on this merchandise are 0.50 percent of the f.o.b. value for shipments exported during the period June 16, 1981, through December 31, 1981, 0.48 percent for shipments exported during the period January 1, 1982, through May 11, 1982, and 2.37 percent for all shipments exported on or after May 12, 1982.

The Department shall notify the U.S. Customs Service to suspend liquidation of shipments of leather wearing apparel from Uruguay exported on or before June 16, 1981, and entered, or withdrawn from warehouse, for consumption on or after April 17, 1982. The Department will also notify the Customs Service to collect cash deposits of estimated countervailing duties in the amount of 2.37 percent of the f.o.b. value of the merchandise on all shipments exported from Uruguay on or after May 12, 1982, and entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit rate shall remain in effect until publication of the final results of the Department's administrative review of the order under section 751 of the Tariff Act. The Department intends to conduct an administrative review by the 1983 anniversary date of publication of this notice.

Concurrent with the publication of this notice, the Department is notifying the petitioner, interested parties who were parties to the investigation, and the International Trade Commission of our actions, in accordance with section 704(i)(1)(D) of the Tariff Act.

This notice is published in accordance with section 706(a) of the Tariff Act (19 U.S.C. 1671e(a)) and § 355.32 of the Commerce Regulations (19 CFR 355.32).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

July 12, 1982.

[FR Doc. 82-19297 Filed 7-15-82; 8:45 am]

BILLING CODE 3510-25-M

[A-588-056]

Melamine in Crystal Form From Japan; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on melamine in crystal form from Japan. The review covers the five known exporters of this merchandise to the United States and the period February 1, 1981 through January 31, 1982. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

As a result of the review the Department has preliminarily determined to require cash deposits of estimated antidumping duties equal to the margins calculated on the last known shipments. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 16, 1982.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Robert Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, (202-377-5255).

SUPPLEMENTARY INFORMATION:

Background

On May 28, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 23507) the final results of its administrative review of the antidumping finding on melamine in crystal form from Japan (42 FR 6866, February 2, 1977) and announced its intent to conduct the next administrative review by the end of February 1983. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

The review covers imports of melamine in crystal form, a fine white crystalline powder used to manufacture melamine formalydehyde resins. Melamine in crystal form is currently classifiable under item 425.1020 of the Tariff Schedules of the United States Annotated (TSUSA).

C. Itoh & Co., Ltd., Mitsui Toatsu Chemicals, Inc., Nichimen Co., Ltd., Nissan Chemical Industries, Ltd., and Nosawa & Co., Ltd. are the five known exporters of Japanese melamine in crystal form to the United States. This review covers the period February 1, 1981 through January 31, 1981. There were no known shipments to the United States during the period and there are no known unliquidated entries.

Preliminary Results of the Review

As a result of our review, we have determined cash deposit rates for estimated antidumping duties on the basis of the margins on the last known shipments. Those margins are:

Firm	Time period	Margin (percent)
C. Itoh & Co., Ltd	02/01/81-01/31/82	[1]60
Mitsui Toatsu Chemicals, Inc	02/01/81-01/31/82	[1]70.22
Nichimen Co., Ltd	02/01/81-01/31/82	[1]60
Nissan Chemical Industries, Ltd	02/01/81-01/31/82	[1]60
Nosawa & Co., Ltd	02/01/81-01/31/82	[1]60

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results on or before August 16, 1982 and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

As provided for in § 353.48(b) of the Commerce Regulations, cash deposits of estimated antidumping duties in the amounts listed above shall be required on all shipments of Japanese melamine in crystal form from these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

July 12, 1982.

[FR Doc. 82-19294 Filed 7-15-82; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

Revision to Federal Information Processing Standard 32, Character Sets for Optical Character Recognition (OCR)

Correction

In FR Doc. 82-17218 appearing on page 27579 in the issue of Friday, June 25, 1982, make the following corrections:

1. On page 27580, first column, there should have been a blank line labeled "Date" beneath the heading **"Federal Information Processing Standards Publication 32-1".**

2. Also on page 27580, in the third column, under **"SPECIAL INFORMATION",** paragraph b. was published incorrectly, and paragraph c. was inadvertently omitted. They should have read as follows:

b. The addition of three monetary shapes and the deletion of four punctuation characters of OCR-B, as reflected in American National Standard X3.49-1975.

c. The inclusion of a special character set, E-13B MICR (read optically), based on the specifications of American National Standard X3.2-1970 (R1976). This is a special set normally used in conjunction with MICR installations.

Implementation * * *

BILLING CODE 1505-01-M

National Voluntary Laboratory Accreditation Program (NVLAP); Quarterly Report (April 1-June 30, 1982)

AGENCY: National Bureau of Standards, Commerce.

ACTION: Publication of the NVLAP quarterly report.

SUMMARY: The National Bureau of Standards (NBS) announces accreditation actions for the second quarter of 1982. In addition, the status of all NVLAP laboratory accreditation programs (LAPs) is summarized.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Locke, Manager, Laboratory Accreditation, National Bureau of Standards, TECH B06, Washington, DC 20234, (301) 921-2427. Those interested in using the services of a NVLAP accredited laboratory may obtain the latest copy of the list of test methods for which it is accredited either from the laboratory itself or from Mr. Locke at the address given above. Also available from Mr. Locke is a complete listing of NVLAP accredited laboratories with a corresponding list of the test methods for which each is accredited.

SUPPLEMENTARY INFORMATION:

Background

This report has been prepared in accordance with sections 7a.17(a), 7b.17(a), and 7c.17(a) of the National Voluntary Laboratory Accreditation Program (NVLAP) Procedures (15 CFR Parts 7a, 7b, and 7c). In addition, to fulfill NVLAP requirements for monthly reporting of accreditation actions, notice of actions taken under NVLAP for the month of June is included in this report.

NVLAP accreditation does not relieve the laboratories from the necessity of observing and complying with existing Federal, State, and local statutes, ordinances, and regulations that may be applicable to their operations, including consumer protection and antitrust laws.

Accreditation is granted for a period of one year. All laboratories will have one of four anniversary dates, January 1, April 1, July 1, or October 1. All accreditation actions will be made during the month preceding each anniversary date. However, before it expires, accreditation may be terminated at the request of the laboratory or may be revoked due to violation of the accreditation criteria or other conditions of the laboratory's accreditation. The criteria are described in sections 7a.19-7a.30 of the NVLAP Procedures (46 FR 37034-37036, dated July 17, 1981).

New Accreditations Granted

Six laboratories were newly accredited during June 1982. The name and address of each laboratory and the test methods for which one year accreditation was granted are listed below. In each case accreditation is granted on July 1, 1982 and expires on June 30, 1983.

FOX & ASSOCIATES OF ARIZONA, INC.

[Attn: Ronald L. Pruett, 3301 E. Madison Street, Phoenix, AZ 85034, phone: (612) 244-8197]

NVLAP code	Designation	Short title
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field.
01/M03	ASTM C172	Sampling Fresh Concrete.
02/P01	ASTM C143	Slump of Portland Cement Concrete.
02/W01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete.
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method.
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens.
02/A02	ASTM C173	Air Content of Freshly Mixed Concrete by the Volumetric Method.

HARDING-LAWSON ASSOCIATES

[Attn: James E. Nichols, 940 Matley Lane, Reno, NV 89502, phone: (702) 329-6123]

NVLAP code	Designation	Short title
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field.
02/M03	ASTM C172	Sampling Fresh Concrete.
02/P01	ASTM C143	Slump of Portland Cement Concrete.
02/W01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete.
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method.
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens.

LINCOLN-DEVORE TESTING LABORATORY, INC.

[Attn: George D. Morris, 1000 West Fillmore Street, Colorado Springs, CO 80907, phone: (303) 632-3593]

NVLAP code	Designation	Short title
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field.
02/M03	ASTM C172	Sampling Fresh Concrete.
02/P01	ASTM C143	Slump of Portland Cement Concrete.
02/W01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete.
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method.
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens.

SALEM CARPET LABORATORY

[Attn: Michael A. Corbin, P.O. Box 160, Chatsworth, GA 30705, phone: (404) 695-4663]

NVLAP code	Designation	Short title
03/C01	AATCC 16E	Colorfastness to Light (Xenon Arc).
03/C02	AATCC 8	Colorfastness to Crocking.
03/D01	ASTM D418	Methods of Testing Woven and Tufted Pile Floor Coverings. Pile Weight—Uncoated (Para. 10-19). Pile Weight—Coated (Para. 20-29) as modified by UM 44C. Pile Thickness—(Para. 30-36). Tuft Height—(Para. 37-45) as modified by UM 44C.
03/D02	DDD-C-95A	Shrinkage
03/S01	ASTM D1335	Tuft Bind of Floor Coverings
	Federal Test Method Standard 191-5100.	Textile Test Method—Breaking Strength.
	Standard 191-5950.	Textile Test Method—Delamination.
03/F03	DoC FF1-70	Methenamine Pill Test.

UNION ROCK AND MATERIALS CORP.

[Attn: Ronald Keefer, P.O. Box 8007, Phoenix, AZ 85066, phone: (603) 276-4211]

NVLAP code	Designation	Short title
02/M01	ASTM C31	Making and Curing Concrete Test Specimens in the Field.
02/M03	ASTM C172	Sampling Fresh Concrete.
02/P01	ASTM C143	Slump of Portland Cement Concrete.
02/W01	ASTM C138	Unit Weight, Yield, and Air Content (Gravimetric) of Concrete.
02/A01	ASTM C231	Air Content of Freshly Mixed Concrete by the Pressure Method.
02/S01	ASTM C39	Compressive Strength of Cylindrical Concrete Specimens.

UNITED STATES GYPSUM COMPANY

[Attn: William Porter, 700 N. U.S. Highway 45, Libertyville, IL 60048, phone: (312) 362-9797]

NVLAP code	Designation	Short title
01/T06	ASTM C518	Thermal Transmission Properties; Heat Flow Meter.

Accreditation for Additional Test Methods

One previously accredited laboratory, Geoscience Ltd., 410 South Cedros Avenue, Solana Beach, CA 92075 added a test method *ASTM C236, Thermal Conductance; Guarded Hot Box* to their list of accredited test methods.

Terminated Accreditation

Accreditation under the Carpet LAP for Mohasco Corp., Physical Testing Laboratory, Amsterdam, NY was voluntarily terminated by the company on June 11, 1982, because the laboratory was transferred to Dublin, GA. It is anticipated that the company will apply for accreditation for the reestablished laboratory.

Technical Micronics Control Inc., Huntsville, Alabama voluntarily terminated its accreditation for test method *ASTM C177, (NVLAP Code 01/T01) Thermal Transmission Properties; Low-Temperature Guarded Hot Plate* effective June 24, 1982. Accreditation for the remainder of its list of accredited test methods continues in effect.

Discontinued Test Methods

ASTM C355 (NVLAP Code 01/D10) Standard Test Methods for Water Vapor Transmission of Thick Materials was officially withdrawn by ASTM Committee C16 as of April 1, 1982. This method was replaced with *ASTM E96, Standard Test Methods for Water Vapor Transmission of Materials.* ASTM E96 is already a part of the Thermal Insulation LAP as NVLAP Code 01/V04. Accordingly, accreditation for ASTM C335 will no longer be offered.

List of Laboratories Whose Accreditations Were Renewed During the Second Quarter of 1982

The accreditation of the following laboratories was renewed during the second quarter of 1982, for one or more test methods available under NVLAP. Each laboratory received a certificate of accreditation and a corresponding list of test methods for which each is accredited. Anyone who wishes to know which test methods each laboratory is accredited for should contact the laboratory directly or Mr. Locke.

Pittsburgh Testing Laboratory, 850 Popular Street, Pittsburgh, PA 15220.

STS Consultants, Ltd., 111 Pfingsten Road, Northbrook, IL 60062.

Insulation LAP Status

The LAP for thermal insulation materials has 56 test methods for which accreditation may be granted. Forty laboratories are currently accredited to perform one or more of these test methods.

Concrete LAP Status

The LAP for freshly mixed field concrete has two groups of test methods and one optional test method for which accreditation can be granted. Forty-nine laboratories are currently accredited under the Concrete LAP.

Carpet LAP Status

The LAP for carpet has 12 test methods for which accreditation may be granted. Twenty-four laboratories are currently accredited for one or more of these test methods.

LAPs Under Development

Stove LAP—The formal establishment of a Laboratory Accreditation Program (LAP) for Solid Fuel Room Heaters (Stove LAP) was announced on April 20, 1982 in the **Federal Register** (47 FR 16823-16827). Several laboratories have already applied for accreditation under this LAP. On-site assessments and proficiency testing are expected to begin in late summer. Laboratories interested in future participation should request application packages from Mr. Locke.

Acoustics LAP—Copies of the minutes of the Acoustics LAP workshops held at NBS earlier this year were sent to nearly 200 people for comments and suggestions. Included with the minutes were appendices which identify the elements that are critical to the proper performance of each test method in the Acoustics LAP. Comments on the minutes and appendices were received and analyzed. Those that were acceptable were incorporated in the NVLAP documents. A request was received from the Motor Vehicles Manufacturers Association to include in the Acoustics LAP ten additional noise emission test methods for motor vehicles. These test methods are being evaluated by NVLAP and will be included in the program if appropriate. A **Federal Register** announcement of the Acoustics LAP test methods for which laboratories can request accreditation is planned for the third quarter of this year.

Dosimetry LAP—Information gathered from the workshop, which was held at the National Bureau of Standards on April 12 and 13, 1982, will

be used to establish a uniform basis for the determination of each processor's compliance with NVLAP criteria. In response to a request for nominations of individuals with professional credentials in personnel dosimetry processing to serve as NVLAP assessors, over 70 individuals have been nominated. These nominees will be contacted to ascertain their interest in serving as assessors prior to the formal selection process. Progress continues on a "Request for Proposal" (RFP) to obtain the services of a testing laboratory to conduct the proficiency testing aspect of this LAP. The RFP should be available to offerors in the third quarter of this year.

Electromagnetic Calibration Services LAP—A final finding of need for a LAP which will be offered to laboratories who provide electromagnetic calibration services was published on January 14, 1982. A public workshop to discuss the technical requirements for this LAP was held on July 1–2, 1982. An analysis of workshop comments is in progress. A notice announcing the formal establishment of this LAP is expected in the fourth quarter of this year.

Windows and Doors LAP—On January 21, 1982 a notice was published in the **Federal Register** (47 FR 3025–3026) announcing a request from the Department of Housing and Urban Development (HUD) to establish a Laboratory Accreditation Program (LAP) for window and door products. HUD in a letter to NBS dated May 12, 1982, withdrew its request so that other interested parties could act as proponents of the proposed program. The notice announcing the HUD decision was published in the **Federal Register** (47 FR 23509–23510) dated May 28, 1982.

As a result of the HUD decision, NBS has received a letter from a private testing laboratory requesting that NBS establish a LAP covering those testing laboratories that test window and door products.

A preliminary finding of need for this program requesting comments to ascertain the overall support for the proposed LAP is being developed and will be published in a **Federal Register** notice during the third quarter of this year.

Date: July 13, 1982.

Raymond G. Kammer,

Acting Director, National Bureau of Standards.

[FR Doc. 82-19283 Filed 7-15-82; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Restrain Levels for Certain Cotton Textile Products From India

July 13, 1982.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Granting an increase of 7,741 dozen for swing in cotton trousers in Category 347/348, produced or manufactured in India and exported during the agreement year which began on January 1, 1981, increasing the level from 121,024 dozen to 128,765 dozen. The amount is being deducted from the level for Category 338/339/340 (shirts and blouses), reducing that level from 1,034,738 dozen to 1,026,997 dozen. This adjustment applies to both visaed merchandise and merchandise certified with the elephant shaped certification.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926), and May 13, 1982 (47 FR 20654))

SUMMARY: The Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India provides for percentage increases in certain categories (swing). Pursuant to the terms of the bilateral agreement, and at the request of the Government of India, the import restraint level established for Category 347/348 is being increased and the level for Category 338/339/340 is being decreased for the twelve-month period which began on January 1, 1982 and extends through December 31, 1982.

EFFECTIVE DATE: July 19, 1982.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

SUPPLEMENTARY INFORMATION: On December 18, 1981 a letter dated December 15, 1981 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the **Federal Register** (46 FR 61685), which established import restraint levels for certain specified categories of cotton, wool, and man-made fiber textile products, produced or manufactured in India and exported to the United States during the twelve-month period which began on January 1, 1982 and extends through December 31, 1982.

In accordance with the terms of the bilateral agreement and at the request of the Government of India, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs in the letter published below to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 347/348 and 338/339/340, produced or manufactured in India, in excess of the designated adjusted levels of restraint, during the twelve-month period which began on January 1, 1982.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

July 13, 1982.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: On December 18, 1981, the Chairman of the Committee for the Implementation of Textile Agreements directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, during the twelve-month period beginning on January 1, 1982 and extending through December 31, 1982 of cotton, wool, and man-made fiber textile products in certain specified categories, produced or manufactured in India, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the arrangement regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on July 19, 1982 to amend the twelve-month levels of restraint established for cotton textile products in Categories 347/348 and 338/339/340, whether

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India, which provide, in part, that: (1) within the aggregate, group limits may be exceeded by designated percentages; (2) specific limits may be exceeded by various percentages subject to various provisions of the agreement; (3) consultation levels may be increased upon agreement between the two governments; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

accompanied by a visa or an elephant shaped certification, to the following:

Category	Amended 12-mo. level of restraint [1] (dozens)
347/348	128,765
338/339/340	1,026,997

[1] The levels of restraint have not been adjusted to account for any imports after December 31, 1981.

The actions taken with respect to the Government of India and with respect to imports of cotton textile products from India have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necesssary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 82-19322 Filed 7-15-82; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Department of the Army

National Board for the Promotion of Rifle Practice, Executive Committee; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92-463, announcement is made of the following committee meeting:

Name of committee: Executive Committee of the National Board for the Promotion of Rifle Practice (NBPRP)
Date of meeting: August 8, 1982.
Place: Camp Perry, Ohio
Time: 0900 hours

Proposed Agenda

1. Recommendations on Board appointments and terms.
2. Appointment Procedures and Terms of Service for Board.
3. NBPRP Support for Development of Automatic Target System.
4. Junior Shooters Sponsored by DCM to US International Championships.
5. Competitive Shooting Program for Carbines.
6. Presentation by Mr. Krenzke.
7. NBPRP/DCM Support for Biathlon.

This meeting is open to the public.

Note.—This is the continuation of a two part meeting, the first of which was conducted in Washington, D.C. The above agenda items are remaining from the July 2, 1982 meeting.

Wilson R. Rutherford III,

LTC, GS, Military Assistant.

[FR Doc. 82-19288 Filed 7-15-82; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Advisory Panel on Financing Elementary and Secondary Education; Meeting

AGENCY: Advisory Panel on Financing Elementary and Secondary Education, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Panel on Financing Elementary and Secondary Education. It also describes the functions of the Panel. Notice of this meeting is required under the Federal Advisory Committee Act, Section 10(a)(2). This document is intended to notify the general public of its opportunity to attend.

DATE: August 3 and 4, 1982, from 8:00 a.m. to 4:00 p.m.

ADDRESS: Room 330, Brown Building, 1200 19th Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Will S. Myers, Executive Director, Advisory Panel on Financing Elementary and Secondary Education, P.O. Box 19125, Washington, D.C., 20036, (202) 653-8278.

SUPPLEMENTARY INFORMATION: The Advisory Panel on Financing Elementary and Secondary Education is established under Section 1203, Title XII of the Education Amendments of 1978 (Pub. L. 95-561). The Panel provides the Secretary and the Congress with advice and counsel concerning public policies on raising and distributing revenues to support elementary and secondary education. The Advisory Panel also provides periodic advice to the Secretary concerning the conduct of studies authorized by Section 1203. The Advisory Panel is scheduled to report its findings and recommendations to the President and the Congress December 31, 1982.

The Agenda for the meeting will include the following items:

1. Official greeting.
2. Review of legislation and discussion of statutory responsibilities.
3. Briefing and discussion of scope and content of school finance studies.
4. Discussion of topics for inclusion in Panel's report to Congress.
5. Schedule of future meetings.
6. Staff personnel.

A portion of the Panel meeting will be closed if necessary on August 3, 1982 from 2:00 p.m. to 4:00 p.m. to discuss the position of Executive Director. The meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. Appendix I) and under exemptions (2) and (6) of Section 552b(c) of the Government in the Sunshine Act (Pub. L. 94-409; 5 U.S.C. 552b(c) (2) and (6)). Discussion of the position will include consideration of the qualifications and fitness of the incumbent and others and may touch upon matters which would constitute an invasion of privacy if conducted in an open meeting.

A record of the proceedings including a summary of the closed session which are informative to the public consistent with the policy of 5 U.S.C. 552b(c) shall be available for public inspection at the offices of the Advisory Panel on Financing Elementary and Secondary Education located at 1200 19th Street, N.W., Room 725, Washington, D.C. within 14 days following the session.

Signed at Washington, D.C. on July 12, 1982.

Will S. Myers,

Executive Director, Advisory Panel on Financing Elementary and Secondary Education.

[FR Doc. 82-19304 Filed 7-15-82; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Supplemental Funds Program for Cooperative Education; Application Notice for New Applications for Fiscal Year 1982

Applications are invited for the award of certain unused College Work-Study Program funds for the support of programs of Cooperative Education.

Authority for this program is contained in section 442(d) of the Higher Education Act of 1965, as amended by section 433 of Pub. L. 96-374 (42 U.S.C. 2752(d)).

Closing Date for Transmittal of Applications

Applications for supplemental funds for the support of programs of Cooperative Education must be mailed or hand-delivered by August 20, 1982.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Office of Postsecondary Education, Division of Institutional and State Incentive Programs, Cooperative

Education Branch, Attention: 84.055E, Washington, D.C. 20202.

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 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 maling:

(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 relying 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 Cooperative Education Branch, U.S. Department of Education, (Room 3C53, ROB–3), 7th and D Streets, S.W., Washington, D.C.

The Cooperative Education Branch will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Available Funds

Section 442(d) of Title IV–C of the Higher Education Act of 1965, as amended, requires the Secretary to give preference in reallotting the first 50 percent of unused College Work-Study Program funds as supplemental funds to eligible institutions of higher education for use in initiating, improving, and expanding programs of Cooperative Education administered in accordance with the regulations implementing Title VIII of the Act.

The Secretary, however, will not have the report of the unused College Work-Study Program funds available for reallotment until mid-August.

These funds must be reallotted on or before September 30, 1982.

Each eligible institution of higher education submitting an application will receive a proportionate share of the available funds, except as noted below, based on the ratio of the number of full-time and full-time-equivalent students assisted under its program of cooperative education between the period July 1, 1981, through June 30, 1982, to the number of those types of students assisted in programs of cooperative education in all eligible institutions. Using the above mentioned formula, the Secretary will not issue a grant to an eligible institution if the institution will receive a grant of less than $500.

Application Forms

Application forms and program information packages are expected to be mailed to institutions of higher education by July 20, 1982. They may also be obtained after July 20, 1982, from the Cooperative Education Branch, U.S. Department of Education (Room 3053, Regional Office Building 3), 7th and D Streets, S.W., Washington, D.C. 20202. Telephone: (202) 245–2146.

Applicable Regulations

The following regulations apply to project supported with supplemental funds:

(a) Regulations governing the Supplemental Funds Program for Cooperative Education (34 CFR Part 636), published in the **Federal Register** on May 3, 1982.

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 75 and 77, formerly 45 CFR Part 100a and 45 CFR Part 100c).

Further Information

For further information, contact Mr. Morris L. Brown, Chief, Cooperative Education Branch, Division of Institutional and State Incentive Programs, Office of Institutional Support Programs, U.S. Department of Education, 400 Maryland Avenue, S.W., (Room 3053, ROB–3), Washington, D.C. 20202. Telephone: (202) 245–2146.

(20 U.S.C. 1133, 42 U.S.C. 2752(d))

Dated: July 6, 1982.

Thomas P. Melady,

Assistant Secretary for Postsecondary Education.

[FR Doc. 82-19289 Filed 7-15-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Action on Consent Order With Getty Oil Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Adoption of proposed consent order as final.

SUMMARY: The Department of Energy (DOE) hereby gives the notice required by 10 CFR 205.199J that it has adopted the Consent Order with Getty Oil Company ("Getty"), executed on April 28, 1982 and published for comment in 47 FR 20347 on May 12, 1982, as a final order of DOE. The Consent Order resolves all issues not resolved by previous Consent Orders, except for those matters explicitly excluded, relating to Getty's compliance with the DOE Petroleum Price and Allocation Regulations for the period January 1, 1973 through January 27, 1981. To remedy any violations that may have occurred during the period, Getty has agreed to make payments totalling $3,050,000 to the U.S. Treasury.

As required by the regulation cited above, DOE received comments on the Consent Order for a period of not less than 30 days following publication of the notice cited above. Eleven comments were received by June 11, 1982, the thirtieth day following publication of the notice of the proposed Consent Order. DOE has considered all comments received and determined that the Consent Order should be made final without modification. The Consent Order was made effective as a final order of the DOE on June 25, 1982, by actual notice to Getty.

FOR FURTHER INFORMATION CONTACT: Leslie Wm. Adams, Deputy Solicitor, Economic Regulatory Administration, Department of Energy, RG–30, 1200 Pennsylvania Avenue, N.W, Washington, D.C. 20461, Phone: (202) 633–9165.

Copies of the Consent Order may be received free of charge by written request to: Getty Consent Order Request, Department of Energy, RG–30, Room 5109, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20461.

Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW., Room IE–190, Washington, D.C.

SUPPLEMENTARY INFORMATION:

The Consent Order

On May 12, 1982, DOE published notice in the **Federal Register** at page 20347 announcing the execution of a proposed Consent Order between Getty and DOE. In compliance with DOE Regulations, that notice and a subsequent press release summarized the Consent Order and the facts behind it. The notice and press release also

gave instructions for obtaining copies of the Consent Order.

The proposed Consent Order can be summarized as follows:

1. The Consent Order marks the conclusion of the Economic Regulatory Administration (ERA) audit of compliance by Getty and Mohawk Petroleum with the Federal Petroleum price and allocation regulations, including the entitlements and mandatory oil import programs, for the period January 1, 1973 through January 27, 1981.

2. Within fifteen (15) days after the effective date of this Consent Order, Getty shall remit $3,050,000 to the United States Treasury to be deposited as miscellaneous receipts.

3. The Consent Order settles all matters arising from Getty's sales of covered products during the settlement period with certain exceptions relating to *Getty Oil Company* v. *DOE*, Civ. No. 77-434 (D. Del.) and Getty's obligations under DOE's entitlements program.

4. The Consent Order also provides details concerning enforcement of the provisions of the Consent Order itself. These provisions address Getty's obligation under DOE recordkeeping regulations and DOE's obligation to maintain the confidentiality required by law of proprietary data received from Getty. The Consent Order provides that Getty has waived its right to an administrative appeal or judicial review of the Consent Order. The Consent Order does not constitute an admission by Getty nor a finding by DOE of a violation of any Federal petroleum price and allocation statutes or regulations.

Comments Received

As noted above, DOE received a total of 11 comments on the proposed Getty Consent Order. Comments were submitted by the States of North Carolina, Vermont, California, New York, and Connecticut, a retailer of petroleum products, the National Oil Jobber's Council, a law firm representing Commonwealth Oil Refining Company, Inc. and Energy Cooperative, Inc., the Association of American Railroads and the National Council of Farmer Cooperatives. DOE has considered all comments and determined that the Consent Order should be made final without modification. The significant points raised by the comments are discussed below.

Nearly all the comments questioned the appropriateness of depositing the $3,050,000 payment in the U.S. Treasury as miscellaneous receipts, citing *Citronelle-Mobile Gathering Inc.* v. *Edwards*, 669 F.2d 717 (TECA 1982).

Consistent with the decision in *Citronelle*, DOE seeks to provide refunds to those persons who may have borne the burden of an alleged regulatory violation. This is not possible or practical in all cases. In those instances where direct refunds are not possible, DOE seeks some form of restitution to ameliorate any injury that may have occurred. The issues resolved by this Consent Order did not permit identification of injured parties. The issues raised concerned improper certification of crude oil and improperly calculated recoveries of costs.

Payment to the Treasury is an appropriate remedy in this case. This is not a situation where these monies can be attributed to identifiable injured parties. Because of the operation of the refiner price rules, it is impossible to determine who ultimately bore the burden of the alleged overcharges. Accordingly, payment to the Treasury provides a satisfactory remedy in an amount DOE believes is sufficient in light of the issues raised.

Comments received from the states suggested that refunds should be made to them to fund various energy related programs. However, none of the states provided any evidence of injury to support their claims that they are entitled to these funds. While a program of allocating funds to states may be appropriate in some instances, there is no *requirement* that such a program be adopted. Of course to the extent those states determine that they have been injured, they may proceed against Getty independently.

Some of the comments stated positions that are not applicable to this Consent Order. Getty is not accused of an entitlements violation, nor was there an issue regarding sales of covered products to jobbers. The claim of the petroleum products retailer is not substantiated by the issues resolved by this Consent Order; he was not identified by the audit as having been injured.

Several comments suggested that a petition to the Office of Hearings and Appeals (OHA) under Subpart V of the Regulations (10 CFR Part 205, Subpart V) for the implementation of special refund procedures was required in this case. Contrary to these assertions, the use of Subpart V is not mandated by the Regulations.

Having considered all comments received, we determined that the proposed Consent Order with Getty should be made final without modification. The Consent Order was made final and effective by providing written notice to that effect to Getty on June 25, 1982.

Issued in Washington, D.C. June 25, 1982.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 82-19244 Filed 7-15-82; 8:45 am]

BILLING CODE 6450-01-M

[ERA Case No. 53146-3804-03-82]

Virginia Electric & Power Co.; Powerplant and Industrial Fuel Use Act of 1978; Intention To Proceed With Prohibition Order Proceedings

In the matter of Virginia Electric and Power Co., Richmond, Virginia.

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of its intention to proceed with the pending Prohibition Order proceedings relating to a powerplant owned by Virginia Electric and Power Company of Richmond, Virginia (VEPCO), located near Dumfries, Virginia, and identified as Possum Point No. 3.

Pursuant to former section 301(b) and section 701(b) of the Powerplant and Industrial Fuel Use Act of 1978, 42 USC 8301 *et seq.* (FUA or the Act), a proposed prohibition order for Possum Point No. 3 was issued by ERA on May 16, 1980, and published in the Federal Register on May 22, 1980 (45 FR 34346).

The Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35 (OBRA), which became law on August 13, 1981, amended Title III of FUA in several important respects, including the limitation of DOE's unilateral authority to issue orders prohibiting the use of petroleum and natural gas or certain mixtures including these fuels as a primary energy source in an existing electric powerplant. Under former section 301, DOE could order the involuntary conversion of such powerplants. On October 1, 1981, ERA issued final rules pursuant to OBRA (46 FR 48118), providing procedures whereby an existing powerplant issued a proposed prohibition order under former section 301 (b) or (c) of FUA as of August 13, 1981, the date of enactment of OBRA, could elect to continue the current prohibition order proceeding under the provisions of former section 301. In accordance with the procedures provided, VEPCO, on November 23, 1981, notified ERA of its election to have Possum Point No. 3 remain subject to former section 301(b) of FUA and thus become an "electing powerplant" as defined in 10 CFR 500.2.

The prohibition order procedures for facilities electing continued coverage under former section 301 are found at 10 CFR 501.31, 501.33, 501.51, and 504.7.

Description of Prohibition Order Proceedings for Electing Powerplants

In accordance with 10 CFR 501.51, the proposed prohibition order commenced an initial public comment period, during which period VEPCO was given an opportunity to challenge ERA's initial finding that Possum Point No. 3 has or previously had the technical capability to burn an alternate fuel (coal) as a primary energy source. VEPCO chose not to do so. The utility must also have identified, during this period, any exemptions for which the powerplant may qualify, but need not have submitted evidence attempting to demonstrate entitlement to an exemption.

The publication of this Notice of Intention to Proceed commences a second three-month period during which VEPCO may present evidence to demonstrate that the powerplant would qualify for an exemption, which would constitute a defense to the issuance of a final prohibition order.

Subsequent to the end of the second three-month period ERA will, if it intends to issue a final prohibition order, prepare and publish a notice of availability of a Tentative Staff Analysis concerning the findings ERA must make prior to issuance of a final prohibition order. Those findings, which are required by former section 301(b) of FUA, are: (1) That the powerplant has the technical capability to use coal or another alternate fuel as a primary energy source, or it could have such capability without (A) substantial physical modification of the powerplant or (B) substantial reduction in the rated capacity of the powerplant; and (2) that it is financially feasible for the powerplant to use coal or another alternate fuel as its primary energy source.

The provisions of section 701(d) of FUA and 10 CFR 501.33(b) afford any interested person an opportunity to request a public hearing on the proposed prohibition order. Interested persons wishing a hearing must make their request, in writing no later than 45 days after publication of the Notice of Availability of the Tentative Staff Analysis. If a hearing is requested, the hearing will be held in accordance with Subpart C of 10 CFR Part 501. Under 10 CFR 501.31(b) interested persons may also submit written comments during this 45 day period.

After the hearing and comment period closes, ERA shall determine whether a final prohibition order will be issued based upon ERA's review of the entire administrative record. Any final prohibition order, together with a summary of the basis therefor, will be published in the **Federal Register**. Such order shall not take effect earlier than sixty days after publication.

Comments and Written Submissions Received on Proposed Prohibition Order

During the initial comment period, comments on the proposed prohibition order were received from VEPCO. These comments indicate that VEPCO believes that ERA can make the findings necessary to issue a final order for Possum Point No. 3, that the unit was designed to burn coal and had burned coal in the past and that the capability to burn coal could be restored without substantial physical modification or significant derating. VEPCO also anticipates that the conversion of this unit would be financially feasible. VEPCO's comments are based on the assumption that the only major capital expenditure associated with the conversion would be the acquisition and installation of a new electrostatic precipitator.

During this period, neither VEPCO nor any other interested persons submitted any information contrary to ERA's initial finding that Possum Point No. 3 has or previously had the technical capability to burn an alternate fuel (coal) as a primary energy source.

In accordance with 10 CFR 501.51(a), VEPCO also submitted evidence relating to the other findings that ERA is required to make under former section 201(b) of FUA, and identified, in their response dated August 18, 1980, those exemptions for which Possum Point No. 3 may qualify. The temporary exemptions authorized by section 311 of the Act, which VEPCO identified are: (1) Site limitations; (2) inability to comply with applicable environmental requirements; (3) public interest and (4) reliability of service. In addition, VEPCO identified the following permanent exemptions for which Possum Point No. 3 may qualify, as authorized by section 312 of the Act: (1) Site limitations; (2) inability to comply with applicable environmental requirements, and (3) state or local requirements.

FOR FURTHER INFORMATION CONTACT:

Loren Farrar, Fuels Conversion Division, Economic Regulatory Administration, Department of Energy, Forestal Building, Room GA-093, Washington, D.C. 20585, (202) 252-4811.

Marya Rowan, Office of General Counsel, Department of Energy, Forrestal Building, Room 6B-178, Washington, D.C. 20585, (202) 252-2967.

Issued in Washington, D.C., July 9, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82-19248 Filed 7-15-82; 8:45 am]

BILLING CODE 6450-01-M

Burton Hawks, Inc.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Burton Hawks, Inc. (Burton Hawks) of Casper, Wyoming. This Proposed Remedial Order charges Burton Hawks with pricing violations in the amount of $366,034.45 connected with the sale of crude oil at prices in excess of those permitted by 10 CFR Part 212, Subpart D during the time period February 1, 1976 through December 31, 1980.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from James A. Martin, Deputy Director, Crude and NGL Audit & Litigation Support Group, Economic Regulatory Administration, Department of Energy, P.O. Box 35228, Dallas, Texas 75235, or by calling (214) 767-7401. Within fifteen (15) days of publication of this notice (on or before July 31, 1982), any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 12th & Pennsylvania Ave NW., Room 3426, Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas, on the 7th day of July 1982.

James A. Martin,

Deputy Director, Crude and NGL Audit and Litigation Support Group, Economic Regulatory Administration.

[FR Doc. 82-19245 Filed 7-15-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER82-630-000]

Central Illinois Light Co.; Filing

July 12, 1982.

The filing company submits the following:

Take notice that on June 28, 1982, Central Illinois Light Company (CILCO) tendered for filing an Interconnection Agreement between CILCO and Illinois Power Company (New Interconnection Agreement) dated June 1, 1982.

CILCO states that the New Interconnection Agreement is intended

to replace entirely the presently effective interconnection agreement between CILCO and Illinois Power Company (Illinois Power) which is designated as CILCO's Rate Schedule FERC. No. 14, with supplements, and Illinois Power's Rate Schedule No. 63, with supplements. The New Interconnection Agreement contains proposed reciprocal service schedules for Limited Term Power, Emergency Energy, Economy Energy, Short Term Power, Maintenance Power and General Purpose Energy. Also included in the New Interconnection Agreement is a service schedule designed to bring the other service schedules into compliance with FERC Order No. 84 whenever "energy being supplied from one party to the other is being purchased from a third party".

CILCO has requested that the New Interconnection Agreement be given an effective date of September 1, 1982 in accordance with the stated intent of the two parties.

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 20, 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. 82-19380 Filed 7-15-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP82-120-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 12, 1982.

Take notice that on July 1, 1982, Columbia Gas Transmission Corporation (Columbia) tendered for filing certain revised tariff sheets to Original Volume No. 1 and Original Volume 2 of its FERC Gas Tariff. Columbia states that all tariff sheets being tendered herein bear an issue date of July 1, 1982 and an effective date of August 1, 1982.

Certain of the revised tariff sheets relate to a general rate increase by the company. Columbia states that while the subject tariff sheets would increase revenues from jurisdictional sales and services by $518,925,773, the increase on cost to the ultimate consumer is approximately $329,000,000, since the filing reflects the inclusion of Green Springs synthetic gas volumes which heretofore have been purchased directly by the vast majority of Columbia's wholesale customers from Columbia LNG Corporation (Columbia LNG). Columbia further states that the above additional revenue is necessary to offset a revenue deficiency of approximately the same amount, based upon a cost of service for the test period twelve months ended March 31, 1982, as adjusted, and as measured from the company's current collection level of rates, exclusive of surcharges and the GRI funding unit. Columbia states that the increased rates are required because of the inclusion of the aforesaid synthetic gas volumes anticipated to be purchased from Columbia LNG; the pricing of Columbia's old gas production at the company's base average commodity rate of purchased gas cost; an increase in the cost of transportation of gas by others; increases in materials and labor expense; an increase in rate base; an increase in the company's overall rate of return; and other cost changes more fully explained in the filing.

In addition, certain of the tendered tariff sheets relate to a proposed tracking provision associated with transportation and compression of gas by others (excluding Columbia Gulf). Also filed were tariff sheets reflecting a change to the unit of sales method of reflecting changes in the cost of gas under the PGA provisions of the company's tariff.

Copies of the filing were served by the company upon each of its jurisdictional customers and interested state commissions.

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, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.18 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 20, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants prties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-19381 Filed 7-15-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP82-119-000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

July 9, 1982.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf), on July 1, 1982, tendered for filing proposed changes to its FERC Gas Tariff as follows:

Original Volume No. 1

Twenty-eighth Revised Sheet No. 7
First Revised Sheet No. 29

Original Volume No. 2

Ninth Revised Sheet No. 72
Ninth Revised Sheet No. 73
Sixth Revised Sheet No. 92
Sixth Revised Sheet No. 93
Sixth Revised Sheet No. 126
Seventh Revised Sheet No. 145
Seventh Revised Sheet No. 146
Sixth Revised Sheet No. 263
Fifth Revised Sheet No. 320
Fifth Revised Sheet No. 337
Fifth Revised Sheet No. 386
Fifth Revised Sheet No. 387
Fourth Revised Sheet No. 416
Fourth Revised Sheet No. 417
Fifth Revised Sheet No. 440
Fifth Revised Sheet No. 484
Fifth Revised Sheet No. 493
Fifth Revised Sheet No. 567
Fifth Revised Sheet No. 596
Fourth Revised Sheet No. 628
Third Revised Sheet No. 663
Third Revised Sheet No. 677
Third Revised Sheet No. 702
Fourth Revised Sheet No. 750
Fourth Revised Sheet No. 820
Fourth Revised Sheet No. 821
Fourth Revised Sheet No. 848
Fourth Revised Sheet No. 849
Third Revised Sheet No. 937
Third Revised Sheet No. 1052
Third Revised Sheet No. 1097
Third Revised Sheet No. 1149
Third Revised Sheet No. 1150
Second Revised Sheet No. 1194
Second Revised Sheet No. 1195
Second Revised Sheet No. 1223
Second Revised Sheet No. 1253
First Revised Sheet No. 1268
First Revised Sheet No. 1302
First Revised Sheet No. 1303
First Revised Sheet No. 1338
First Revised Sheet No. 1339

The revised tariff sheets proposed to become effective August 1, 1982, reflect

an increase in Columbia Gulf's revenue of $22,929,469 based on a cost of service for the test period twelve months ended March 31, 1982, as adjusted, compared with revenue based upon its current collection rates. Columbia Gulf further states that the increased rates are required because of increases in labor and materials expense; an increase in the company's overall rate of return; and other cost changes more fully explained in the filing.

Copies of this filing are also being mailed to each of Columbia Gulf's jurisdictional customers, as well as to each of Columbia Gas Transmission Corporation's jurisdictional customers and interested state commissions.

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, Union Center Plaza Building, 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 20, 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 proceedings. Any person wishing to become a party must file a petition to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 82-19382 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP75-104-028 and RP81-18-004]

High Island Offshore System; Tariff Revision

July 12, 1982.

Take notice that on June 29, 1982, High Island Offshore System (HIOS) tendered for filing the tariff sheets listed on the attached Appendix A to Volume Nos. 1 and 2 of its F.E.R.C. Gas Tariff.

HIOS states that the tariff sheets listed on Appendix A are being filed as a result of the resolution of two HIOS proceedings. The first proceeding is HIOS' rate case in Docket No. RP81-18. By order issued June 3, 1982, the commission approved a Stipulation and Agreement (Stipulation) in that proceeding. The second proceeding involves HIOS's Petition to Amend its Certificate of Public Convenience and Necessity, filed August 21, 1979, to increase the firm certificated capacity of the HIOS system. The increase in firm certificated capacity was authorized by Commission orders dated July 29, 1981, and March 29, 1982, in Docket Nos. CP75-104, *et al.* The latter order in that docket, *inter alia,* aproved a Stipulation and Agreement (Agreement) with respect to the capacity allocation issue which had been litigated in that proceeding.

Specifically, HIOS states that the revised tariff sheets included in this filing reflect: (1) The revision of HIOS' rates to reflect HIOS' increased capacity authorized by the Commission in Docket No. CP75-104-013 in compliance with HIOS' Stipulation in Docket No. RP81-18-001; (2) the revision of each respective HIOS Shipper's Currently Effective Contract Demand to reflect the allocation of HIOS' increased firm capacity agreed upon in the approved Agreement in Docket No. CP75-104-013; (3) the modification of HIOS' Rate schedule I (Interruptible Overrun Transporation Service) to reflect the use of the volumes specified in Article IV of the Agreement in Docket No. CP75-104-013 as the basis for the allocation of Interruptible Overrun Transportation Service among those Shippers desiring such service; (4) the modification of Section 2.2 of all transportation agreements in compliance with Article V of the aforementioned Agreement; and (5) the modification of the Exhibit A of each respective Shipper's Transportation Agreement to reflect (a) the Shipper's respective revised Currently Effective Contract Demand, and (b) the allocation of each respective Shipper's revised Currently Effective Contract Demand among such Shipper's Points of Receipt in accordance with said Shipper's instructions to HIOS.

HIOS requests that the tariff sheets listed on Appendix A attached hereto be made effective as of June 1, 1982, the date upon which the increased firm service commenced.

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 20, 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.

Appendix A

Original Volume No. 1

Sixth Revised Sheet No. 4
Sixth Revised Sheet No. 6
Second Revised Sheet No. 7
Third Revised Sheet No. 8

Original Volume No. 2

First Revised Sheet Nos. 6, 7, 30, 31, 54, 55, 78, 79, 102, 103, 127, 126, 151, 152, 176, 177, 201, 202, 226, 227, 251, 252, 276, 277, 301, 302, 327, 328, 352, 353, 377 and 378

Revised Exhibit A to Rate Schedule T-1, consisting of Fifth Revised Sheet No. 25, Third Revised Sheet No. 25A, First Revised Sheet No. 25B and Original Sheet No. 25C

Revised Exhibit A to Rate Schedule T-2, consisting of Fourth Revised Sheet No. 49, Second Revised Sheet No. 49A, and Original Sheet No. 49B

Revised Exhibit A to Rate Schedule T-3, consisting of Sixth Revised Sheet No. 73 and Second Revised Sheet No. 73A

Revised Exhibit A to Rate Schedule T-4, consisting of Fifth Revised Sheet No. 97 and Original Sheet Nos. 97A and 97B

Revised Exhibit A to Rate Schedule T-5, consisting of Fourth Revised Sheet No. 121, Second Revised Sheet No. 121A and Original Sheet Nos. 121B and 121C

Revised Exhibit A to Rate Schedule T-6, consisting of Third Revised Sheet No. 146

Revised Exhibit A to Rate Schedule T-7, consisting of Seventh Revised Sheet No. 171 and First Revised Sheet No. 171A

Revised Exhibit A to Rate Schedule T-8, consisting of Third Revised Sheet No. 196

Revised Exhibit A to Rate Schedule T-9, consisting of Fourth Revised Sheet No. 221 and Original Sheet No. 221A

Revised Exhibit A to Rate Schedule T-10, consisting of Third Revised Sheet No. 246

Revised Exhibit A to Rate Schedule T-11, consisting of Third Revised Sheet No. 271 and Original Sheet No. 271A

Revised Exhibit A to Rate Schedule T-12, consisting of Fifth Revised Sheet No. 296 and Original Sheet No. 296A

Revised Exhibit A to Rate Schedule T-13, consisting of Third Revised Sheet No. 322 and Original Sheet No. 322A

Revised Exhibit A to Rate Schedule T-14, consisting of Third Revised Sheet No. 347

[FR Doc. 82-19383 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-628-000]

Kansas City Power & Light Company; Cancellation

July 12, 1982.

The filing Company submits the following:

Take notice that Kansas City Power & Light Company (KCPL) on June 28, 1982, tendered for filing a Notice of Cancellation of its Service Schedule F-

MPA for Transmission and Subtransmission Service under the Municipal Participation Agreement, FPC No. 56, as supplemented, to be effective June 30, 1982. KCPL states that the Service Schedule is applicable to KCPL's transmission service to the City of Independence, Missouri (City).

KCPL requests an effective date of June 30, 1982, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the City and upon the Missouri Public Service 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, 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 20, 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. 82-19384 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-2-15-000 (PGA82-2)(IPR82-2-2)]

Mid Louisiana Gas Co.; Proposed Change in Rates

July 12, 1982.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on July 1, 1982, tendered for filing as a part of First Revised Volume No. 1 of its FERC Gas Tariff, Forty-Fourth Revised Sheet No. 3a and Sixth Revised Sheet No. 3c to become effective August 1, 1982. Mid Louisiana also tendered for filing as a part of First Revised Volume No. 1 of its FERC Gas Tariff, Alternate Forty-Fourth Revised Sheet No. 3a to become effective August 2, 1982.

Mid Louisiana states that the purpose of the filing of Forty-Fourth Revised Sheet No. 3a is to reflect a Purchased Gas Cost Current Adjustment, a Purchased Gas Cost Surcharge and a Transportation Cost Adjustment resulting in a rate after current adjustment of 415.80¢.

Mid Louisiana states that the purpose of the filing of Alternate Forty-Four Revised Sheet No. 3a is to reflect a change in the pricing of Mid Louisiana's pre-1978 production from cost of service to prices allowed under the NGPA, and a change in the Base Tariff Rate eliminating production cost of service, resulting in a rate after adjustments of 449.42¢. The filing is being made in accordance with Section 19 of Mid Louisiana's FERC Gas Tariff, and the Purchased Gas Cost Current Adjustment reflects rates payable to Mid Louisiana's suppliers during the period August 1, 1982 through January 31, 1983.

Copies of the filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

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 1.10of 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 20, 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. 82-19385 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-118-000]

Mid Louisiana Gas Co.; Proposed Change in FERC Gas Tariff

July 12, 1982.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on July 1, 1982, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff Forty-Third Revised Sheet No. 3a.

Mid Louisiana states that the purpose of the filing is to reflect an increase in rate schedules G-1, SG-1 and I-1 from 403.26¢ to 448.66¢ per Mcf based on operations for the twelve months ended March 31, 1982, as adjusted. Mid Louisiana has requested that the proposed tariff sheet become effective August 1, 1982; however, pursuant to a Commission order issued April 29, 1982, and Mid Louisiana's statement on intent of Docket No. RP80-113, Mid Louisiana requests that the Commission suspend the proposed tariff sheet for five months so that it will become effective January 1, 1983.

Mid Louisiana states that the principal reasons for the proposed increase are: (1) A decline in sales volumes from 31,941,000 Mcf used in designing the underlying base rates to 27,907,000 Mcf reflected in this filing, a decline of 12.6%; (2) the cost of connecting and having transported to Mid Louisiana's system new sources of gas supply to replace declining volumes from existing sources; (3) increases in employee payroll and benefit program costs; and (4) other cost increases net of decreases occurring during the last two years resulting from inflationary economic conditions.

Copies of the filing have been served on interested customers and state commissions.

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 20, 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. 82-19386 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3849-001]

Jorges Sanchez; Surrender of Preliminary Permit

July 13, 1982.

Take notice that Jorges Sanchez (JS), Permittee for the proposed Structure 65-B Project No. 3849, has requested that its preliminary permit be terminated. The preliminary permit was issued on May 21, 1981, and would have expired on November 1, 1982. The project would have been located at the South Florida Water Management District's Structure 65-B on the Kissimmee River near Okeechobee County, Florida. JS cites that the project is not economically feasible for development due to extremely low head, turbine size limitations, and high civil costs.

JS filed its request on May 28, 1982, and the surrender of its permit for

Project No. 3849 has been deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-19375 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3850-001]

Jorges Sanchez; Surrender of Preliminary Permit

July 13, 1982.

Take notice that Jorges Sanchez (JS), Permittee for the proposed Structure 65-C Project No. 3850, has requested that its preliminary permit be terminated. The preliminary permit was issued on May 29, 1981, and would have expired on November 1, 1982. The project would have been located at the South Florida Water Management District's Structure 65-C on the Kissimmee River near Okeechobee County, Florida. JS cites that the project is not economically feasible for development due to extremely low head, turbine size limitations, and high civil costs.

JS filed its request on May 28, 1982, and the surrender of its permit for Project No. 3850 has been deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-19376 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1859-001]

R. C. Somers; Application

July 13, 1982.

The filing individual submits the following:

Take notice that on June 28, 1982, R. C. Somers filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President, Ohio Valley Tramsmission Corporation

Senior Vice President, Louisville Gas & Electric 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 August 2, 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. 82-19377 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2011-000]

P. C. Smither, Jr.; Application

July 13, 1982.

The filing individual submits the following:

Take notice that on June 28, 1982, P. C. Smither, Jr. filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Vice President, Ohio Valley Tramsmission Corporation

Vice President, Louisville Gas & Electric 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 August 2, 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. 82-19378 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-118-000]

Union Camp Corp.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

July 13, 1982.

On April 19, 1982, Union Camp Corp., P.O. Box 326, Montgomery, Alabama 36101, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The topping-cycle cogeneration facility is located in Autauga County, Alabama. The primary energy sources of the facility are biomass in the forms of pulping liquors, bark and woodwaste, as well as coal, natural gas and Fuel Oil #6. The electric power production capacity of the facility is 60 megawatts. Steam is used in process at varying pressures and temperatures at a rate of .92 million lbs/hr. Installation of the most recent additions to the facility began in July 1978. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status 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. All such petitions or protests must be filed on or before August 16, 1982 and must be served on the applicant. 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. 82-19379 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6211-000]

Alaska Industrial Power Corp.; Application for Preliminary Permit

July 12, 1982.

Take notice that Alaska Industrial Power Corporation (Applicant) filed on April 9, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for Project No. 6211 to be known as the Thomas Bay Project located on Cascade Creek in the Tongass National Forest near Petersburg, Alaska. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Robert J. Martin, Jr., 3441 Meander Way, Juneau, Alaska 99801.

Project Description.—The proposed project would consist of: (1) Swan Lake with a natural water surface elevation at 1,515 feet and a surface area of 572 acres; (2) a lake tap; (3) a 7-foot-diameter, 13,000-foot-long power tunnel; (4) a powerhouse at tidewater containing four 8,500-kW generating units producing 170,000 MWh of energy

annually; and (5) 12 miles of 69-kV transmission line and 5 miles of 69-kV underwater cable connecting the powerhouse to the electrical system at the City of Petersburg. Applicant would transmit project energy via proposed and existing transmission lines from Petersburg to a U.S. Borax Company mining development southeast of Ketchikan.

Proposed Scope of Studies under Permit.—A preliminary permit, if issued, does not authorize construction. During the term of the permit Applicant would conduct studies to determine the economic, financial, environmental, and engineering feasibility of the project. Applicant estimates that its studies would cost $2.1 million.

Competing Applications.—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before September 17, 1982, the competing application itself or a notice of intent to file such an application [see: 18 CFR § 4.30 et seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

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 September 17, 1982, and should specify the type of application forthcoming. Applications for license 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].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than November 16, 1982.

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 and 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 September 17, 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 82–19393 Filed 7–15–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER82–635–000.

Central Hudson Gas & Electric Corp; Rate Filing

July 13, 1982.

The filing Company submits the following:

Take notice that on July 1, 1982, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing its development of actual costs for 1981 related to transmission service provided from the Roseton Generating Plant to Consolidated Edison Company of New York, Inc. (Con Edison) and Nigara Mohawk Power Corporation (Niagara Mohawk) in accordance with the provisions of its Rate Schedule FERC No. 42.

The actual costs for 1981 amounted to $1.2792 per Mw.-day to Con Edison and $4.3408 per Mw.-day to Nagara Mohawk and are the basis on which charges for 1982 have been estimated.

Central Hudson requests waiver on the notice requirements set forth in 18 CFR 35.11 of the Regulations to permit charges to become effective January 1, 1982 as agreed by the parties.

Central Hudson states that a copy of its filing was served on Con Edison, Nagara Mohawk and the State of New York Public Service Commission.

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 18 CFR 1.8, 1.10. All such petitions or protests should be filed on or before July 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 proceedings. 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. 82–19353 Filed 7–15–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER82–636–000]

Central Hudson Gas & Electric Corp.; Rate Filing

July 13, 1982

The filing Company submits the following:

Take notice that on July 1, 1982, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing its development of actual costs for 1981 related to substation service provided to Consolidated Edison Company of New York, Inc. (Con Edison) in accordance with the Provisions of its Rate Schedule FERC No. 43.

Central Hudson indicates that the actual costs for 1981 amounted to $323,360 and will be the basis on which estimated charges for 1982 will be billed.

Central Hudson requests waiver of the notice requirements set forth in 18 CFR 35.11 of the Regulations to permit charges to become effective January 1, 1982 as agreed by the parties.

Central Hudson states that a copy of its filing was served on Con Edison and the State of New York Public Service Commission.

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 18 CFR 1.8, 1.10. All such petitions or protests should be filed on or before July 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. 82-19354 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP80-145-000 and RP80-146-000]

Columbia Gulf Transmission Co.; Notice Changing Date of Settlement Conference

July 13, 1982.

Take notice that on August 24, 1982, at 10:00 a.m., possibly extending to August 25, 1982, there will be a settlement conference on liquids and liquefiables in this proceeding. The conference previously scheduled for August 3, 1982 is cancelled. On the day of the conference, the conference room number will be posted by 9:00 a.m. on the second floor bulletin board of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

Customers and other interested persons will be permitted to attend, but if such persons have not previously been permitted to intervene in this matter by order of the Commission, attendance will not be deemed to authorize intervention as a party in these proceedings.

All parties will be expected to come fully prepared to discuss the merits of the issues arising in these proceedings and to make commitments with respect to such issues and to any offers of settlement or stipulation discussed at the conference.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-19368 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-115-000]

Consolidated Gas Supply Corp.; Proposed Changes in Rates and Charges

July 9, 1982.

Take notice that Consolidated Gas Supply Corporation (Consolidated), pursuant to Section 4 of the Natural Gas Act and Section 154.63 of the Commission's Regulations, filed on June 30, 1982, proposed changes to its FERC Gas Tariff, Third Revised Volume No. 1 to become effective on August 1, 1982.

The proposed rate changes would increase Consolidated's revenues from jurisdictional sales and services by $35.5 million based on the twelve months ended March 31, 1982, adjusted for known and measurable changes through December 31, 1982.

Consolidated states that increased rates are necessary to recover increases in operation and maintenance expenses, transportation costs, taxes, and the cost of money. The rate change also reflects a decrease in sales. The rates are based on an overall rate of return of 14.24% and an equity return of 18%.

Consolidated states that the cost of gas was computed using the base costs of gas per unit of sales reflected on Consolidated's Substitute Twenty-Ninth Revised Sheet No. 16, operation of which was suspended by the Commission until August 1, 1982, by order issued on April 30, 1982, in Docket No. RP82-64-000. Said tariff sheet treats old and new pipeline production produced after January 1, 1982, in accordance with the decision of the U.S. Court of Appeals for the Fifth Circuit in *Mid-Louisiana Gas Co. v. FERC,* 664 F. 2d 530 (1981).

Consolidated represents that Statement P will be filed within fifteen days of the filing. It states that it served copies of its filing upon its jurisdictional customers as well as interested state commissions.

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, N.E., Washington, D.C. 20426, in accordance with Section 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 20, 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 bcecome a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 82-19395 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-632-000]

Consumers Power Co.; Filing

July 13, 1982.

The filing Company submits the following:

Take notice that Consumers Power Company on June 30, 1982, tendered for filing the Pere Marquette Interconnection Facilities Agreement Between Consumers Power Company and Wolverine Electric Cooperative, Inc.

The Pere Marquette Interconnection Facilities Agreement is one of eight facilites agreements related to a coordinated operating agreement between Consumers Power Company, on the one hand, and Wolverine Electric Cooperative, Inc., Northern Michigan Electric Cooperative, Inc., the City of Grand Haven, Michigan, the City of Traverse City, Michigan and the City of Zeeland, Michigan, on the other hand. The said coordinated operating agreement and the other seven related facilities agreements were accepted for filing by letter of February 16, 1982 in Docket No. ER82-181-000.

Consumers Power states that copies of the filing were served on Wolverine Electric Cooperative, Inc., Northern Michigan Electric Cooperative, Inc., the City of Grand Haven, Michigan, the City of Traverse City, Michigan, the City of Zeeland, Michigan and the Michigan Public Service 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 N. Capitol Street, NE, Washington, DC 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 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. 82-19356 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3882-001]

Continental Hydro Corp.; Surrender of Preliminary Permit

July 13, 1982.

Take notice that Continental Hydro Corporation, Permittee for the Platoro Dam Project No. 3882 located on the Conejos River in Conejos County, Colorado has requested that its preliminary permit be terminated. The preliminary permit was issued on July 6, 1981, and would have expired January 1, 1983.

Continental Hydro Corporation states that engineering evaluations have determined that the site is not

economically feasible for hydroelectric development.

Continental Hydro Corporation's request was dated June 22, 1982. The surrender of the permit for Project No. 3882 is in the public interest and is accepted as of the date of issuance of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-19369 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-633-000]

Detroit Edison Co.; Filing

July 13, 1982.

The filing Company submits the following:

Take notice that the Detroit Edison Company (Detroit) on July 1, 1982, tendered for filing a new schedule, Amendment No. 6 to an Operating Agreement dated March 1, 1966 among Consumers Power Company, Detroit and the Toledo Edison Company. This Operating Agreement is designated Detroit Edison Company Rate Schedule FERC No. 11.

Amendment No. 6 provides for the sale of 650 MW by Detroit for delivery to the Toledo Edison Company. This new service is identified as Specific Capacity Power which will be delivered from the effective date through December 31, 1990. Specific Capacity Power is intended for ultimate delivery to General Public Utilities Corporation via the Cleveland Electric Illuminating Company.

Detroit requests an effective date on the date that an agreement is made among the Central Area Power Coordinating Group for the purchase and sale and said power.

Copies of the filing were served upon Consumers Power Company, the Cleveland Electric Illuminating Company, General Public Utilities Corporation, the Toledo Edison Company, and the Michigan Public Service 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, N.E., 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 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. 82-19357 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3198-001]

Eastern Iowa Light and Power Cooperative; Surrender of Preliminary Permit

July 13, 1982.

Take notice that Eastern Iowa Light and Power Cooperative, Permittee for the Lock and Dam No. 18 on the Mississippi River Project No. 3198, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 3198 was issued on October 2, 1980, and would have expired on October 1, 1982. The project would have been located on the Mississippi River in the State of Iowa.

Permittee stated that it had encountered circumstances which render it unable to continue to develop the project.

Eastern Iowa Light and Power Cooperative filed the request for surrender of Project No. 3198 on June 10, 1982, and the surrender of the preliminary permit for Project No. 3198 has been deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-19358 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3196-001]

Eastern Iowa Light and Power Cooperative; Surrender of Preliminary Permit

July 13, 1982.

Take notice that Eastern Iowa Light and Power Cooperative, Permittee for the Lock and Dam No. 13 on the Mississippi River Project No. 3196, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 3196 was issued on October 2, 1980, and would have expired on October 1, 1982. The project would have been located on the Mississippi River in the State of Iowa.

Permittee stated that it had encountered circumstances which render it unable to continue to develop the project.

Eastern Iowa Light and Power Cooperative filed the request for surrender of Project No. 3196 on June 10, 1982, and the surrender of the preliminary permit for Project No. 3196 has been deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-19370 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3197-001]

Eastern Iowa Light and Power Cooperative; Surrender of Preliminary Permit

July 13, 1982.

Take notice that Eastern Iowa Light and Power Cooperative, Permittee for the Lock and Dam No. 17 on the Mississippi River Project No 3197, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 3197 was issued on October 2, 1980, and would have expired on October 1, 1982. The project would have been located on the Mississippi River in the State of Iowa.

Permittee stated that it had encountered circumstances which render it unable to continue to develop the project.

Eastern Iowa Light and Power Cooperative filed the request for surrender of Project No. 3197 on June 10, 1982, and the surrender of the preliminary permit for Project No. 3197 has been deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-19371 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-159-000]

Elba Hydroelectric Company, Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

July 13, 1982.

On June 21, 1982, Elba Hydroelectric Company, Inc., filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The proposed hydroelectric facility will be located on the Pea River in Coffee County, Alabama. The electric power production capacity of the facility will be 1,800 kilowatts. No other small power production facility owned by Elba Hydroelectric and using hydroelectric power as its primary energy source, is located within one mile

of the proposed facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed by August 16, 1982 and must be served on the applicant. 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. 82-19360 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2013-000]

Karl Eller; Application

July 13, 1982.

The filing individual submits the following:

Take notice that on July 2, 1982, Karl Eller filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Director, Arizona Public Service Company

Director, Southwest Forest Industries, 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, N.E., Washington, D.C. 20426, in accordance with Section 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 August 4, 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. 82-19372 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-161-001]

Energenics Systems, Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

July 13, 1982.

On June 28, 1982, Energenics Systems, Inc., 1717 K Street, N.W., Suite 706, Washington, D.C. 20006, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The hydroelectric small power production facility will be located on the Eltopia Branch Canal near Eltopia in Franklin County, Washington. The electric power production capacity of the facility will be 682 kilowatts. There are no other small power production facilities within one mile of the site which are owned by the Applicant and use hydroelectric power as the primary energy source. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed by August 16, 1982 and must be served on the applicant. 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. 82-19359 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1713-001]

W. W. Hancock, Jr.; Application

July 13, 1982.

The filing individual submits the following:

Take notice that on June 28, 1982, W. W. Hancock, Jr. filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President, Secretary and Director, Louisville Gas & Electric Company

Senior Vice President and Secretary, Ohio Valley Transmission Corporation

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 August 2, 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 82-19361 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2009-000]

John Hart, Jr.; Application

July 13, 1982.

The filing individual submits the following:

Take notice that on June 28, 1982, John Hart, Jr. filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Vice President, Ohio Valley Transmission Corporation

Vice President, Louisville Gas & Electric 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 Section, 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 August 2, 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 82-19362 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6411-000]

James Thompson and Co., Inc.; Application for Preliminary Permit

July 12, 1982.

Take notice that James Thompson and Co., Inc. (Applicant) filed on June 8, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for Project No. 6411 to be known as the James Thompson Dam Project located on the Hoosic River in the Towns of Pittstown and Schagticoke, Rensselaer County, New York. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Robert B. Judell, 1133 Avenue of the Americas, New York, New York 10036.

Project Description—The proposed project would utilize the existing dam owned by the Pleasant Valley Mill Holding Corporation and would consist of: (1) a concrete gravity dam about 300 feet long and 14 feet high having spillway crest elevation 293.4 feet m.s.l.; (2) a reservoir having a surface area of about 20 acres and a storage capacity of about 185 acre-feet at normal maximum surface elevation 293.4 feet m.s.l.; (3) a gated canal on the left (south) bank; (4) a new powerhouse containing two new generating units having a total rated capacity of 1,200 kW; (5) a new switchyard; (6) a new 200-foot-long 4.8-kV transmission line; (7) a tailrace; and (8) appurtenant facilities. Project energy would be used by Applicant at the James Thompson Mill or would be sold to Niagara Mohawk Power Corporation. Applicant estimates the annual generation would average about 4.5 GWh.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time it would prepare studies of the hydrological, engineering, economic, environmental, and legal aspects of the project. Depending upon the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $25,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before October 19, 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 September 20, 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 September 20, 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. 82-19401 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6442-000]

Kelley, Ravenscroft and Chenoweth; Application for Preliminary Permit

July 12, 1982.

Take notice that Lester Kelley, Vernon Ravenscroft and Helen Chenoweth (Applicants) filed on June 17, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for Project No. 6442 to be known as the Whitehorse Rapids Hydro Project located on Johnson Creek, within the Boise National Forest in Valley County, Idaho. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Consulting Associates, Inc., Post Office Box 893, Boise, Idaho 83701.

Project Description—The proposed project would consist of: (1) a streamside intake structure utilizing a natural pool at elevation 5,680 feet; (2) a penstock 42 inches in diameter by 6,200 feet long; (3) a powerhouse containing a turbine generator with 964–kW capacity and 5.618–GWh average annual output; and (4) a transmission line 650 feet long. The intended market for project output is the Idaho Power Company.

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 term of 24 months, during which engineering, economic and environmental studies will be conducted to ascertain project feasibility and to support application for a license to construct and operate the project. The estimated cost of permit activities in $62,500.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before September 20, 1982, the competing application itself,

or a notice of intent to file such an application [see: 18 CFR § 4.30 et seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

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 September 20, 1982, and should specify the type of application forthcoming. Any application for license 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].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than November 19, 1982.

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 September 20, 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. 82–19396 Filed 7–15–82; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 3902–001]

Liberty County and the Town of Chester, Montana; Surrender of Preliminary Permit

July 13, 1982.

Take notice that Liberty County and the Town of Chester, Montana, Permittee for the proposed Tiber Dam Project No. 3902 has requested that its preliminary permit be terminated. The permit was issued on November 3, 1981, and would have expired October 31, 1983. The project would have been located on the Marias River in Liberty County, Montana. The Permittee stated that the request to surrender the permit for Project No. 3902 was made to avoid a conflict with the Lake Elwell license application, whose applicants will have a proprietary interest in the project.

The Permittee filed its request on June 15, 1982, and the surrender of the preliminary permit for Project No. 3902 is deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–19373 Filed 7–15–82; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 4792–000]

Mac Hydro-Power Company, Inc.; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

July 12, 1982.

Take notice that on February 23, 1982, Mac Hydro-Power Company, Inc. (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. §§ 2705 and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 4792) would be located on Aikens Creek near Orleans in Humboldt County, California. The proposed project would affect U.S. lands in the Six Rivers National Forest. Correspondence with the Applicant should be directed to: Mr. H. L. "Pete" Childers, President, Mac Hydro-Power Company, Inc., 2515 Gross Valley-Highway, P.O. Box 5193, Auburn, California 95603.

Project Description—The proposed project would consist of: (1) a 3-foot-high diversion structure; (2) a 24-inch-diameter, 50-foot-long conduit; (3) a 40-foot-long, 6-foot-wide and 4-foot-deep stilling basin; (4) a 2,600-foot-long low pressure conduit; (5) a 24-inch-diameter, 400-foot-long penstock; (6) a powerhouse with a total installed capacity of 400 kW; and (7) a 300-foot-long, 12.5-kV transmission line. The applicant estimates that the average annual energy output would be 1.8 million kWh.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the California Department of Fish and Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Application—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before August 27, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Submission of a timely

notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR § 4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR § 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone 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 August 27, 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 82-19397 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1715-000]

H. N. McGinnis; Application

July 13, 1982.

The filing individual submits the following:

Take notice that on June 28, 1982, H. N. McGinnis filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President, Louisville Gas & Electric Company

Senior Vice President, Ohio Valley Transmission Corporation

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, N.E., 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 August 2, 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. 82-19363 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-164-000

Merced Irrigation District—Fairfield; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

July 13, 1982.

On June 24, 1982, Merced Irrigation District, P.O. Box 2288, Merced, California 95344, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The proposed hydroelectric small power production facility will be located on the Merced Irrigation District's aqueduct between Fairfield and LeGrand Canals in Merced County, California. The electric power production capacity of the facility will be 900 kilowatts. The Applicant does not own any other small power production facility located within one mile of the proposed facility which uses the same energy source. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed by August 16, 1982 and must be served on the applicant. 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. 82-19364 Filed 7-19-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-165-000

Merced Irrigation District—Main; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

July 13, 1982.

On June 24, 1982, Merced Irrigation District, P.O. Box 2288, Merced, California 95344, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The proposed hydroelectric small power production facility will be located on the Merced Irrigation District's aqueduct between Main and Canal Creek Canals in Merced County, California. The electric power production capacity of the facility will be 900 kilowatts. The Applicant does not own any other small power production facility located within one mile of the proposed facility which uses the same energy source. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed by August 16, 1982 and must be served on the applicant. 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 insepction.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-19365 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-117-000]

Midwestern Gas Transmission Co.; Filing of Changes in Rates

July 9, 1982.

Take notice that on July 1, 1982, Midwestern Gas Transmission Company (Midwestern) tendered for filing changes in its FERC Gas Tariff to be effective on August 1, 1982, consisting of the following revised tariff sheets:

Original Volume No. 1

Fourth Revised Sheet No. 5
Fifth Revised Sheet No. 6
Alternate Fourth Revised Sheet No. 5

Original Volume No. 2

Second Revised Sheet Nos. 62L and 64F
Third Revised Sheet No. 62K
Sixth Revised Sheet No. 37
Alternate Second Revised Sheet Nos. 62L and 64F
Alternate Third Revised Sheet No. 62K

The changes would increase non-gas revenues from jurisdictional sales and services by $10,444,000 for the Southern System and $3,060,000 for the Northern System, based on the test period consisting of the twelve months ended March 31, 1982, adjusted for known and measurable changes through December 31, 1982.

Midwestern states that the changed rates are required to reflect (1) a decline in sales and transportation volumes, (2) an increase in rate of return, and (3) changes in the cost of materials, supplies, wages and services, taxes, and other costs required to operate and maintain its pipeline systems. Due to a dramatic decline in sales and transportation volumes, Midwestern has requested a shortened suspension period or, in the alternative, that an interim rate increase be made effective during the suspension period.

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, N.E., 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 20, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 82-19387 Filed 7-16-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-631-000]

Northern States Power Co.; Filing

July 13, 1982.

The filing Company submits the following:

Take notice that Northern States Power Company, (NSP) on June 29, 1982, tendered for filing Supplement No. 1, dated June 17, 1982, to the Interconnection and Interchange Agreement, dated May 5, 1978, with Dairyland Power Cooperative.

Supplement No. 1 amends Exhibits A and B of the Interconnection and Interchange Agreement to reflect removals and changes in existing Interconnections and the addition of new Interconnections.

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 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 26, 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. 82-19374 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP81-388-007]

Northwest Alaskan Pipeline Co.; Filing Tariff Sheets and Initial Rate Schedules

July 9, 1982.

Take notice that on *July 1, 1982,* Northwest Alaskan Pipeline Company ("Northwest Alaskan") submitted for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 2.

Tariff sheets	Effective date
Second revised sheet No. 5	Aug. 15, 1982.
First revised sheet No. 2	Aug. 15, 1982.
First revised sheet No. 3	Aug. 15, 1982.
Original sheet Nos. 100-192 (rate schedule X-1).	Aug. 15, 1982.
Original sheet Nos. 200-292 (rate schedule X-2).	Aug. 15, 1982.
Original sheet Nos. 300-392 (rate schedule X-3).	Aug. 15, 1982.
First revised sheet No. 412A (rate schedule X-4).	Aug. 15, 1982.
First revised sheet No. 470A (rate schedule X-4).	Aug. 15, 1982.
Third revised sheet No. 5	Sept. 1, 1982.

Northwest Alaskan also submitted for filing, a statement of Nature, Reason, and Basis for the Initial Rate Schedules.

Northwest Alaskan states that this tariff is being filed pursuant to the Commission's Findings and Order Issuing Certificate of Public Convenience and Necessity Authorizing the Importation of Natural Gas, ordering paragraph A, subparagraph (e), issued April 28, 1980, in Docket No. CP78-123 *et al.* and Section 153.8 and 154 of the Commission's Rules and Regulations. Northwest Alaskan proposes that the tariff sheets become effective on the dates indicated hereinabove.

Northwest Alaskan will sell gas to its customers at the initial rate of $4.94223 which is comprised of the currently approved Canadian border price of $4.93546 per MMBtu plus an initial Administrative Cost Component of $0.00677.

Northwest Alaskan states that a copy of this filing, in accordance with the requirements of Section 1.17 of the Commission's Rules of Practice and Procedure, have been served upon Northern, Panhandle, and United and all parties of record in Docket No. CP81-388.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the FERC in accordance with Seciton 1.8 and 1.10 of the Commission's Rules of Practice and Procedures. All such petitions or protests should be filed on or before July 20, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 82-19388 Filed 7-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-634-000]

Pacific Power & Light Co.; Filing

July 13, 1982.

The filing Company submits the following:

Take Notice that Pacific Power & Light Company (Pacific) on July 1, 1982, tendered for filing, in accordance with Section 35.13 of the Commission's Regulations, an application for an increase in rates for service to:

Supplement No.	Agreement	Pacific Power & Light Co. FPC rate schedule Nos.
3	Cheyenne Light, Fuel & Power Co. (Cheyenne)	108
3	Town of Torrington, Wyo. (Torrington)	126
3	Montana-Dakota Utilities Co. (MDU)	129
3	City of Powell, Wyo. (Powell)	119
1	Town of Basin, Wyo. (Basin)	120
3	Town of Deaver, Wyo. (Deaver)	121
2	Svilar Light & Power, Inc. (Svilar)	122

The proposed changes would increase revenues from jurisdictional sales and service by $976,254 based on the 12-month period ending December 31, 1981.

The proposed changes have been filed to partially recover the cost of Pacific's investment, operating expenses and capital costs.

Copies of the filing were served upon all parties hereto and a copy of the proposed revision and comparative billing information were served on the Public Service Commission, the State of Wyoming.

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, N.E., 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 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-19366 Filed 7-16-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6379-000]

City of Rochester, New York; Application for Preliminary Permit

July 12, 1982.

Take notice that the City of Rochester, New York (Applicant) filed on May 28, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for Project No. 6379 to be known as the Rochester Upper Falls Project located on the Genesee River in Monroe County, New York. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Peter Korn, City Manager, City of Rochester, City Hall, 30 Church St., Rochester, New York 14614.

Project Description—The proposed project would consist of: (1) an existing concrete dam varying in height from 10 to 12 feet and 300 feet long built to maintain the Natural Falls; (2) a reservoir with surface area of 100 acre-feet and water surface elevation of 483 feet m.s.l. and having negligible storage; (3) a new intake; (4) a new penstock 12 feet in diameter and 400 feet long; (5) a new powerhouse with two units having a total generating capacity of 12,000 kW; (6) a new tailrace; (7) a new 320-foot-long, 115-kV transmission lines; and (8) appurtenant facilities. The Applicant estimates the annual average energy would be 16 GWh. The existing project facilities are owned by Rochester Gas & Electric Corp., Conrail, Monalk Reality Inc., New York State Department of Transportation, and the City of Rochester.

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 Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates cost of the studies under the permit would be $550,000.

Competing Applications—This application was filed as a competing application to Long Lake Energy Corporation's application for Project No. 5807 filed on December 27, 1981. 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 August 13, 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. 82-19394 Filed 7-16-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1422-000]

Peter Ronald; Application

July 13, 1982.

The filing individual submits the following:

Take notice that on June 28, 1982, Peter Ronald filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President, Treasurer and Director—Louisville Gas & Electric Co.
Senior Vice President, and Treasurer—Ohio Valley Transmission Corp.

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, N.E., 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 August 2, 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. 82-19367 Filed 7-16-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-155-000]

City of San Diego; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

July 13, 1982.

On June 7, 1982, the City of San Diego, c/o Mr. James Mueller, Metro II Project Manager, 1222 First Avenue, MS #401, San Diego, California 92101, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The topping-cycle cogeneration facility is under construction in San Diego, California. The primary energy source of the facility will be primary-sewage digester gas. Natural gas will provide up to 10 percent of total fuel input to the facility. The electric power production capacity of the facility will be 2,700 kilowatts. Waste heat will be recovered at a rate of 3 million Btu/hr. and used to heat sewage digesters. Installation of the facility began in 1982. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed by August 16, 1982 and must be served on the applicant. 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. 82-19355 Filed 7-16-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6416-000]

Shasta Land Management Consultants; Application for Preliminary Permit

July 12, 1982.

Take notice that Shasta Land Management Consultants (Applicant) filed on June 10, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6416 to be known as the Dubakella Power Project located on the Dubakella Creek in Trinity County near Wildwood, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Shasta Land Management Consultants, 1036 Yuba Street, P.O. Box 4226, Redding, California 96099.

Project Description—The proposed project would consist of: (1) a 6-foot-high natural rock and concrete diversion structure; (2) an 11,000-foot-long, 36-inch-diameter diversion conduit; (3) a 3,800-foot-long, 30-inch diameter penstock; (4) a powerhouse to contain one impulse-type, turbine-generating unit with a rated capacity of 2 MW operating under a head of 600 feet; and (5) a 2.5-mile-long, 12.5-kV transmission line to connect to an existing Pacific Gas and Electric Company line. The estimated average annual energy production is 4.9 million kWhs. The project would be located within the boundaries of the Trinity National Forest.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project. No new roads would be required to conduct the studies.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before September 20, 1982, the competing application itself, or a notice of intent to file such an aplication [see 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

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 September 20, 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].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than November 19, 1982.

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 September 20, 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. 825 North Capitol Street, NE., 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. 82-19398 Filed 7-16-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6420-000]

Sweetwater Ranch Co.; Application for Preliminary Permit

July 12, 1982.

Take notice that Sweetwater Ranch Company (Applicant) filed on June 14, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for Project No. 6420 to be known as the Sweetwater Ranch Power Project located on Sweetwater Creek within the Toiyabe National Forest in Lyon County, Nevada. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Bruce S. Jones, 600 South Lake Avenue, Suite 405, Pasadena, California 91106.

Project Description—The proposed project would consist of: (1) a 3-foot-high diversion structure on Sweetwater Creek forming; (2) a small pond with a surface area of 2,500 square feet at elevation 7,140 feet (mean sea level); (3) a 9,000-foot-long, 10-inch-diameter pipe; (4) a powerhouse containing a single generating unit with a rated capacity of 95 kW; and (5) appurtenant facilities.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. Applicant has requested a 36-month permit to prepare a definitive project report including preliminary designs, results of environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $7,500.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before September 20, 1982, the competing application itself, or a notice of intent to file such an application [see: 18 CFR § 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

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 September 20, 1982, and should specify the type of application forthcoming. Any application for license 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].

Submission of a timely notice of intent to file an application for preliminiary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than November 19, 1982.

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 September 20, 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. Apringer, 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. 82-19399 Filed 7-16-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-2-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 12, 1982.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 1, 1982 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following sheets:

Sixty-second Revised Sheet No. 14
Sixty-second Revised Sheet No. 14A
Sixty-second Revised Sheet No. 14B
Sixty-second Revised Sheet No. 14C
Sixty-second Revised Sheet No. 14D
Sixth Revised Sheet No. 14E

These sheets are being issued pursuant to provisions of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff contained in Section 12.4, Demand Charge Adjustment Commodity Surcharge; Section 23, Purchased Gas Cost Adjustment and Section 27, Electric Power Cost (EPC) Adjustment. These sheets are also being issued pursuant to Article XI, Staten Island LNG Facility, of the Stipulation and Agreement in Docket No. RP78-87 approved by Commission Order issued April 4, 1980.

The changes proposed consist of:

(1) Changes in the DCA Commodity Surcharges pursuant to Section 12.4, mentioned above;

(2) A PGA increase of $.002/dth in the demand component of rates and $.4061/dth in the commodity component based on increases in the projected cost of gas purchased from producer and pipeline suppliers offset by a decrease in the Account 191 balance as of May 31, 1982 pursuant to Section 23;

(3) A special surcharge of 3.01¢/dth designed to recover over the 12-month period, August 1, 1982 through July 31, 1983,

approximately $28 million in retroactive payments to producers reflecting the implementation of Order Nos. 93 and 93–A for the period December 1, 1978 through March 31, 1982. Of the $28 million, Texas Eastern has already made payments to producers totalling approximately $12.6 million;

(4) Projected Incremental Pricing Surcharges for the period August, 1982 through January, 1983 pursuant to Section 23;

(5) Increases in rates for sales and transportation services pursuant to Section 27 to reflect the projected annual increase in electric power cost incurred in the operation of transmission compressor stations with electric motor prime movers and to reflect the EPC surcharge which is designed to clear the latest balance in the Deferred EPC Account of May 31, 1982; and

(6) An increase in the Rate Schedule SS rates to reflect the increase in actual costs incurred in operating and maintaining the Staten Island LNG Facility for the twelve month period ended February 28, 1982, pursuant to the provisions of Article XI of the RP78–87 Stipulation and Agreement.

Also pursuant to Article XI of the RP78–87 Stipulation and Agreement, Texas Eastern reports that on December 31, 1981 Texas Eastern settled the property damage action against Dow Chemical Corporation regarding the Staten Island LNG facility. In accordance with an informal settlement referred to in the testimony of Gordon L. Jennings in Docket No. CP74–122–005, et al., Texas Eastern will apply 55% of the net proceeds from such settlement as a reduction to the unamortized portion of 55% of the net investment in the Staten Island LNG facility, as reflected on the attached Schedule No. 12.

The proposed effective date of the above tariff sheets is August 1, 1982.

Texas Eastern respectfully requests waiver of any regulations that the Commission may deem necessary to accept the above tariff sheets to be effective on August 1, 1982.

In addition, Texas Eastern tendered for filing as a part of its FERC Gas Tariff, Fourth Revised Volume No. 1, six copies of each of the following sheets:

Revised Sixty-second Revised Sheet No. 14
Revised Sixty-second Revised Sheet No. 14A
Revised Sixty-second Revised Sheet No. 14B
Revised Sixty-second Revised Sheet No. 14C
Revised Sixty-second Revised Sheet No. 14D

These Revised Sixty-second Revised Sheets reflect an increase over the Sixty-second Revised Sheets in the demand component of rates equal to $1.347/dth and in the commodity component equal to $.1020/dth. This increase in rates is based on a proposed increase in the rates of one of Texas Eastern's major pipeline suppliers, United Gas Pipe Line Company (UGPL), to be effective on October 1, 1982 in Docket No. RP82–57. The purpose of UGPL's increase in Docket No. RP82–57 is to reflect costs to be incurred by UGPL in acquiring Canadian gas through the Northern Border Pipeline Company (Northern Border) system.

The Commission has previously granted special tracking privileges to the Northern Border participants including UGPL, by order dated April 28, 1980, which provides that UGPL may make the increases attributable to Northern Border effective on the date the Northern Border gas starts flowing. By this filing, Texas Eastern requests the same special tracking privilege to permit it to reflect in its rates the Northern Border costs which UGPL will flow through to Texas Eastern projected to begin October 1, 1982. Texas Eastern requests that the Commission allow the October 1, 1982 effective date as requested, but in the event UGPL delays the increase past October 1, 1982, then Texas Eastern proposes a corresponding delay in its request for an October 1, 1982 effective date.

Under the normal operation of Texas Eastern's PGA provision, Texas Eastern would defer such Northern Border costs, approximately $50 million, for the period October 1, 1982 through January 31, 1983, into its PGA deferred account and collection of such deferred costs would not be completed until January 31, 1984. Carrying charges at the rate prescribed by the Commission's regulations would be accrued against such deferred costs and be charged to Texas Eastern's customers.

Texas Eastern's proposal will enable Texas Eastern to track the Northern Border costs on a current basis and will protect Texas Eastern's customers from the effects of a later inflated unit rate and the carrying costs associated with the Northern Border costs which would be deferred. Due to the magnitude of the projected amounts which would have to be deferred, Texas Eastern believes the special tracking request to be appropriate and in the best interest of all parties. Therefore Texas Eastern respectfully requests waiver of any of the requirements of Texas Eastern's FERC Gas Tariff and any of the Commission's Rules and Regulations necessary to permit Revised Sixty-second Revised Sheet Nos. 14, 14A–14D to be made effective on October 1, 1982, or such other date as UGPL may make its Northern Border tracking increase effective, coincident with the effectiveness of UGPL's flow through of Northern Border costs to Texas Eastern.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

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 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 20, 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. 82–19400 Filed 7–16–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP81–130–000]

Transwestern Pipeline Co.; Settlement Conference

July 12, 1982.

Take notice that settlement conference in the above-captioned docket will commence at 10:00 a.m., on July 23, 1982. The conference will be held at the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Customers and other interested persons will be permitted to attend but if such persons have not previously been permitted to intervene by order of the Commission, attendance will not be deemed to authorize intervention as a party in this proceeding.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–19398 Filed 7–16–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP78–58–021]

Valero Interstate Transmission Co. (Formerly South Texas Natural Gas Gathering Co.); Rate Schedule Filing

July 12, 1982.

Take notice that on June 30, 1982, Valero Interstate Transmission Company ("Vitco") filed pursuant to the terms of the August 3, 1979 order of the Federal Energy Regulatory Commission ("Commission") in *South Texas Natural Gas Gathering Company*, Docket No. RP78–58, in Supplement No. 38 to Vitco's Rate Schedule No. 1 a notice of change in rate for the transporation of gas for Natural Gas Pipeline Company of America and in Supplement No. 3 to each of Vitco's Rate Schedule Nos. 10,

11, 12, and 13 and a notice of change in rate for the transportation of liquefiable hydrocarbons for Shell Oil Company, Conoco, Inc., Tenneco Oil Company and Shell Oil Company, respectively. Under the terms of the settlement approved by the Commission on August 3, 1979, in Docket No. RP78–58 Vitco proposes to increase effective on August 3, 1982 the above transportation rates from 5.072¢ per Mcf at 14.65 psia. (5.10¢ per Mcf at 14.73 psia) to 5.321¢ per Mcf at 14.65 psia (5.35¢ per Mcf at 14.73 psia).

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 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 20, 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. 82–19390 Filed 7–16–82; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 6364–000]

Ralph Wagner; Application for Preliminary Permit

July 12, 1982.

Take notice that Ralph Wagner (Applicant) filed on May 24, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for Project No. 6364 to be known as the Papoose Lake Power Project located on Papoose Lake in San Bernardino County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Ralph Wagner, 337 State Highway 173, P.O. Box 13, Lake Arrowhead, California 92352.

Project Description—The proposed project would consist of: (1) an existing 210-foot-high Lake Arrowhead earth-fill dam owned by San Bernardino County; (2) Papoose Lake which has a gross storage capacity of 1,970 acre-feet, and a surface area of 31-acres; (3) a 5-inch-diameter, 1000-foot-long penstock; (4) a generating unit with a rated capacity of 14.5 kW; and (5) appurtenant facilities. The Applicant estimates a 127,000 kWh average annual energy production.

Purposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant has requested a 36-month permit to prepare a definitive project report including preliminary designs, and geological, environmental, and economic feasibility studies. The cost for forementioned activities along with preparation of an environmental impact report, obtaining agreements with Federal, State and local agencies, and preparing a license application is estimated by the Applicant to be $6,500.00. Power would be sold to Southern California Edison Company.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before October 19, 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 September 20, 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 September 20, 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. 82–19402 Filed 7–16–82; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 6467–000]

Washington County Water Conservancy District; Application for Preliminary Permit

July 12, 1982.

Take notice that Washington County Water Conservancy District (Applicant) filed on June 25, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6467 to be known as the Virgin River Project located on the Virgin River in Washington County, Utah. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Rudger McArthur, 175 East 200 North, St. George, Utah 84770.

Project Description—The proposed project would consist of: (1) a new 200-foot-long, 10-foot-high concrete diversion dam; (2) a 10 acre head-pond at elevation 3,580 feet M.S.L.; (3) a new 36,000-foot-long diversion canal; (4) a new headgate and 1,000-foot-long, 60-inch diameter penstock; (5) a new powerhouse containing turbine generators with a total rated capacity of 2,700 kW; (6) a tailrace channel; (7) a ½ mile long transmission line; and (8) appurtenant facilities. The project would be located on lands under the control of the Bureau of Land Management. The proposed project would generate up to 18,290,000 kWh annually for use of the Applicant's customers.

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 2 years, during which time it would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, geotechnical investigations in the vicinity of the dam axis and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimated the cost of the studies under the permit would be $150,000.

Competing Applications—This application was filed as a competing application of Dixie Escalante Rural Electric Association's application for Project No. 4810 filed on October 13, 1981. 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 August 13, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", "COMPETING APPLICATIONS", 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. 82-15906 Filed 7-16-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-629-000]

Washington Water Power Co.; Filing

July 12, 1982.

The filing Company submits the following:

Take notice that on June 28, 1982, the Washington Water Power Company (WWP) tendered for filing a report issued by Bonneville Power Administration (Bonneville) containing their average system cost for WWP's Washington jurisdiction. WWP states that this filing is required under Exhibit C, Section V(A) of the Residential Purchase and Sale Agreement (Agreement)—Contract No. DE-MS79-81BP90606, between this Company and Bonneville.

WWP requests that the report be accepted for filing with the Commission and that the average system cost of 15.309 mills per kilowatt-hour contained therein be accepted for sales of energy to Bonneville under the Agreement in the State of Washington.

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, N.E., 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 20, 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. 82-19391 Filed 7-16-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-2-61-000]

West Lake Arthur Corp.; Change in Rates

July 12, 1982.

Take notice that West Lake Arthur Corporation (WLAC), on June 28, 1982 tendered for filing Second Revised Sheet No. 4A of its FERC Gas Tariff, Original Volume No. 1. The tariff sheet was filed pursuant to the Purchased Gas Cost Adjustment provision contained in Section 15 of WLAC's tariff.

Copies of the filing were served upon WLAC's jurisdictional customer and interested state regulatory 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, N.E., 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 20, 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. 82-19392 Filed 7-16-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6387-000]

Western Hydro Electric, Inc., Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

July 12, 1982.

Take notice that on June 1, 1982, Western Hydro Electric, Inc. (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. §§ 2705, and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 6387) would be located on Willame Creek within

Gifford Pinchot National Forest in Lewis County, Washington. Correspondence with the Applicant should be directed to: Donald J. White, Western Hydro Electric, Inc., Commercial Security Bank Building, Suite 600, 50 South Main Street, Salt Lake City, Utah 84144.

Project Description—The proposed project would consist of: (1) a 5-foot-high concrete diversion structure at elevation 1520 feet; (2) a 30-inch-diameter diversion pipeline 11,800 feet long; (3) a 24-inch-diameter penstock 800 feet long; (4) a powerhouse containing a turbine generator with a 782-kW capacity and 4.04-GWH average annual output; and (5) a tailrace at elevation 1035 feet.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit for license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Washington State Departments of Fisheries and Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before August 30, 1982, either the competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR § 4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR § 4.33(a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone 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 August 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. 82-19404 Filed 7-16-82; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of June 11 Through June 18, 1982

During the week of June 11 through June 18, 1982, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Director, Office of Hearings and Appeals.

July 12, 1982.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 11 through June 18, 1982]

Date	Name and location of applicant	Case No.	Type of submission
6/14/82	State of Connecticut, Hartford, Connecticut	HEE-0032	Exception to the Energy Conservation Program.
	If granted: The State of Connecticut would receive an exception from the provisions of 10 CFR Part 455, the Institutional Conservation Program, regarding administrative grant expenses for Cycle IV.		
6/14/82	State of Maine, Augusta, Maine	HEE-0033	Exception to the Energy Conservation Program.
	If granted: The State of Maine would receive an exception from the provisions of 10 CFR Part 455, the Energy Conservation Program, regarding administrative grant expenses under Cycle IV.		
6/14/82	The 341 Tract Unit of the Citronelle Field, Mobile, Alabama.	HEX-0031	Supplemental Order.
	If granted: The 341 Tract Unit of the Citronelle Field would receive an extension of time to enable it to determine the revenues attributable to the Unit's tertiary crude oil production.		
6/16/82	Bracewell & Patterson, Washington, D.C.	HFA-0063	Appeal of an Information Request Denial.
	If granted: The April 29, 1982 Information Request Denial issued by the Disclosure Officer of the Office of Special Counsel would be rescinded, and Bracewell & Patterson would receive access to certain DOE information.		

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of June 11 through June 18, 1982]

Date	Name and location of applicant	Case No.	Type of submission
6/16/82	Sonat, Inc., Washington, D.C.	HRD-0058, HRH-0058	Request for Evidentiary Hearing & Motion for Discovery.
If granted: An evidentiary hearing would be convened and discovery would be granted to Sonat, Inc. in connection with the Statement of Objections submitted in response to the March 11, 1982 Proposed Remedial Order (Case No. HRO-0039) issued to Sonat, Inc. by the Economic Regulatory Administration.			
6/16/82	True Oil Company, Casper, Wyoming	HRX-0032	Supplemental Order.
If granted: The Office of Hearings and Appeals would issue a decision and order with respect to two documents claimed by the Economic Regulatory Administration to be privileged in regard to True Oil Company's Statement of Objections to a Proposed Remedial Order (Case No. DRO-0268).			
6/17/82	Ginsburg, Feldman, Weil and Bress, Washington, D.C.	HFA-0064	Appeal of an Information Request Denial.
If granted: The may 18, 1982 Information Request Denial issued by the Dallas Regional Director of the Economic Regulatory Administration would be rescinded, and Ginsburg, Feldman, Weil and Bress would receive access to DOE's audits of Allison Drilling Company and Ladd Petroleum Corporation.			
6/18/82	New York State Energy Office, Albany, New York	HEG-0017 and HES-0017	Petition for Special Redress and Request for Stay.
If granted: The Office of Hearings and Appeals would implement refund procedures for funds covered under the June 1, 1982 Consent Order executed by Permian Corporation and the Economic Regulatory Administration.			

NOTICE OF OBJECTION RECEIVED

[Week of June 1 to June 18, 1982]

Date	Name and location of objector	Case No.
6/14/82	Golden Eagle Refining Company, Washington, D.C.	BEE-1313.

REFUND APPLICATIONS RECEIVED

[Week of June 11 to June 18, 1982]

Date and name of refund proceeding/name of refund applicant	Case No.
June 14, 1982:	
Pennzoil/Vortex Oil & Gas Co., Inc	RF10-31.
Pennzoil/Geo. W. Wolf Jr., Inc	RF10-32.
OKC Corp./Commonwealth Oil Co., Inc	RF13-2.
Pennzoil/Commonwealth Oil Co., Inc	RF10-33.
Pennzoil/Monarch Oils Co., Inc	RF10-34.
Pennzoil/Burch Thomas, Inc	RF10-35.
Pennzoil/Perrine Oils	RF10-36.
Pennzoil/Windham Gas & Oil Co	RF10-37.
Pennzoil/Gulf Oil Corp	RF10-38.
Pennzoil/Chamlin Petroleum	RF10-39.
June 15, 1982:	
Pennzoil/Petroleum Electronics & Cook Enterprises	RF10-40.
Pennzoil/Oerther Brothers	RF10-41.
Pennzoil/Maybee Gas & Oil Co	RF10-42.
Pennzoil/Standard Oil Co. of Indiana	RF10-43.
Pennzoil/Commonwealth of Pennsylvania	RF10-44.
June 16, 1982:	
Anadarko/Farmland Industries	RF12-2.
Anderson Butane/Buckeye Gas Products Co	RF14-1.
Pennzoil/R-K Oil Co	RF10-45.
Pennzoil/Purvis Brothers, Inc	RF10-46.
Pennzoil/White Petroleum, Inc	RF10-47.
Pennzoil/Enterprise Products Co	RF10-48.
June 17, 1982:	
Pennzoil/Precision Fastening	RF10-49.
Pennzoil/Schaible Oil Co	RF10-50.
Pennzoil/Guttman Oil Co	RF10-51.
June 18, 1982:	
OKC Corp./Missouri Pacific Railroad	RF13-3.
OKC Corp./Sooner Transport Corp	RF13-4.

[FR Doc. 82-19295 Filed 7-15-82; 8:45 am]

BILLING CODE 6450-01-M

Office of the Secretary

Preliminary Clean-up Activity at Vicinity Properties Contaminated by Tailings From the Former Vitro Rare Metals Plant, Canonsburg, Pennsylvania; Finding of No Significant Impact

The Department of Energy has prepared an environmental assessment (EA) on the proposed preliminary clean-up activity at the vicinity properties contaminated by tailings from the former Vitro Rare Metals Plant, Canonsburg, Pennsylvania. This EA encompasses all of the vicinity properties associated with the former Vitro Rare Metals Plant and was prepared to ensure that environmental factors are considered in the Department's proposed preliminary clean-up activity.

On May 11, 1981, the Department issued a Notice of Intent announcing its plans to prepare an environmental impact statement (EIS) on a remedial action program in Canonsburg involving the permanent disposition of uranium mill tailings located on the former Vitro Rare Metals Plant and on the vicinity properties. Scoping meetings on the EIS were held on June 3 and 4, 1981. The proposed action, which is the subject of this notice, is a preliminary activity involving the decontamination of the vicinity properties and the movement of contaminated material to the former Vitro Rare Metals Plant for temporary storage, prior to the initiation of remedial action as described in the Notice of Intent. This proposed preliminary clean-up activity on the vicinity properties will not limit the choice of reasonable alternatives for the remedial action project in Canonsburg.

Based on the EA, which is available to the public on request, the Department of Energy has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* Therefore, no environmental impact statement is required.

The proposed action is to remove a total of approximately 9,200 cubic yards of radioactively contaminated materials from about 100 properties in the vicinity of the former Vitro Rare Metals Plant, and to return the contaminated materials to the Vitro Plant site for temporary storage. Decontamination of the vicinity properties may include wiping, chipping, and sandblasting, and in some cases may require excavation and removal of contaminated soils. After decontamination, the vicinity properties will be restored to their pre-clean-up appearance.

There are no significant environmental impacts anticipated as a result of the proposed action. The vicinity properties are located in an urban environment. Consequently, impacts to biota would be minimal. Environmental impacts, e.g., dust created by the excavation and replacement of soils, noise associated with the equipment used in the decontamination effort, and interruption of traffic near the work site, are anticipated to be temporary and typical of other construction type projects. No endangered species, historic structures or cultural resources will be affected.

Since the preliminary clean-up activities are corrective in nature, the existing radiation environment at the vicinity properties will be improved. Current levels of radiation (gamma radiation levels which range up to 670 microroentgens per hour at one meter heights indoors) will be reduced to levels of about 3.6 microroentgens per hour above background (background levels in the Canonsburg area are 11 microroentgens per hour). The resulting level is well within the level of 20 microroentgens above background per hour proposed in the interim clean-up standards issued by the Environmental Protection Agency (**Federal Register**, April 22, 1980).

As described in the EA, under normal conditions exposures to workers involved in the clean-up of the properties, to truck drivers transporting the materials to the temporary disposal

site, and to members of the general public near the vicinity properties and along the transportation routes, will be well within the radiation standards specified in Chapter XI of DOE Order 5480.1A.

In the event of an accident (worst case assumed to be a 20-ton truck overturning and spilling its entire load), workers involved in the clean-up would be the maximally exposed individuals. An estimated two hours would be required to complete the clean-up. During this period, each individual worker would receive a total dose of less than 0.5 millirems.

Alternatives to the proposed action considered in the EA include: (1) No action; and, (2) in-place radiation control.

Single copies of the EA are available from: Richard H. Campbell, Uranium Mill Tailings Project Office, Albuquerque Operations Office, Department of Energy, P.O. Box 5400, Albuquerque, NM 87115.

FOR FURTHER INFORMATION CONTACT: Robert H. Strickler, EP–362, Office of Environmental Compliance, U.S. Department of Energy, Room 4G–057 Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–4610.

Date issued: July 6, 1982.

William A. Vaughan,

Assistant Secretary, Environmental Protection, Safety and Emergency Preparedness.

[FR Doc. 19247– Filed 7–15–82; 8:45 am]

BILLING CODE 6450–01–M

Office of Assistant Secretary for International Affairs

International Atomic Energy Agreements, Civil Uses; Proposed Subsequent Arrangement, European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the following sale: Contract Number S–EU–735, to Amersham International Ltd., the United Kingdom, 250,000 curies of tritium, for use in the manufacture of labelled compounds, neutron sources, starter switches, electronic valves, and for various research uses.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than July 31, 1982.

For the Department of Energy.

Dated: July 12, 1982.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 82–19246 Filed 7–15–82; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–2172–3]

Availability of Environmental Impact Statements Filed July 6 Through July 9, 1982

RESPONSIBLE AGENCY: Office of Federal Activities, General Information 382–5075 or 382–5076.

Corps of Engineers:
- EIS No. 820453, Draft, COE, GA, Bellville Point Navigational Improvements, McIntosh County, Due: Aug. 30, 1982
- EIS No. 820459, Draft, COE, HI, Wailua River Hydropower Project, Island of Kauai, Kauai County, Due: Aug. 30, 1982
- EIS No. 820449, Final, COE, CO, Taylor Draw Dam and Reservoir, Permit, White River, Rio Blanco County, Due: Aug. 16, 1982
- EIS No. 820450, Final, COE, GU, Asan Village Flood Control Study, Asan, Territory of Guam, Due: Aug. 16, 1982

Department of Energy:
- EIS No. 820466, Final, DOE, CA, Lawrence Livermore/Sandia Laboratories Site Development, Alameda County, Due: Aug. 16, 1982
- EIS No. 820462, Final, DOE, NY, Liquid Radioactive Waste Storage, Western NY Nuclear Service Center, Due: Aug. 16, 1982

Department of Interior:
- EIS No. 820464, Final, BLM, CA, Willow Creek Unit Livestock Grazing Management Plan, Lassen County, Due: Aug. 16, 1982

Department of Transportation:
- EIS No. 820456, Draft, FHW, NB, Gothenburg/NB–47 Viaduct Construction, Gothenburg, Dawson County, Due: Aug. 30, 1982
- EIS No. 820457, Draft, FHW, NB, Harrison, Street, Giles Road and I–80 Upgrading and Construction, Due: Aug. 30, 1982
- EIS No. 820461, Draft, FHW, ND, Washington Street Corridor Improvements, Bismarck, Burleigh County, Due: Sept. 1, 1982
- EIS No. 820448, Final, FHW, CO, North Washington and 38th St Reconstruction, Lawrence/Larimer to I–70, Due: Aug. 16, 1982
- EIS No. 820465, Final, FHW, PA, I–70/LR–1071, Section 50 Relocation, Due: Aug. 16, 1982

Federal Energy Regulatory Commission:
- EIS No. 820460, Draft, FRC, SEV, CT, MA, NH, NJ, NY, PA, Tennessee/Boundary Looping Project, Certificate, Due: Aug. 30, 1982

Department of Housing and Urban Development:
- EIS No. 820455, Final, HUD, UT, Willow Heights Development, Mortgage Insurance, Emery County, Due: Aug. 16, 1982

Department of Defense, Army:
- EIS No. 820452, Draft, USA, CA, Parks Reserve Forces Training Areas, Reactivation, Due: Aug. 30, 1982

Department of Defense, Air Force:
- EIS No. 820467, Suppl, UAF, OH, Rickenbacker ANGB, Noise Analysis, Franklin and Pickaway Counties, Due: Aug. 30, 1982

Department of Agriculture:
- EIS No. 820458, Draft, AFS, CO, San Juan National Forest, Land and Resource Management Plan, Due: Oct. 16, 1982
- EIS No. 820454, Final, AFS, WV, WV–150/ Highland Scenic Highway Extension, Monongahela National Forest, Due: Aug. 16, 1982
- EIS No. 820463, Final, REA, CO, Hayden-Blue River 345 kV Transmission Line, Grand, Routt & Summit Counties, Due: Aug. 16, 1982

Amended Notices:
- EIS No. 820402, Draft, MMS, SEV, ATL, 1983 OCS Oil/Gas Lease Sale #76 Offshore Mid-Atlantic States, Due: Sept. 20, 1982 [1]
- EIS No. 820425, Draft, BLM, CA, Clear Lake Resource Area, Wilderness Study, Napa, Lake and Yolo Counties, Due: Sept. 1, 1982 [2]

Dated: July 13, 1982.

Paul C. Cahill,

Director, Office of Federal Activities.

[FR Doc. 82–19305 Filed 7–15–82; 8:45 am]

BILLING CODE 6560–50–M

[1] Published FR June 25, 1982—review extended.

[2] Published FR July 2, 1982—review extended.

[OPTS-51442, TSH-FRL 2171-5]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979(44 FR 28558) and November 7, 1980 (45 FR 74378). This notice annonces receipt of seven PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 82–481; September 30, 1982

PMN 82–482, 82–483, 82–484 & 82–485; October 4, 1982

PMN 82–486 & 82–487, October 5, 1982

Written comments by:

PMN 82–481; August 31, 1982

PMN 82–482, 82–483, 82–484 82–485, September 4, 1982

PMN 82–486 & 82–487, September 5, 1982

ADDRESS: Written comments, identified by the document control number "[OPTS–51422]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–409, 401 M St., SW., Washington, DC 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branchy, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–216, 401 M St., SW., Washington, DC 20460, (202–382–3729)..

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-condifidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the public reading room E–107.

PMN 82–481

Manufacturer: Confidential.

Chemical. (G) Blocked urethane polymer.

Use/Production. (G) Open use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure: Confidential.

Environmental Release/Disposal. Confidential. Disposal by incineration and landfill.

PMN 82–482

Importer. Henley and Company.

Chemical. (G) Acetal of polyvinylalcohol.

Use/import. (S) Paper coating. Import range: No data submitted.

Toxicity Data. Acute oral: >15 g/kg; Skin irritation: Non-irritant.

Exposure: No data submitted.

Environmental Release/Disposal. No data submitted.

PMN 82–483

Manufacturer: Ashland Chemical Company.

Chemical. (G) Polymer of acrylic acid and acrylic esters.

Use/Production. (G) Pressure sensitive adhesive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure: Manufacture: a total of 3 workers, up to 5 hrs/da, up to 15 day/yr.

Environmental Release/Disposal. Disposal by approved landfill.

PMN 82–484

Manufacturer: Confidential.

Chemical. (G) Phosphorodithioic acid, dialkyl ester, amine salt.

Use/Production. (G) Processing aid. Prod. Range: Confidential.

Toxicity Data. No data submitted.

Exposure: Confidential.

Environmental Release/Disposal. Confidential.

PMN 82–485

Importer. Confidential.

Chemical. (G) Chlorotriazine modified copper phthalocyanine, sodium salt.

Use/Import. (S) Dye for fibers and fabrics. Import range: 400–7,500 kg/yr.

Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >200 mg/kg; Skin irritation: Non-irritant; Eye irritation: Non-irritant.

Exposure: Processing: dermal and inhalation, a total of 3 workers, up to 3 hrs/da, up to 100 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air with 100–1,000 kg/yr to water. Disposal by publicly owned treatment works (POTW), incineration and approved landfill.

PMN 82–486

Manufacturer: Confidential.

Chemical. (G) Alkyl phosphate ester.

Use/Production. (S) To be incorporated into a polymer. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure: Processing: dermal, inhalation and eye, a total of 6 workers, up to 1 hr/da, up to 40 da/yr.

Environmental Release/Disposal. No release. Disposal by approved landfill.

PMN 82–487

Importer. Confidential.

Chemical. (G) Copolymer of an alkenoic acid derivative, substituted and unsubstituted vinyl aromatic compounds and a substituted alkene.

Use/Import. (G) Contained use. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure: Occular, dermal and inhalation, up to 5 da/wk.

Environmental Release/Disposal. Less than 10 kg/yr released to air.

Dated: July 12, 1982.

Woodson W. Bercaw,

Acting Director, Management Supprt Division.

[FR Doc. 82–19149 Filed 7–15–82; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program; Notice of a Rate Order

Correction

In FR Doc. 82–18088, appearing at page 28992 in the issue of Friday, July 2, 1982, make the following change:

On page 28993, first column, last line, "different locations from January 18", should appear after "These meetings were conducted at four" and before "through January 21, 1982.", which appears on the first line of the middle column.

BILLING CODE 1505–01–M

ENVIRONMENTAL PROTECTION AGENCY

[A–6–FRL–2172–2]

Delegation of Additional Authority to the State of Oklahoma for Prevention of Significant Deterioration (PSD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Information notice.

SUMMARY: EPA, Region 6, has delegated the authority under the Prevention of Significant Deterioration (PSD) program for source inspections and compliance reviews to the Oklahoma State Department of Health (OSDH). The OSDH is now authorized to conduct

PSD source inspections and compliance reviews.

EFFECTIVE DATE: April 26, 1982.

ADDRESS: Copies of the amendment to the State-EPA agreement for delegation of additional authority are available for public inspection at the Air Branch, Environmental Protection Agency, Region 6, First International Building, 28th Floor, 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: William H. Taylor, Jr., Air Branch, address above (214) 767–1594.

SUPPLEMENTARY INFORMATION: On July 16, 1981, EPA, Region 6, delegated to the OSDH the authority for technical and administrative review of the PSD program. An information notice of this delegation was published in the **Federal Register** on February 17, 1982. The OSDH has been delegated additional PSD responsibility for performing PSD inspections of and reviewing PSD compliance reports for located in the State of Oklahoma. Pursuant to 40 CFR 52.21, EPA, Region 6, delegated this additional PSD authority to the State of Oklahoma for performing source inspections and reviewing compliance reports on April 26, 1982.

Effective immediately, all of the information related to PSD source inspections and compliance reports for sources located in the State of Oklahoma should be submitted to the State agency at the following address: Oklahoma State Department of Health, Northeast Tenth and Stonewall, Oklahoma City, Oklahoma 73105.

(Secs. 101 and 301 of the Clean Air Act, as amended (42 U.S.C. 7401 and 7601))

Dated: July 2, 1982.

Frances E. Phillips,

Acting Regional Administrator.

[FR Doc. 82-19-287 Filed 7-15-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

International Telegraph and Telephone Consultative Committee (CCITT); Study Group A of the U.S. Organization; Meeting

July 12, 1982.

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on July 28, 1982 at 10:00 a.m. in Room 856 of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. This Study Group deals with U.S. Government aspects of international telegram and telephone operations and tariffs.

The Study Group will discuss international telecommunications questions relating to telegraph, telex, new record services, data transmission and leased channel services in order to develop U.S. positions to be taken at upcoming international Study Group I and III meetings.

Members of the general public may attend the meeting and join in the discussion subject to the instruction of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Earl S. Barbely, Conference Staff, Federal Communications Commission, Washington, D.C., telephone (202) 632–3214.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 82-19261 Filed 7-15-82; 8:45 am]

BILLING CODE 6712-01-M

1983 World Administrative Radio Conference for Mobile Telecommunication; Agenda

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: The Commission, by this action, presents to the public the Agenda of the 1983 World Administrative Radio Conference (WARC) for Mobile Telecommunications, and the FCC recommended U.S. Proposals for that conference to be sent to the Department of State with a request that they be sent as the formal U.S. input to that WARC. These FCC recommended U.S. proposals were developed as a result of four notices of inquiry over a two and one-half year period. Some of the key issues to be addressed at the conference and for which the FCC included in its recommended proposals include:

—The Future Global Maritime Distress and Safety System;
—Aeronautical matters and Interconnection with the Maritime Mobile Service;
—HF Radiotelephone Channel Spacing and the Use of the Shared Bands at 4000–4063 and 8100–8195 kHz;
—Coast Station Watch on Distress Frequencies;
—Aeronautical Exemption Clause; and
—Frequencies at VHF for the FGMDSS.

While the recommended U.S. proposals are to modify the international Radio Regulations, which does not involve FCC Rules and Regulations, changes to those Rules could occur later through domestic rulemaking as a result of conference decisions.

ADDRESS: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Lawrence M. Palmer, Office of Science and Technology, International Staff, Federal Communications Commission, 2025 M Street, N.W. Room 7002, Washington, D.C., (202) 653–8102.

SUPPLEMENTARY INFORMATION:

Adopted: June 23, 1982.

Released: July 2, 1982.

Purpose

In the matter of an inquiry relating to preparation for an international telecommunication union world administrative radio conference for the mobile services; Gen. Docket No. 80–184; Report and Order (Proceeding Terminated).

1. The Commission is issuing this Report and Order as a means of informing the public on the Agenda, venue, and length of the 1983 International Telecommunication Union (ITU) World Administrative Radio Conference (WARC) for Mobile Telecommunications, and to present the FCC recommended U.S. Proposals that are being forwarded to the Department of State with a request that they be utilized as the basis for formal U.S. input to that WARC.[1] Since these proposals represent the combined efforts of the Commission and the Executive Branch, the National Telecommunications and Information Administration (NTIA) is expected to make similar recommendations to the Department of State.

Report and Order Presentation

2. In this Report and Order we will outline the significant items and events that were pertinent to the conference preparation process. This will include such things as the preparatory schedule, conference Agenda, Notice of Inquiry history, and domestic and international preparation. We will summarize the comments and reply comments received in response to the most recent Notice of Inquiry in this proceeding. We will also address several key issues, and review a few of the recommended U.S. Proposals that are different from the earlier draft proposals. The introductory portion of the recommended U.S. Proposals (Appendix 2) contains the rationale for

[1] The Agenda is attached as Appendix 1; the recommended U.S. Proposals are contained in Appendix 2.

the proposals themselves; it is, therefore, not necessary to treat them in great depth in the introductory portion of this Report and Order.

Background

A. Mobile WARC Schedule, Agenda and Notice of Inquiry History

3. The need for a Mobile WARC was recognized by the 1979 WARC when it recommended (Recommendation No. 12 as clarified by Resolution No. 202) that a Mobile Services WARC be held. The need for a WARC resulted primarily from the fact that the 1979 WARC could not revise the international Radio Regulations in the specialized mobile services categories.[2] Shortly after the U.S. Delegation returned from the 1979 WARC, the FCC started its preparation for the Mobile WARC with the release of a Notice of Inquiry in May, 1980.[3] That Notice, released in advance of any formal WARC Agenda, solicited comments on various matters affecting the mobile services.

4. In May, 1980, the ITU Administrative Council proposed to ITU member countries that a Mobile WARC of limited scope and duration be held in Geneva, Switzerland, for three weeks, three days, beginning March 2, 1982. (See, however, paragraph 11.) The proposed Agenda for the WARC was confined primarily to matters relating to distress and safety.[4] The Second Notice of Inquiry, [5] released in October, 1980, indicated that the necessary number of member countries had agreed to the holding of a Mobile WARC. In that Notice, we provided a schedule of events and meeting dates pertinent to the Mobile WARC, both national [6] and international, reviewed a few of the issues, and presented some initial proposals.

5. An Order [7] was released in November, 1980, that extended the date for comments and reply comments in the Second Notice of Inquiry, and which also indicated that certain papers that had recently been approved by the twenty-second session (September–October, 1980) of the Inter-Governmental Maritime Consultative Organization (IMCO) could have a significant impact on our preparation process. Accordingly, that Order indicated that portions of those IMCO papers were extracted and placed in this proceeding. Comments were requested.[8]

6. The Third Notice of Inquiry was released in the spring of 1981.[9] It presented the U.S. preliminary views for the 1982 Mobile WARC in the form of proposals to modify the international Radio Regulations. These proposals covered broad areas within the Radio Regulations affecting the Mobile Services, including the future global maritime distress and safety system (FGMDSS) [10] as developed by IMCO, navigational warnings, aeronautical matters, satellite provisions, radars and transponders, notification and registration procedures. Once again we examined and failed to see a need to establish any industry advisory groups, but indicated that we would continue discussions with representatives from the Department of State regarding formation of the U.S. Delegation.[11]

7. The Fourth and last notice in this proceeding was released early in 1982.[12] That Notice presented the U.S. draft proposals, which had been coordinated with NTIA. We indicated that the comments received in response to the Fourth Notice would serve as the basis for Commission coordination with NTIA in modifying any of the draft proposals, attached to that Notice as Appendix 1.[13] We also indicated that this would serve as the basis for the formulation of the recommended U.S. proposals to and positions at the WARC.[14]

8. In the Fourth Notice, we indicated that the date of the WARC had been changed to 1983, as a result of decisions taken by the 36th Session (May–June, 1981) of the ITU Administrative Council (See, however, paragraph 11.) and that the Agenda had not changed. We also went on to say that the one year delay would permit a more thorough set of U.S. proposals to be developed for consideration by the WARC. We further indicated that proposals from ITU member countries have been requested by the ITU Secretary-General to be in Geneva at the end of May, 1982.

9. Our Fourth Notice also pointed out that a separate and distinct Mobile WARC, originally planned for 1986, was now moved to 1988. We went on to indicate that we expect that this separate Mobile WARC, while not yet having an agenda, would probably have a broad mandate.[15] In recognition of this separate 1988 WARC, many of our recommended U.S. Proposals, in Appendix 2, request that conference to finalize dates of implementation and to adopt standards and operational procedures.

10. The Fourth Notice presented the coordinated U.S. draft proposals for the 1983 Mobile WARC.[16] These proposals addressed almost all of the matters before the 1983 conference, either through proposed changes to the Radio Regulations, or textual material expressing our views. Some of the major issues addressed were: (1) Our continued support for the FGMDSS; (2) obtaining a frequency at MF for navigational warnings; (3) interim usage for the 4 and 8 MHz shared bands; (4) provisions for aircraft to communicate with ships in emergency situations; (5) updating the aeronautical provisions reflecting the current practices employed by that service; and (6) provisions for EPIRB's operating at VHF.

11. The 37th Session of the ITU Administrative Council (April–May, 1982) decided, for budgetary reasons, to request agreement from the ITU administrations to shorten the conference to a duration of three weeks. (See Appendix 1.) We fully anticipate that this will be accepted. Thus, barring unforeseen complications, the 1983 Mobile WARC will be held from February 28 through March 18, 1983.

[2] Several other specialized WARC's are also planned. See FCC Public Notice, July 13, 1981, Mimeo No. 002139.

[3] Adopted April 24; released May 15, 1980; 45 FR 35418. Chief Scientist Order, FCC 32267, of June 6, 1980 extended the dates for comments and reply comments.

[4] The Agenda was attached to the Order, previously cited.

[5] Adopted October 21, 1980; released October 31 1980; 45 FR 73792.

[6] As a result of several comments, and taking into account the extensive preparation process underway in the U.S., it was decided not to establish any additional advisory groups.

[7] Chief Scientist Order, Adopted November 18, 1980; released November 19, 1980; FCC 01792.

[8] FCC News Release, 01921, of November 21, 1980, announcing the Order, also gave an FCC point of contact to obtain a copy of the IMCO extracts.

[9] Adopted April 9, 1981; released April 20, 1981; 46 FR 23988.

[10] Paragraph 7., Third Notice, indicated that the FGMDSS requirements had been released to the public in the IMCO Safety of Life at Sea (SOLAS) proceeding, Sixth Notice of Inquiry, Docket No. 20274, 46 FR 16692.

[11] Paragraph 13., Third Notice.

[12] Fourth Notice of Inquiry, FCC 81–573, Adopted December 17, 1981, released January 8, 1982, 47 FR 1022.

[13] Fourth Notice, paragraph 1.

[14] A U.S. Coast Guard request for an extension of time to file reply comments was not accepted. See Chief Scientist Denial of Request to Extend Reply Comments Period, Adopted March 2, 1982; released March 4, 1982. See, however, [20].

[15] While it is too early to begin formal preparation for that planned 1988 Mobile WARC, our initial thoughts would be to begin our preparation process sometime after the results of the 1983 WARC are known, or when the conference agenda is known or anticipated. At that time we would expect to attempt to establish U.S. objectives and goals, set priorities, review the need for advisory committees, and lay the groundwork for our preparation for the 1988 conference. While we are not requesting comments on these ideas now, parties should bear in mind these thoughts as they review the recommended U.S. Proposals in Appendix 2.

[16] Footnote 2 to the Fourth Notice indicated two areas of disagreement between the FCC and the NTIA. See, however, paragraphs 31. and 32. of this Report and Order.

B. U.S. Preparatory Structure

12. As indicated in the previous section, some parties have requested over the past two years that we establish an industry advisory committee; we have not done so. While we recognize that a committee of this type could have benefit, we also believe that for this very specialized WARC, there was sufficient and in-depth analysis available in the U.S. in several fora.[17] These included: 1) The Radio Technical Commission for Marine Services (RTCM), Special Committee No. 76 (SC–76); 2) the International Radio Consultative Committee (CCIR) Study Group 8 (SG–8); 3) the U.S. Safety of Life at Sea (SOLAS) Working Group on Radiocommunications for the Inter-Governmental Maritime Consultative Organization (IMCO); and 4) the U.S. preparation for the International Civil Aviation Organization (ICAO), Communications Divisional (COM/DIV) Meeting.

13. As we have mentioned several times in this proceeding, and at paragraph 1. herewith, our proposals have been coordinated with the Executive Branch agencies.[18] This coordination has primarily taken place in the NTIA, Interdepartment Radio Advisory Committee (IRAC), Ad Hoc 175 forum.

C. International Meetings

14. In the *Second Notice* we outlined a schedule of events showing when various international meetings pertinent to our preparation process would take place.[19] The listed meetings included: A) IMCO Sessions of the IMCO Sub-Committee on Radiocommunications; B) Interim, Final, and Special Meetings of the CCIR SG–8; and C) ICAO COM/DIV meeting. All of these meetings have been attended by various government and private sector personnel concerned with preparation for the 1983 Mobile WARC.

15. Other international meetings that were part of our preparation process included various bilateral and multi-lateral discussions between the U.S. and other administrations, either in the U.S., or abroad. More formalized meetings have also taken place in the Inter-American Telecommunications Conference (CITEL), and other fora. We expect that meetings of these types will continue until the 1983 Mobile WARC convenes.

16. More important, however, is the fact that the results of all of these meetings have been taken into account in the preparation of the recommended U.S. Proposals. While we have not followed exactly the ideas expressed by the international communities, we have attemped to accommodate their thoughts, consistent with U.S. policies and priorities.

Comments/Reply Comments Received in Response to Fourth Notice

17. In response to the Fourth Notice, we received comments from several parties. Aeronautical Radio, Inc., (ARINC), and the Air Transport Association of America (ATA) generally supported the U.S. draft proposals contained in that Notice relating to distress and safety and aeronautical matters in which they have an interest. ARINC and ATA, however, indicated that certain items shown in the Fourth Notice differed from the Third Notice. They then made several proposals reflecting their views.

18. The Central Committee on Telecommunications of the American Petroleum Institute (Central Committee) in its comments supported the general direction and substance of our proposals in what they believed were the major issues before the 1983 Mobile WARC. They then went on to endorse more specifically a few of these issues or, in other cases, pointed out what they believe are some of the limitations not addressed by the proposals in the Fourth Notice.

19. American Telephone and Telegraph Company (AT&T), in its comments, addressed certain maritime matters, including HF radiotelephone channel spacing, use of the shared bands at 4 and 8 MHz, and distress watches by coast stations. The American Waterways Operators, Inc. (AWO), also addressed marine matters, but only in the VHF band. They suggested certain changes and pointed out what they believe are certain inconsistencies between the domestic and the proposed international rules.

20. The Association of American Railroads (AAR) also addressed, in its comments, the VHF band. They indicated their concerns regarding retention of the Regulations that permit land mobile use in the band.

21. Mobile Marine Radio, Inc., (MMR) addressed several maritime matters in its comments. These included HF radiotelephone channel spacing, use of the shared bands at 4 and 8 MHz, and distress watches by coast stations.

22. The Radio Technical Commission for Marine Services (RTCM) fully supported all of the draft proposals attached to the Fourth Notice, except for a few specific areas. Two of these areas included the use of the shared band at 4 MHz and narrow band direct-printing (NBDP) frequencies for the FGMDSS at VHF.

23. RCA Global Communications, Inc. (RCA Globecom) addressed two matters in its comments. These were distress watches by coast stations, and frequencies at HF for narrow-band direct-printing purposes.

24. Only the U.S. Coast Guard submitted reply comments.[20] These reply comments concerned distress watches by coast stations commented upon by AT&T, MMR, and RCA Globecom.

25. All of the foregoing comments and reply comments were reviewed and considered in depth in the development of the attached recommended U.S. Proposals. Thus, while we may not further mention specific comments when addressing an issue, they were nevertheless, fully considered.

Key Issues

26. Throughout our proceeding, there have been several issues that have received significant attention. These issues will also occupy a major portion of the WARC deliberations. Some of these issues will be examined in the next few paragraphs, along with those proposals that have changed from the Fourth Notice.

A. Future Global Maritime Distress and Safety System (FGMDSS)

27. Our recommended U.S. Proposals, in Appendix 2, continue our earlier support for incorporation of the IMCO developed FGMDSS [21] into the ITU Radio Regulations. During this proceeding we have received no comments in opposition to the FGMDSS. Our recommended U.S. Proposals provide the frequency support for the FGMDSS to be progressively developed and implemented over the next several years. These proposals take into account the results of the IMCO Sub-Committee on Radiocommunications meetings, the CCIR SG–8 meetings and the ICAO COM/DIV meeting. Finally, while we have changed slightly from the Fourth Notice in the presentation of the regulatory proposals, we have continued to maintain the existing Radio Regulations concerning the present distress and safety system.

[17] Second Notice, paragraphs 17. through 19. provides more details on our thinking in this matter.

[18] See, for example, Second Notice, paragraph 19.

[19] Second Notice, paragraph 5.

[20] Although these reply comments were received on March 4, 1982, and the reply comment deadline was March 1, 1982, we believe that the Coast Guard views are important to this preparation process, and they are hereby accepted as part of this proceeding.

[21] IMCO matters affecting domestic concerns, including the FGMDSS, have been addressed in a separate proceeding; see Seventh Notice of Inquiry, Docket No. 20274, mimeo 30426, adopted November 24, 1981, released December 10, 1981.

B. Aeronautical Matters and Inter-Connection With the Maritime Mobile Service

28. Throughout this proceeding, we have consistently attempted to develop proposals affecting the aeronautical community that would bring into line the ITU Regulations reflecting the actual practices in that service. Some of these changes were required as a result of actions by the 1979 WARC; others were proposed by parties making comments, or by ICAO. Our proposals also reflect our belief that provisions in the ITU Radio Regulations are necessary in order to permit the aeronautical mobile service to contact the maritime mobile service. The conditions under which these communications can take place must also be indicated in the Radio Regulations; adoption of our proposals would accomplish this.

C. HF Radiotelephone Channel Spacing and the Use of the Shared Bands at 4000–4063 and 8100–8195 kHz

29. Throughout our preparatory process we have pointed out the advantages and disadvantages in proposing to change the HF radiotelephone channel spacing in the existing maritime mobile bands from 3.1 kHz to 3.0 kHz. While the existing technical standards and equipments in use would permit a change to 3.0 kHz, many smaller vessels would have to change crystals, with a resultant total outlay of funds far in excess of the frequency spectrum gain, e.g., at 4 kHz, the gain of 2.6 kHz would not even provide one additional channel. We believe, however, that planning for the 1988 WARC should be based on 3.0 kHz, when it will probably be possible to examine all of the Maritime Mobile bands and several additional channels might be obtained.

30. Concerning use of the shared bands at 4000–4063 and 8100–8195 kHz, we are proposing to use these spectrum portions in a cross-band mode for duplex radiotelephone, which we believe has the highest priority of need. This idea will encourage maritime use of the bands, and provide data to the planned 1988 WARC, so that appropriate allocation or regulatory decisions may be made.

31. Other proposals made concerning these two shared bands include the use of the 8 MHz for narrow-band direct-printing coast and ship use, simplex voice channels at 8 MHz, and coast station use of the 4 MHz band. This latter matter was not agreed to by the NTIA in the Fourth Notice. The attached recommended U.S. Proposals would internationally permit coast stations at 4 MHz on a non-interference basis only, in recognition of the conference Agenda, and the need to share this allocation with the fixed service. We have, however, concluded an agreement with NTIA to provide more useful accommodation domestically for the maritime service in the band.

D. Coast Station Watch on Distress Frequencies

32. In the *Fourth Notice* we proposed to modify a few of the Radio Regulations relating to coast station watchkeeping on distress frequencies in response to comments to the Third Notice. The Fourth Notice indicated that these proposals had not been agreed to by NTIA.[22] In response to the Fourth Notice draft proposals we received comments from AT&T, MMR, and RCA Globecom,[23] which advocated the removal of the distress and safety watch requirements for public coast stations; and opposing reply comments from the U.S. Coast Guard.

33. NTIA previously addressed the subject of removing the distress and safety watch requirements for public coast stations,[24] and recently stated in a letter to the FCC that "such action would be consistent with the principle of deregulation of high seas public coast station operations—we continue to support the principle of such deregulation. However, it should be clear that our position has been and continues to be, that such action cannot occur without appropriate concurrent action being taken to assure that the Coast Guard is vested with complete statutory authority (and associated budgetary support) to assume any and all distress watches which might be abandoned by the public coast stations". The U.S. Coast Guard in their reply comments urged the Commission to reconsider its proposals concerning the deletion of "public correspondence stations" in those provisions of the Radio Regulations that prescribe coast station responsibility for keeping watch on the maritime distress, safety and calling frequencies.

34. The NTIA letter [25] and the USCG in their reply comments, further state in support of their opposition to the Commission's proposal that:

—The existing regulations permit the Commission to exempt public cost stations from radio watch requirements, as was done in recent Commission proceedings, on the distress frequencies 2182 kHz and 156.8 MHz; [26]

—In line with the Administration's policy to effect economies in coast of government and possible changes to the future role and mission of the U.S. Coast Guard, they are not prepared to accept the economic burden of a newly imposed or implied responsibility which results from deletion of the phrase "public correspondence station".

—Deletion of "public correspondence stations" from the watch regulations would likely encounter stiff opposition at the conference because foreign administrations rely heavily on this type of station to provide an effective distress watch system, consequently, they "lend great importance to the precise wording of the existing provisions";

35. We are proposing to maintain the reference to public correspondence stations in the pertinent regulations as requested by the U.S. Coast Guard and NTIA. The ADD RR 3042.1 which we proposed in the Fourth Notice is unchanged to permit public coast stations to be exempted from a mandatory watch on 500 kHz in cases where an equivalent distress watch is provided by another station. In RR 3048 we are proposing to delete the word all in the 2182 kHz watch provision, and in ADD RR 3052.1 to indicate that the same type of exemption would apply for 500 kHz. We are further proposing that the watch on 4125 kHz, 6215.5 kHz, and 156.8 MHz be made mandatory, so long as the station forms an essential part of the coverage area for distress purposes.

36. The changes we have proposed satisfy the concerns of the U.S. Coast Guard and NTIA. At the same time, they will permit the Commission, in consonance with the international Radio Regulations, to exempt public coast stations from a mandatory watch on distress frequencies when this is

[22] Fourth Notice, paragraph 45.

[23] Mobile Marine Radio, Inc. (MMR); RCA Global Communications, Inc. (RCA Globecom); and American Telephone and Telegraph Co. (AT&T).

[24] Report to the Congress of the United States, A Study of Maritime Public Coast Station Operations, Services and Industry, FCC, December 1979.

[25] Bernard J. Wunder, Jr., The Assistant Secretary for Communications and Information, United States Department of Commerce letter to the Chairman, FCC, dated December 15, 1981.

[26] The requirement for both conditions to be met, "coast stations open to public correspondence and which form an essential part of the coverage of the area for distress purposes", permits administrations to exempt a coast station from a distress watch when, for example, another station such as a U.S. Coast Guard station provides an equivalent distress watch. See Report and Order, PR Docket No. 80–145, 46 FR 10155, released January 23, 1981. See also, Report and Order, PR Docket No. 79–68, 71 FCC 2d 171, released September 22, 1980.

deemed to be in the public interest and an equivalent distress watch is stood by another station such as the U.S. Coast Guard.

E. Aeronautical Exemption Clause

37. We are proposing changes to Chapter X that will permit the aeronautical community in coordination with administrations to conclude special arrangements in accordance with Article 31 of the ITU Convention. This, we believe, meets the needs of this service, and at the same time retains within the ITU framework the basic foundation for regulating telecommunications.

F. Frequencies at VHF for the FGMDSS

38. In the Fourth Notice draft proposals, we modified RR Appendix 18 indicating certain frequencies at VHF to satisfy some of the IMCO-stated requirements for use in the FGMDSS. We proposed channel 6 for the voice distress traffic requirement, and channel 70 for the DSC distress alerting function. We did not, however, make a proposal for the NBDP distress traffic frequency.

39. After a review of all the considerations and comments, we are now continuing the proposal for use of channel 6 for the voice distress SAR traffic portion of FGMDSS. We are now proposing that channel 76 be set aside exclusively for the DSC distress alerting function. For the NBDP distress and safety traffic requirement we are proposing that channel 70 be used, with an indication that up until February 1, 1990, this channel may also be used for other NBDP requirements. These other uses would have to give priority to stations using the channel for distress and safety traffic.

Method of Presentation of Proposals

40. In the recommended U.S. Proposals, Appendix 2, we use the ITU prescribed format for the presentation of the changes. The recommended U.S. Proposals are based on the 1982 Edition of the ITU Radio Regulations.

Conclusion

41. The 1983 WARC for Mobile Telecommunications will be held in Geneva from February 28 through March 18, 1983, with an Agenda as shown in Appendix 1. The recommended U.S. Proposals for that conference are shown in Appendix 2. NTIA is expected to make similar recommendations.

42. In developing these proposals, consideration has been given to the views submitted by the public. Four Notices of Inquiry have been issued. Coordination between the FCC and the Executive Branch agencies has taken place. The recommended U.S. Proposals in Appendix 2 are to modify the international Radio Regulations, which does not involve Commission Rules and Regulations, noting that changes to our Rules may occur later through domestic rulemaking as a result of conference decisions.

43. This proceeding has served as the vehicle by which a major portion of the attached proposals were developed and refined to their present state. The recommended U.S. Proposals in Appendix 2 are being forwarded to the Department of State and are expected to constitute the basis for the formal proposals of the United States of America to be submitted by the Department of State to the ITU for consideration by the 1983 World Administrative Radio Conference for Mobile Telecommunications.

44. This Report and Order is adopted pursuant to Section 4(i) of the Communications Act of 1934, as amended. It is ordered that this proceeding is hereby terminated.

45. Point of contact on this matter is Mr. Lawrence M. Palmer, International Staff, Office of Science and Technology, at telephone number (202) 653–8102.

Note.—Due to the continuing effort to minimize publishing costs, neither of the two Appendices of this Report and Order (Appendix 1: "Resolution No. 853"; Appendix 2: "Proposals of the USA to the World Administrative Radio Conference for the Mobile Services—Geneva, 1983") will be printed herein. However, copies of the complete document may be obtained from any of the distribution centers listed in the FCC Office of Public Affairs, Room 202, 1919 M St. NW., Washington, D.C. 20554 (202) 254–7674. Also, a copy is available for inspection in the FCC Library, Room 639, and the FCC Dockets Branch, Room 239, both located at 1919 M St., NW.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82–19334 Filed 7–15–82; 8:45 am]

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[FCC 82–292; Docket Nos. 82–336 etc., File Nos. BRH–1148 DR]

Memorandum Opinion and Order United Broadcasting Co. of Eastern Maryland, Inc. et al.; Designating Application for Consolidated Hearing on Stated Issues

Adopted: June 23, 1982.

Released: July 8, 1982.

In re Applications of United Broadcasting Company of Eastern Maryland, Inc., BC Docket No. 82–336, File Nos. BRH–1148 and BRH–810602UW. (Has: 92.3 MHz Channel 222 10kw, 560 feet) For Renewal of License of Station WYS(FM), Baltimore, Maryland, SRW, INC. Baltimore, Maryland, BC Docket NO. 82–337, File No. BPH–810723AD, Req: 92.3 MHz, Channel 222 20kW, 390 feet, Belvedere Broadcasting Corporation, Baltimore, Maryland, BC Docket NO. 82–338, File No. BPH–81083AC, Req: 92.3 MHz, Channel 222 50kW, 197 feet For Construction Permits.

1. The Commission has under consideration the license renewal application, as supplemented, of United Broadcasting Company of Eastern Maryland, Inc. (UBCEM) for Station WYST(FM) in Baltimore, Maryland, and timely filed construction permit applications by SRW, Inc. (SRW) and Belvedere Broadcasting Corporation (Belvedere). Because the applications are mutually exclusive, they must be designated for a comparative hearing.

2. *UBCEM.* According to its 1981 supplemental renewal application for Station WYST(FM), UBCEM is wholly owned by United Broadcasting Company (United). Until recently, United was wholly owned by Richard Eaton.[1]

3. Over the past several years, the Commission has denied or revoked four of United's licenses.[2] Recently, in *United*

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[1] On April 16, 1981, the Circuit Court for Montgomery County, Maryland, appointed Suburban Trust Company to act as temporary guardian of the property of Richard Eaton. As a result of this appointment, applications were filed with the Commission on May 18, 1981, for consent to the involuntary tranfser of control of United and its various licensee subsidiaries. On June 1, 1981, Richard Eaton died, and his property was transferred, pursuant to the terms of his will, to his Personal Representatives, Suburban Trust Company and Dennison L. Mitchell. As a result of this transfer, and prior to any Commission action on the May 18, 1981, applications, new applications for consent to the involuntary transfer of control of United and its various licensee subsidiaries to Richard Eaton's Personal Representatives were filed on July 1, 1981. On August 24, 1981, the Commission granted simultaneously both the May 18 and July 1, 1981, applications, with the result that control of United and its various licensee subsidiaries has been transferred to Suburban Trust Company and Dennison L. Mitchell, Personal Representatives.

[2] *United Television Co.*, 46 FCC 2d 698 (1974) (WFAN–TV) and *United Television of New Hampshire*, 46 FCC 2d 702 (1974) (WMET), *aff'd* 514 F.2d 279 (D.C. Cir. 1975); *United Broadcasting of Florida, Inc.*, 55 FCC 2d 832 (1975), *recon. denied* 60 FCC 2d 816 (1976) (WFAB); *United Television Co.*, 55 FCC 2d 416 (1975), *recon. denied* 59 FCC 2d 663 (1976), *aff'd sub nom. United Broadcasting Co.* v. *FCC*, 569 F.2d 699 (D.C. Cir. 1977), *cert. denied* 434 U.S. 1076 (1978) (WOOK (AM)).

In the first two decisions, we revoked two of United's television stations because they had been dark for more than two years, therby depriving viewers of service over those frequencies. In the latter two, we denied two radio station renewals, finding that United was unfit to operate those broadcast facilities.

Broadcasting Co. (WOOK(FM)), 86 FCC 2d 452 (1981), the Commission held that these prior adverse determinations reflected a pattern of serious misbehavior by United and thereby raised a *prima facie* question about its qualifications to operate WOOK(FM). In designating a qualifications issue, we noted that, although we lacked sufficient evidence to determine whether Richard Eaton was personally responsible for United's misconduct, even if Eaton were removed from United's ownership, a serious question would still remain regarding the soundness and reliability of the licensee's operations. *Id.* at 458 n.24.

4. In designating these applications for hearing, we are again confronted with the question whether United's past misconduct should reflect adversely on UBCEM's qualifications to remain the licensee of WYST(FM). Our decision is that it is unnecessary to add to a basic qualifications issue to this proceeding at this time.[3] The question of which individuals were responsible for United's prior misconduct is being explored fully in the WOOK(FM) proceeding. After the Administrative Law Judge issues an initial decision in WOOK(FM), the parties to this proceeding may then argue to the Administrative Law Judge whether issues should be added to consider the significance that the findings there have on UBCEM's qualifications. A final determination as to WYST(FM)'s qualifications will therefore be conditioned on the outcome of the WOOK(FM) proceeding. Whether Richard Eaton's death has any effect on the resolution of any qualification issue, or the addition of any issues, is a matter, of course, for the Administrative Law Judge to decide initially.

5. Except as limited by our discussion above, a review of UCBEM's license renewal application indicates that it is qualified to be a Commission licensee. In the interest of administrative efficiency, we believe that the Chief Administrative Law Judge should assign this matter to the same judge currently presiding in the WOOK(FM) proceeding.

6. *SRW.* It appears that $400,580 will be required to construct its proposed station and operate it for three months. In order to meet that requirement, each of its three principals is to loan the corporation a *pro rata* share of the funds. Their agreement, however, states that the "terms and conditions of any such loans will be determined when the FCC grants the application . . . referred to above." Since the agreement fails to state the terms of repayment and the security required, or otherwise indicate that none will be required, it cannot be accepted. In addition, the financial statements of two of the principals, Richard Rynd and Paul H. Weinstein, do not show sufficient liquid assets to meet their share of the commitment.[4] An appropriate financial issue will be specified. Otherwise, a review of SRW's application indicates that it is qualified to be a licensee.

7. *Belvedere.* Applicant estimates that it will require $283,001 to construct its proposed station and operate it for three months. In order to meet that requirement, Belvedere proposes to rely upon its own assets. However, Belvedere's balance sheet was not dated within 90 days of the date of the application. Moreover, it does not show sufficient liquid assets to effectuate its proposal. Belvedere does not demonstrate that its accounts receivable can be relied upon to provide a readily available source of funds, and it has not properly described or shown the ready marketability of its other non-cash assets. Accordingly, an appropriate financial issue will be specified.

8. Applicants for new broadcast stations are required by Section 73.3580(f) of the Commission's Rules to give local public notice of the filing of their applications. We have no evidence that Belvedere published the required notice. To remedy this deficiency, Belvedere must publish local notice of its application, if it has not already done so, and so inform the presiding Adminstrative Law Judge. Except as set forth herein, Belvedere appears to be qualified to be a licensee.

9. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications of United Broadcasting Company of Eastern Maryland, Inc., SRW, Inc. and Belvedere Broadcasting Corporation are designated for consolidated hearing, at a time and place to be specified in a subsequent Order, upon the following issues: [5]

1. To determine, with respect to SRW, Inc.: (a) The source and availability of sufficient funds to meet anticipated costs; and (b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

2. To determine, with respect to Belvedere Broadcasting Corporation: (a) The source and availability of sufficient funds to meet anticipated costs; and (b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications, if any, should be granted.

10. It is further ordered, That Belvedere shall inform the presiding Administrative Law Judge as to whether it has complied with the public notice requirements of § 73.3580(f) of the Commission's rules.

11. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

12. It is further ordered, That the applicants herein shall pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give local notice of the hearing (either individually, or if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

13. It is further ordered, That this case be assigned to the same Administrative Law Judge presently presiding in the United Broadcasting Co. (WOOK(FM)) proceeding.

14. It is further ordered, That the Secretary of the Commission shall send, by Certified Mail—Return Receipt Requested, a copy of this Memorandum Opinion and Order to each of the parties named herein.

Federal Communications Commmission.

William J. Tricarico,

Secretary.

[FR Doc. 82-19258 Filed 7-15-82; 8:45 am]

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[3] See our similar decisions in *Intercontinental Radio, Inc.*, 88 FCC 2d 819 (1981), *Tele-Broadcasters of California, Inc.*, FCC 82-18, released February 1, 1982, and *Montgomery County Broadcast Company, Inc.*, FCC 82-209, released May 17, 1982.

[4] Both have failed to demonstrate that their real and personal property can be relied upon to provide a readily available source of funds. In addition, both have not properly described or shown the ready marketability of their other non-cash assets.

[5] Our determination that UBCEM possesses the basic qualifications to remain a Commission licensee is conditioned upon the outcome of the WOOK(FM) proceeding. See paragraphs 2-4, *supra.*

[FCC 82-295; Docket Nos. 82-343 and 82-344; File Nos. BR-250 and BP-810403 AG]

United Broadcasting Co. of New York, Inc., and Osborne Communications Corp.; Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: June 23, 1982.

Released: July 8, 1982.

In re applications of United Broadcasting Company of New York, Inc., New York, New York (Has: 1380 kHz, 5kW–L, DA–2), for renewal of License of Station WBNX(AM), New York, New York and Osborne Communications Corporation, New York, New York (Req: 1380 kHz, 5kW–L, DA–2), for construction permit.

1. The Commission has before it for consideration the above-captioned license renewal application of United Broadcasting Company of New York, Inc. (United-NY) for AM Station WBNX, New York, New York, and a mutually exclusive application for the same frequency filed by Osborne Communications Corporation (Osborne) on April 3, 1981.

2. *Procedural Matters.* By way of background, WBNX has been operated for more than 50 years, on a share-time basis with AM Station WAWZ, Zarephath, New Jersey, licensed to Pillar of Fire (Pillar). On April 1, 1977, however, due to its inability to establish a mutually agreeable share-time operating schedule with United-NY, Pillar filed a petition to designate the renewal applications of both stations for hearing upon oral argument, as permitted under § 73.1715(b) of the Commission's rules. Following the filing of United-NY's 1978 supplemental renewal application, Pillar filed an application, on April 28, 1978, mutually exclusive with WBNX's renewal, to modify the status of WAWZ from a share-time station to an unlimited-time station. On February 2, 1981, United-NY again filed a supplemental renewal application. Osborne then submitted a construction permit application on April 3, 1981, specifying WBNX/s facilities.[1]

3. United-NY filed a motion to dismiss Osborne's application on June 22, 1981. It contends that, under § 73.3516(e) of the rules (the "cut-off" rule), the filing of WAWZ's application for unlimited-time operation established a May 1, 1978, cut-off date for the filing of applications mutually exclusive with WBNX's renewal. Since Osborne's application was filed after that date and was unaccompanied by a request for a waiver of the cut-off rule, it asserts, it should be dismissed.

4. More particularly, United-NY argues, the Commission has in the past strictly applied its cut-off rules, granting waivers only for the most compelling reasons even where applications were filed shortly after the cut-off date. The complementary effect of this policy, it asserts, has been to confer a protected status on pending renewal applications and timely filed competing applications when the cut-off date arrives. Yet, it states, Osborne has offered nothing to justify its three year delay in filing its application. Indeed, it believes, Osborne should have filed its application during an earlier renewal period since the difficulties encountered by United Broadcasting Company and the requirements of the cut-off rule are matters of public knowledge. Furthermore, were the Commission to allow Osborne to file its untimely application, it contends, we would be inviting interminable processing delays. The fact that their applications were not designated for comparative hearing should not be significant, United-NY believes, in view of a prior Commission ruling that the cut-off rules will not be waived merely because a comparative hearing will be held in any event.

5. Osborne's opposition first asserts that the motion to dismiss should be disregarded because it was itself untimely filed. To the extent United-NY intended to challenge the Commission's action in accepting Osborne's applicaton,[2] it argues, it should have done so either by petition for reconsideration or application for review, pursuant to Sections 1.106 and 1.115 of the rules. Those rules, it states, require challenges in the nature of the instant motion to dismiss to be filed within 30 days of the date of release of the public notice announcing the action in question, in this case by June 15, 1981. Since the motion cannot be properly characterized as a petition to deny and parties are expected to exercise diligence in protecting their rights, Osborne reasons, United-NY must be deemed to have waived its rights by its failure to object to Osborne's application by June 15, 1981.

6. Moreover, Osborne asserts, Commission acceptance of its application would, in fact, be consistent with both the language in § 73.3516(e) and policies established in decisions construing that rule. § 73.3516(e), it points out, specifically permits mutually exclusive applications to be filed up to three months after the filing of a renewal application. Thus, its application is consistent with the rule, it insists, as it was filed one month before the 1981 renewal "window" closed. In addition, it claims, *Carlisle Broadcasting Associates,* 59 FCC 2d 885 (1976) (*"Carlisle"*) establishes a policy that where a renewal application is deferred, as in this case, the "window" for competing applicants opens every three years, triggered by the required filing of supplemental renewal applications, except where the renewal application has been designated for hearing. Finally, Osborne contends, the public interest warrants Commission acceptance and consideration of its application as it would provide the Commission with a meaningful choice of applicants. For example, it argues, doubts concerning the qualifications of United Broadcasting Company, Inc. to remain a licensee necessarily raise the same questions about United-NY's qualifications to operate WBNX in the public interest.[3]

7. In its reply to Osborne, United–NY contends that its motion to dismiss was timely-filed. Unied-NY argues that Commission acceptance of Osborne's application cannot be considered an "action" for which review by means of petitions for reconsideration or applications for review is available. The Commission's rules, it notes, do not specify a date by which motions to dismiss applications accepted for filing must be submitted. Thus conceivably, it asserts, they can be filed any time prior to a Commission action granting an application or designating it for hearing. In any event, it contends, § 73.3584 (a) and (c) of the Commission's rules (governing petitions to deny) contemplate that any pleading which questions a construction permit application's acceptability will be deemed timely if filed on or before the cut-off date for petitions to deny. Since that date was June 22, 1981, the date on which the motion to dismiss was filed, United–NY claims, it must be considered timely.

[1] On February 24, 1982, Pillar requested that its mutually exclusive application for unlimited-time operation be dismissed. It has reached an agreement providing for the assignment of the assets and authorization of WAWZ to Osborne, if Osborne prevails in the comparative hearing. Accordingly, the staff dismissed the application by letter on April 30, 1982. In addition, there is on file a proposed Share Time Agreement between Pillar and United-NY. On April 30, 1982, Pillar informed the Commission that it had exercised its right under one of the agreement's provisions and terminated the proposed Share Time Agreement. United-NY has filed a pleading opposing Pillar's action.

[2] *Public Notice,* Report No. B–16 (May 15, 1981).

[3] *United Broadcasting Co., Inc. (WOOK(FM)),* 86 FCC 2d 452 (1981).

8. Furthermore, Osborne's application must be considered inconsistent with the cut-off rules, United-NY asserts, in that it rests on a mistaken and overly broad reading of the *Carlisle* decision and conflicts with policies articulated in other decisions applying the cut-off rules. Although *Carlisle* involved a mutually exclusive construction permit application submitted within three months after the filing of a supplemental renewal application by a deferred licensee, the decision can be distinguished from the present case, it contends, since no competing application had been filed during a previous renewal "window." More directly on point, it believes, is *Bronco Broadcasting Co., Inc.*, 50 FCC 2d 529 (1974), *recon. denied* 52 FCC 2d 836 (1975), *aff'd* 58 FCC 2d 909 (1976) (*"Bronco"*), where a mutually exclusive application accompanied by a request for waiver of the cut-off rules was tendered some six months after the cut-off date. The Commission denied the request and returned the application, it notes, holding that circumstances less compelling than the ones involved here precluded a finding of "good cause" for waiver. According to United-NY, Commission consideration of Osborne's application is inconsistent with *Bronco*, permitting an application filed three years late to be deemed acceptable, while rejecting as untimely applications only months late. It perceives no meaningful difference between *Bronco* and the present case and believes disparate treatment would be illogical and arbitrary. In sum, United-NY argues, applicants for new facilities who acquire cut-off status are not subject to further competing applications simply because the Commission delays in designating the applications for hearing.

9. The issue here is whether the timely submission of Pillar's application for unlimited-time operation effectively precluded the filing of further competing applications in subsequent renewal periods, even though Pillar's application was not designated for comparative hearing with United-NY's application for renewal of license before the next renewal period arrived.[4] This question was recently addressed by the Commission in *In re Faith Center, Inc. (KHOF(FM))*, 89 FCC 2d 1054 (1982). There the Commission concluded that the filing of an application mutually exclusive with a renewal application does not bar the filing of additional mutually exclusive applications during subsequent renewal periods where the original applications have not been set for hearing.[5]

10. In explaining its decision in *In re Faith Center, Inc. (KHOF(FM))*, the Commission stated that, although the cut-off rules are designed to avoid serious disruptions to the processing of applications[6] by providing the Commission, renewal applicants and mutually exclusive applicants with a date by which the identity of the participants in a comparative hearing will be determined,[7] acceptance of additional applications in subsequent renewal "windows" is not disruptive where the hearing process has not commenced. Moreover, it noted, in the absence of some strong countervailing consideration, such as where there exists a need to inaugurate a new broadcast service or where applications have already been designated for hearing,[8] the public interest in a broader choice of applicants normally prevails.

11. Although United-NY claims a "protected status" by virtue of the timely filing of the Pillar application, that status is one simply conferred as a complementary effect of the operation of rules designed to insure that applications can be processed without interruptions or the necessity of reprocessing.[9] It has never been construed to invest a property interest of any kind in an applicant merely because of the passing of a particular date and does not insulate renewal or mutually exclusive applicants from further competing applications filed during any appropriate "window" three years later.[10]

12. As to the argument that our decision to accept Osborne's application disadvantages United-NY at hearing due to the fact that Osborne's application was more recently filed, any such unfairness will be minimized by the operation of § 73.3522(a)(2) of the rules, which permits amendments as a matter of right by the date specified in the public notice announcing acceptance for filing of the last filed mutually exclusive application, *i.e.*, June 22, 1981. United-NY, we recognize, did not file any amendments during the allowable period after notification that Osborne's application was accepted for filing. However, since the question as to the timeliness of Osborne's application had not been resolved at the time the motion to dismiss was filed, the Commission will accept amendments as of right in this case for an additional thirty days after release of this Order. This right to amend is in addition to the right to amend to cure deficiencies first raised in the designation order, provided by § 73.3522(b)(2) of the rules.[11]

13. *The Competing Applications.* Applicant Osborne is qualified to construct and operate as it proposes. An examination of United-NY's license renewal application indicates that, except as limited by the following discussion, it too is qualified to be a Commission licensee.

14. Information in its 1981 supplemental renewal application for WBNX indicates that United-NY is a subsidiary of United Broadcasting Co., Inc. ("United"), which until very recently was wholly-owned by Richard Eaton.[12]

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[4] Questions concerning the timeliness of the motion to dismiss need not be addressed as they are mooted by the Commission's decision on the merits. The questions concerning United Broadcasting Company's qualifications will be handled consistent with the Commission's recent decisions in *Intercontinental Radio, Inc. (KSOL(FM))*, 88 FCC 2d 819 (1981) and *Tele-Broadcasters of California, Inc. (KALI)*, FCC 82-18, released February 1, 1982. (See, *infra*, at paragraph 16.)

[5] The circumstances in *In re Faith Center, Inc. (KHOF(FM))* are similar to those involved in the present case. At issue in *In re Faith Center, Inc. (KHOF(FM))* were the 1977 license renewal application of Faith Center, Inc. for FM radio Station KHOF in Los Angeles, California and the mutually exclusive construction permit application of Inspiration Media of Southern California, Inc., timely-filed on October 31, 1977. The applications had not been designated for hearing when Coronado Broadcasting of Southern California, Inc. filed its mutually exclusive construction permit application on November 3, 1980, during the 1980 renewal "window."

[6] *Report and Order (Docket No. 20205)*, 53 FCC 2d 1069 (1975); *Carlisle Broadcasting Associates, supra*, 59 FCC 2d at 888.

[7] *Notice of Proposed Rule Making (Docket No. 18495)*, 16 FCC 2d 858 (1969); *Carlisle Broadcasting Associates, supra*, 59 FCC 2d at 888.

[8] *In re Faith Center, Inc. (KHOF(FM))*, *supra*, (citing *Alabama Citizens for Responsive Televisions*, 53 FCC 2d 457 (1975)).

[9] *Bronco Broadcasting Company, Inc., supra*, 58 FCC 2d at 911.

[10] *In re Faith Center, Inc. (KHOF(FM))*, *supra*.

[11] On November 12, 1981, United Broadcasting Company, Inc. filed a "Petition to Dismiss or for Other Relief" on behalf of itself and six of its subsidiaries. United requests the dismissal, for abuse of process, of six applicants (Osborne, District Broadcasting Company, San Mateo Broadcasting Co., Life Broadcasting Co., Inc., SRW, Inc., and Community Airwaves, Inc.) who are represented by the same counsel and have mutually exclusive applications pending against United renewal applications. It contends that these parties have filed pleadings with the Commission and the Court of Appeals which improperly argue the merits of the question of United's qualifications. These comments, United believes, are intended to create an "indelible impression in the minds of the Commission and the Court" that United is unqualified to hold these licenses. However, Commission consideration of license qualifications is based solely upon evidence adduced at hearing and appropriate legal precedents, utilizing the procedures set forth in the Commission's rules and regulations. These procedures provide United with the right to participate at all stages of the adjudicatory process. Thus, its claim of prejudice is without basis and the petition will be denied.

[12] On April 16, 1981, the Circuit Court for Montgomery County, Maryland, appointed Suburban Trust Company to act as temporary

Over the past several years, the Commission has denied or revoked four of United's licenses.[13] Recently, in *United Broadcasting Co., Inc. (WOOK(FM))*, 86 FCC 2d 452 (1981), the Commission held that these prior adverse determinations reflected a pattern of serious misbehavior by United and thereby raised a *prima facie* question about its qualifications to operate WOOK(FM). In designating a qualifications issue, we noted that, although we lacked sufficient evidence to determine whether Richard Eaton was personally responsible for United's misconduct, a serious question would still remain regarding the soundness and reliability of the licensee's operations, even if Eaton was removed from United's ownership. 86 FCC 2d at 458, n. 24.

15. In designating these applications for hearing, the Commission is confronted with the question whether United's past misconduct should reflect adversely on its qualifications to remain a licensee of WBNX. Our decision is that it is unnecessary to add a basic qualification issue to this proceeding at this time.[14] The question of which individuals were responsible for United's prior misconduct is being fully explored in the WOOK(FM) proceeding. After the Administrative Law Judge issues an initial decision in WOOK(FM), the parties to this proceeding may then argue to the Administrative Law Judge whether issues should be added to consider the significance that the findings there have on United-NY's qualifications. A final determination as to WBNX's qualifications will therefore be conditioned on the outcome of the WOOK(FM) proceeding. Whether Richard Eaton's death has any effect on the resolution of any qualification issue, or the addition of any issues, is a matter, of course, for the Administrative Law Judge to decide initially. In the interest of administrative efficiency, we believe that the Chief Administrative Law Judge should assign this matter to the same judge currently presiding in the WOOK(FM) proceeding.

16. Accordingly, *It is ordered*, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications of United Broadcasting Company of New York, Inc. and Osborne Communications Corporation are designated for consolidated hearing, at a time and place to be specified in a subsequent Order, upon the following issues: [15]

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue which of the applications should be granted.

17. It is further ordered, That the Motion to Dismiss Osborne Communications Corporation's application, filed by United Broadcasting Company of New York, Inc. is denied.

18. It is further ordered, That, the Petition to Dismiss or for Other Relief filed by United Broadcasting Company, Inc. is denied.

19. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

20. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give local notice of the hearing (either individually or, if feasible and consistent with the rules, jointly) within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

21. It is further ordered, That this case shall be assigned to the same Administrative Law Judge presently presiding in the United Broadcasting Co., Inc. (WOOK(FM)) proceeding.

22. It is further ordered, That the Secretary shall send, by Certified Mail-Return Receipt Requested, a copy of this Memorandum Opinion and Order to each of the parties named herein.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82-19259 Filed 7-15-82; 8:45 am]

BILLING CODE 6712-01-M

guardian of the property of Richard Eaton. As a result of this appointment, applications were filed with the Commission on May 18, 1981, for consent to the involuntary transfer of control of United and its various licensee subsidiaries. On June 1, 1981, Richard Eaton died, and his property was transferred, pursuant to the terms of his will to his Personal Representatives (Suburban Trust Company and Dennis L. Mitchell). As a result of this transfer, and prior to any Commission action on the May 8, 1981 applications, new applications for consent to the involuntary transfer of control of United and its various licensee subsidiaries to Richard Eaton's Personal Representatives were filed on July 1, 1981. On August 24, 1981 the Commission granted simultaneously both the May 18 and July 1, 1981, applications, with the result that control of United and its various licensee subsidiaries has been transferred to Suburban Trust Company and Dennis L. Mitchell, Personal Representatives.

[13] *United Television Co.*, 46 FCC 2d 698 (1974); *United Television of New Hampshire*, 46 FCC 2d 702 (1974), *aff'd* 514 F. 2d 279 (D.C. Cir. 1975); *United Broadcasting of Florida, Inc.*, 55 FCC 2d 832 (1975), *recon. denied* 60 FCC 2d 816 (1976); *United Television Co.*, 55 FCC 2d 416 (1975), *recon. denied* 59 FCC 2d 663 (1976), *aff'd sub nom. United Broadcasting Co.* v. *FCC*, 569 F. 2d 699 (D.C. Cir. 1977), *cert. denied* 434 U.S. 1076 (1978).

In the first two decisions, we revoked two of United's television stations because they had been dark for more than two years, thereby depriving viewers of service over those frequencies. In the latter two, we denied two radio station renewals, finding that United was unfit to operate those broadcast facilities.

[14] See similar decisions in *Intercontinental Radio, Inc., supra*, and *Tele-Broadcasters of California, Inc., supra*.

[15] Our determination that United-NY possesses the basic qualifications to remain a Commission licensee is conditioned upon the outcome of the WOOK(FM) proceeding.

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Notice of 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 section 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 detemined 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 outweigh 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 hearings should identify clearly the specific application to which they relate, and should be submitted in

writing and received by the appropriate Federal Reserve Bank not later than the date indicated for each application.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *BankAmerica Corporation,* San Francisco, California (industrial loan company, financing, servicing, and insurance activities; Minnesota): To engage through its indirect subsidiary, FinanceAmerica Plan, Inc., a Minnesota corporation (whose name will be changed to FinanceAmerica Thrift Corporation), in the additional activities of acting as an industrial loan company under the Minnesota Industrial Loan and Thrift Company Act, and to continue to engage in the activities of making or acquiring for its own account loans and other extensions of credit such as are made or acquired by a finance or industrial loan company, servicing loans and other extensions of credit, and offering credit-related life, credit-related accident and health, and credit-related property insurance in the State of Minnesota. Such activities will include, but not be limited to, issuing investment certificates (intrastate only), making consumer installment loans, purchasing installment sales finance contracts, making loans and other extensions of credit to small businesses, making loans secured by real and personal property and offering credit-related life insurance, credit-related accident and health insurance, and credit-related property insurance in connection with extensions of credit made or acquired by FinanceAmerica Plan, Inc. These activities will be conducted from three existing offices located in Columbia Heights, Minneapolis and St. Paul, Minnesota, serving the State of Minnesota. Comments on this application must be received not later than August 11, 1982.

2. *Orbanco Financial Services Corporation,* Portland, Oregon (commercial financing, servicing loans, leasing; California and Arizona): To engage through its subsidiary, Northwest Acceptance Corporation, in the following activities: making or acquiring loans or other extensions of credit as would be made or acquired by a commercial finance company; leasing personal property in accordance with 12 CFR 225.4(a)(6); and servicing loans or participations in loans and other extensions of credit. These activities would be conducted from an office in Newport Beach, California, serving the States of California and Arizona. Comments on this application must be received not later than August 11, 1982.

3. *U.S. Bancorp,* Portland, Oregon (consumer finance and insurance activities; Wyoming): To engage through its subsidiary, U.S. Bancorp Financial, Inc., in the making, acquiring and servicing of loans and other extensions of credit either secured or unsecured for its own account or for the account of others, including the making of consumer installment loans, purchasing consumer installment and real estate sales finance contracts and evidences of debt and making consumer home equity loans secured by real estate, making industrial loans, and acting as insurance agent with regard to credit life and disability insurance, directly related to extensions of credit by U.S. Bancorp Financial, Inc. These activities would be conducted from an office in Casper, Wyoming. Serving Casper, Wyoming and all of Natrona County, Wyoming. Comments on this application must be received not later than August 11, 1982.

Board of Governors of the Federal Reseve System, July 12, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-19239 Filed 7-15-82; 8:45 am]

BILLING CODE 6210-01-M

Citibank International; Establishment of U.S. Branch of a Corporation Organized Under Section 25(a) of the Federal Reserve Act

Citibank International, Miami, Florida, a corporation organized under section 25(a) of the Federal Reserve Act, has applied for the Board's approval under § 211.4(c)(1) of the Board's Regulation K (12 CFR 211.4(c)(1)), to establish a *de novo* branch at the Honolulu Airport, Honolulu, Hawaii. Citibank International operates as a subsidiary of Citibank, New York, New York.

The factors that are to be considered in acting on this application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than August 11, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of act that are in dispute, and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 12, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-19240 Filed 7-15-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/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 sumarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Hardee Banking Corporation,* Wauchula, Florida; to become a bank holding company by acquiring 80 percent or more of the voting shares of First National Bank of Wauchula, Wauchula, Florida. Comments on this application must be received not later than August 11, 1982.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First LaPorte Financial Corp.,* LaPorte, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank and Trust Company of LaPorte, LaPorte, Indiana. Comments on this application must be received not later than August 11, 1982.

C. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Midcon Holding, Inc.,* St. Louis, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Belleville National Bank, Belleville, Illinois, through a merger with Mid-Continent Bancshares,

Inc., Belleville, Illinois. Comments on this application must be received not later than August 11, 1982.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First National Bancshares of Winfield, Inc.*, Winfield, Kansas; to become a bank holding company by acquiring 80 percent of the voting shares of the First National Bank of Winfield, Winfield, Kansas. Comments on this application must be received not later than August 11, 1982.

2. *First National Bankshares of Gunnison, Inc.*, Gunnison, Colorado; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank of Gunnison, Gunnison, Colorado. Comments on this application must be received not later than August 11, 1982.

Board of Governors of the Federal Reserve System, July 12, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-19242 Filed 7-15-82; 8:45 am]

BILLING CODE 6210-01-M

General Bancshares Corp., Acquisition of Bank

General Bancshares Corporation, St. Louis, Missouri, has applied for the Board's approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge through its wholly-owned subsidiary, Midcon Holding, Inc., with Mid-Continent Bancshares, Inc., Belleville, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

General Bancshares Corporation, St. Louis, Missouri, is also engaged in the following nonbank activities: performing data processing services to its subsidiary bank, and nonaffiliated banks and savings and loans. In addition to the factors considered under section 3 of the Act (banking factors), the Board will consider the proposal in the light of the company's nonbanking activities and the provisions and prohibitions in section 4 of the Act (12 U.S.C 1843).

The application may be inspected at the offices of the Board of Governors of the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 11, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 12, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-19241 Filed 7-15-82; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Early Termination of the Waiting Period of the Premerger Notification Rules; Alghanim Industries, Inc.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Alghanim Industries, Inc. is granted early termination of the waiting period provided by law and the permerger notification rules with respect to the proposed acquisition of all assets of Jobbers Supply Co., The General Automotive Supply Co. and Womwell Automotive Supply Company. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: June 24, 1982.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premeger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requiries that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82-19281 Filed 7-15-82; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules; Chesebrough-Pond's, Inc.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Chesebrough-Pond's, Inc. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all voting securities of Prince Manufacturing, Inc. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: June 25, 1982.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82-19279 Filed 7-15-82; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules; F. Hoffman-LaRoche & Co., Ltd.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: F. Hoffman-LaRoche & Co., Ltd. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all voting securities of Agrigenetics Corporation.

The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: June 23, 1982.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82–19280 Filed 7–15–82; 8:45 am]

BILLING CODE 6750–01–M

Early Termination of the Waiting Period of the Premerger Notification Rules; Tultex Corp.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Tultex Corporation is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all voting securities of Washington Mills Company. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by The Washington Group, Inc. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: June 23, 1982.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General Advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82–19278 Filed 7–15–82; 8:45 am]

BILLING CODE 6750–0–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Medicare Program; Revised Market Basket Inflation Rates for Provider Cost Limits

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

ACTION: General notice.

SUMMARY: In 1979 and 1980 we published in the **Federal Register** schedules of limits on Medicare payments for hospitals, skilled nursing facilities, and home health agencies for specific cost reporting periods. In developing and applying those limits, we used projected rates of inflation to account for anticipated increased in the prices of goods and services that these health care providers normally purchase. Because we recognized that the actual rate of increase for a year might be significantly higher than our projection, we also stated that we would make a retroactive adjustment if increases greater than a certain percentage threshold showed that it was necessary. Since we have determined that this percentage level was exceeded for some years, we are setting forth in this notice the necessary revisions. Medicare intermediaries will make these revisions and notify the affected providers.

EFFECTIVE DATE: Hospitals: Cost reporting periods beginning on or after August 1, 1979, and before July 1, 1980.

Skilled Nursing Facilities: Cost reporting periods beginning on or after October 1, 1979, and before October 1, 1980.

Home Health Agencies: Cost reporting periods beginning on or after July 1, 1980, and before July 1, 1981.

FOR FURTHER INFORMATION CONTACT: Carl Slutter, 301–594–9344.

SUPPLEMENTARY INFORMATION:

Background

Section 1861(v)(1) of the Social Security Act (42 U.S.C. 1395x(v)(1)), as amended by section 223 (Limitation on Coverage of Costs) of Pub. L. 92–603, the Social Security Amendments of 1972, authorizes the Secretary to set prospective limits on the costs that are reimbursed under Medicare. These limits may be applied to direct or indirect overall costs or to costs incurred for specific items or services furnished by a Medicare provider (that is, a hospital, skilled nursing facility, or home health agency), and may be based on estimates of the cost necessary in the efficient delivery of needed health services. The regulations implementing this authority are set forth at 42 CFR 405.460.

Under this authority, we have published schedules of limits on hospital inpatient general routine service costs annually from 1974 through 1978, and schedules of limits on hospital inpatient general routine operating costs, home health agency (HHA) per visit costs, and skilled nursing facility (SNF) inpatient routine service costs annually since 1979.

In developing each schedule of limits, we obtained actual cost data from Medicare cost reports. We adjusted these data to account for inflation occurring between the midpoints of the cost reporting periods included in the data collection and the midpoint of the first cost reporting period to which the limits apply. We also provided an adjustment that permits the published limits to be increased for later cost reporting periods, in recognition of projected inflation for those periods.

Market Basket Index

Beginning in 1979, we made adjustment to the cost limits to account for inflation by using a "market basket" index to reflect overall rates of increase in costs for each type of provider. These market basket indexes were first published in the following schedules of cost limits:

Hospitals—44 FR 31806, published June 1, 1979. Effective for cost reporting periods beginning on or after July 1, 1979, and before July 1, 1980.

SNFs—44 FR 51542, published August 31, 1979. Effective for cost reporting

periods beginning on or after October 1, 1979, and before October 1, 1980.

HHAs—45 FR 38014, published June 5, 1980. Cost reporting periods beginning on or after July 1, 1980, and before July 1, 1981.

We developed the hospital market basket by identifying the most commonly used categories of hospital routine operating expenses, and weighting these categories according to the estimated proportion of hospital routine operating costs attributable to each category. We then obtained historical and projected rates of increase in the resource prices for each market basket category. Based on the rate of increase for each category and the weight assigned to each category, we developed the market basket index factors that we used to project the overall rates of increase in hospital inpatient general routine operating expenses for periods after June 30, 1979.

The categories we used are based on those currently used by the American Hospital Association (AHA) in its analysis of costs, by the U.S. Department of Commerce in publishing price indexes by industry, and by HCFA in its cost reports. For further discussion of the weights for each category and the derivation of the hospital market basket index, see the notice published in the **Federal Register** on June 1, 1979.

The SNF market basket index is comprised of the most commonly used categories of SNF routine service expenses. The categories we are using are primarily based on those which were used by the National Center for Health Statistics in its National Nursing Home Surveys. For further discussion of the weights and derivation of the skilled nursing facility market basket, see the August 31, 1979, notice.

We developed the HHA market basket by identifying (through analysis of Medicare cost reports and other available home health industry surveys) nine major categories of costs specifically related to home health expenses and weighting these categories according to the estimated proportion of total HHA costs attributable to each category. For further discussion of the weights and derivation of the home health market basket, see the notice published in the **Federal Register** on June 5, 1980.

Because of the time needed to assemble and analyze the data to show the actual rate of increase in the market basket categories, the actual rate of increase of the costs represented by a market basket index for a calendar year ordinarily is not available until after the end of the first quarter of the next calendar year. Therefore, in developing the limits to be included in the notices listed above, we used projected rates of increase in the market basket indices for calendar years 1979 and 1980.

Because we recognized the possibility that the actual rate of increase for a year might be significantly higher than our projected rate, we also provided for a retroactive adjustment to the limits if the actual rate exceeded our projection by more than a specified tolerance factor. In the notices listed above, we stated that if the actual rate of increase in the market basket index for a particular year exceeded the projected rate of increase by more than .25 of 1 percentage point for that year, HCFA would publish the actual rate in the **Federal Register**, and the intermediaries would use that rate to adjust each provider's cost limit retroactively at final settlement of the cost report.

The actual rate of increase in the market basket index for calendar year 1980 for hospitals and HHAs was 11.7 percent, and 10.2 percent for SNFs. We projected the rate of increase for hospitals to be 8.9 percent, 10.2 percent for HHAs, and 8.7 percent for SNFs. Because the actual rates exceeded the projected rates by more than our tolerance level, the limits for hospitals (for cost reporting periods beginning on or after August 1, 1979, and before July 1, 1980), for HHAs (for cost reporting periods beginning on or after July 1, 1980 and before July 1, 1981) and for SNFs (for cost reporting periods beginning on or after October 1, 1979 and before October 1, 1980) must be revised to reflect the actual rate.

Hospitals—Revised Adjustment Factors for Cost Reporting Periods Beginning on or After August 1, 1979, and Before July 1, 1980

In applying the hospital market basket index, we used a projected 1979 rate in setting limits for the cost reporting period beginning July 1, 1979, which has a midpoint of December 31, 1979. We used the projected 1980 rate to adjust the limits for hospital cost reporting periods beginning or after August 1, 1979, because the midpoints of those periods would fall in calendar year 1980.

We estimated the calendar year 1979 increase at 8.9 percent for hospitals. Since the final 1979 routine operating cost market basket rate was 9.1 percent, it did not exceed our estimate by an amount greater than .25 of 1 percent. Therefore, no adjustment to the limits for the cost reporting period beginning July 1, 1979 is necessary.

We have now obtained the actual rate of increase in the hospital market basket index for calendar year 1980. This rate is 11.7 percent. Since this actual rate exceeds our projected rate of increase for 1980 (8.9 percent) by more than our tolerance factor, adjustments to the limits for certain cost reporting periods covered by the June 1, 1979 notice are needed. The limit amounts published in the notice for periods beginning on July 1, 1979, remain correct because they reflect a market basket adjustment for inflation only through December 31, 1979, the mid-point of the first period covered by the limits, and the final 1979 routine operating cost market basket rate was within the established tolerance. However, the cost reporting year adjustment for the period must be revised to reflect the change in the market basket rate of increase for months in calendar year 1980. The periods affected are those beginning on or after August 1, 1979 and before July 1, 1980, since the midpoints of those periods fall in calendar year 1980. We do not need to revise the rate of increase for periods beginning July 1, 1980, or later because these periods are governed by a subsequent schedule of cost limits published June 20 1980 (45 FR 41868), and effective for periods beginning on or after July 1, 1980. This schedule incorporated a projected 1980 market basket rate of 11.7 percent, which equals the actual rate for 1980.

In Table I below, we have set forth revised cost reporting year adjustment factors that are based on the actual 1980 market basket rate. In settling hospital cost reports for 12-month cost reporting periods beginning on or after August 1, 1979, but before July 1, 1980, intermediaries will use limits based on these factors, rather than on the adjustment factors specified in the 1979 notice. If a hospital's cost report has been settled using limits calculated under the 1979 notice, and the hospital exceeded its cost limit, the hospital should contact its fiscal imtermediary and request a recalculation of its limit using the revised adjustment factor from the table below, and a revision of the amount paid to reflect the new limit.

The revised adjustment factors set forth below apply only to 12-month cost reporting periods. If a hospital uses a cost reporting period that is other than 12 months long, a special calculation of the adjustment factor must be made. This calculation is needed because the routine operating cost market basket inflation rates set forth below are computed to the midpoint of an assumed 12-month reporting period. For cost reporting periods other than 12 months, the calculation must be done specifically for the midpoint of the particular cost reporting period. The hospital's

intermediary will obtain special adjustment factors for these periods from HCFA.

TABLE I—COST REPORTING YEAR ADJUSTMENT FACTORS [1]

If the hospital cost reporting period begins—	The adjustment factor is—
Aug. 1, 1979	1.00975
Sept. 1, 1979	1.01950
Oct. 1, 1979	1.02925
Nov. 1, 1979	1.03900
Dec. 1, 1979	1.04875
Jan. 1, 1980	1.05850
Feb. 1, 1980	1.06825
Mar. 1, 1980	1.07800
Apr. 1, 1980	1.08775
May 1, 1980	1.09750
June 1, 1980	1.10725

[1] Based on actual hospital routine market basket rate of 11.7 percent for 1980.

Example of Application

Hospital A's cost reporting period began January 1, 1980. The basic group limit for hospital A's group was $90. Computation of Revised Group Limit:

Group Limit—$90

Adjustment Factor from Table 1—1.05850

Revised basic group limit applicable to hospital A for cost reporting period beginning January 1, 1980 is $95.27

Hospital Cost Reporting Periods Not Affected

We wish to note that the use of an actual rather than projected hospital market basket rate for 1980 does not require any adjustment of the hospital cost limits for a cost reporting period that began on July 1, 1979, or in the limits for periods beginning on or after July 1, 1980. This is true for the following reasons.

1. *Cost Reporting Period Beginning July 1, 1979.* As explained earlier in this notice, the cost reporting period that began on July 1, 1979 has a midpoint of December 31, 1979. Therefore, we used the annualized market basket rate for the last half of 1979 to set the limits for this period. In setting these limits, we used a projected hospital market basket rate of 8.9 percent; the actual rate was 9.1 percent. Since the actual hospital rate did not exceed the projected rate by more than .25 of 1 percent, no adjustment to the limits for the cost reporting period that began on July 1, 1979, will be made.

2. *Cost Reporting Period Beginning July 1, 1980.* As explained in the notice published on June 20, 1980 (45 FR 41868), we used a projected 1980 hospital market basket rate of 11.7 percent in developiing the limits for this period. Since this projected 1980 rate is the same as the actual rate for 1980, the hospital cost limits for this cost reporting period need not be adjusted.

3. *Cost Reporting Periods Beginning on or After August 1, 1980.* The hospital cost limits for cost reporting periods beginning on or after August 1, 1980, and before July 1, 1981, are based on a projected market basket rate for 1981 of 10.6 pecent. The limits for cost reporting periods beginning on or after August 1, 1981, and before July 1, 1982, are based on a projected 1982 hospital market basket rate of 9.5 percent. If the final hospital rate for either year is at least .3 of 1 percent above the projected rate, we will update the appropriate adjustment factors and advise the Medicare intermediaries to use the actual market basket rate to adjust each hospital's cost limit at the time of final cost settlement. (The figure has been changed to .3 of 1 percent because the program we receive from Data Resources, Inc. that we use to calculate the hospital market basket increases specifies that the market basket price changes are rounded to the nearest tenth.)

Skilled Nursing Facilities—Revised Schedule of Cost Limits for Cost Reporting Periods Beginning on or After October 1, 1979, and Before October 1, 1980

In the August 31, 1979 notice setting forth SNF cost limits, we estimated the rate of increase in the skilled nursing facility market basket at 10.3 percent for 1979 and 8.7 percent for 1980. The final rate for 1979 was 9.4 percent. The final 1980 SNF market basket rate was 10.2 percent. Presently, we are projecting that the 1981 rate of increase will be 10.2 percent, which is the same as the final rate for 1980. Therefore, even though some cost reporting periods affected will not end until sometime in 1981, we do not believe we will need to make any further adjustment in the limits published in 1979, since the actual rate for 1981 will probably be within the specified tolerance.

The October 1, 1979 cost limits are based on costs inflated through March 31, 1980, the midpoint of the first 12-month cost reporting period to which the limits apply. Since the actual 1980 SNF market basket of 10.2 percent exceeds our projected rate of increase of 8.7 percent by more than .25 of 1 percent the schedule of limits published in Tables I and II of the August 31, 1979 **Federal Register** (44 FR 51542) will be increased. Also revised year end adjustment factors will be used.

In tables II and III below, we have set forth the revised schedule of cost limits that incorporate the actual 1980 market basket rate and which apply to cost reporting periods beginning on or after October 1, 1979, but before October 1, 1980. We also include in table IV revised cost reporting year-end adjustment factors to account for those SNFs that have cost reporting periods that straddle portions of two calendar years.

The Medicare intermediaries will, at the time of final settlement, increase the limits to the level specified in the tables below. If a SNF cost report for one of these periods has been settled under limits calculated under the 1979 notice, and the SNF exceeded its limit, the SNF should contact its fiscal intermediary and request a recalculation of the limit using the revise schedule from the tables below, and a revision of the amount reimbursed to reflect the new limit.

For a SNF with a cost reporting period other than 12 months in duration, a special calculation must be made. This calculation is necesssary because the SNF market basket inflation rates are computed to the midpoint of an assumed 12-month reporting period. For cost reporting periods other than 12 months, the calculation must be done specifically to the midpoint of the particular cost reporting period. The Medicare intermediary will obtain special adjustment factors for these periods from HCFA.

TABLE II.—GROUP LIMITS FOR HOSPITAL-BASED SNF'S

Location	Group limit	Labor portion (62.21 pct)	Non-labor portion (37.79 pct)
SMSA	90.79	56.48	34.31
Non-SMSA	66.71	41.50	25.21

TABLE III.—GROUP LIMITS FOR FREESTANDING SNF'S

Location	Group limit	Labor portion (62.21 pct)	Non-labor portion (37.79 pct)
SMSA	48.56	30.21	18.35
Non-SMSA	39.53	24.59	14.94

TABLE IV.—REVISED YEAR-END ADJUSTMENT FACTORS

If the SNF cost report period begins	The adjustment factor is—
Nov. 1, 1979	1.00850
Dec. 1, 1979	1.01700
Jan. 1, 1980	1.02550
Feb. 1, 1980	1.03400
Mar. 1, 1980	1.04250
Apr. 1, 1980	1.05100
May 1, 1980	1.05950
June 1, 1980	1.06800
July 1, 1980	1.07650
Aug. 1, 1980	1.08500
Sept. 1, 1980	1.09350

Home Health Agencies—Revised Schedule of Cost Limits for Cost Reporting Periods Beginning on or After July 1, 1980, and Before July 1, 1981

In the June 5, 1980 schedule of HHA cost limits, we estimated the rate of increase in the HHA market basket at 10.2 percent and 9.9 percent, respectively for 1980 and 1981. The final 1980 HHA market basket rate is 11.7 percent. However, the actual rate for 1981 will not be available until the second quarter of 1982.

The July 1 1980 HHA cost limits are based on cost inflated through December 31, 1980, the midpoint of the first 12 month cost reporting period to which the limits apply. Since the actual 1980 HHA market basket of 11.7 percent exceeds our projected rate of increase of 10.2 percent by more than .25 of 1 percent, we are revising the schedule of limits published in Tables I and II of the June 5, 1980 **Federal Register** (45 FR 38019).

In tables V and VI below, we have set forth the revised schedule of basic cost limits that incorporate the actual 1980 market basket rate and which apply to cost reporting periods beginning on or after July 1, 1980, but before July 1, 1981. The Medicare intermediaries will, at the time of final settlement, increase the cost per visit limits that would otherwise apply to the HHA to the level specified in the tables below. If a HHA's cost report for one of these periods has been settled under limits calculated under the 1980 notice, and the HHA exceeded its limit, the HHA should contact its fiscal intermediary and request a recalculation of the HHA's limit using the revised schedule from the table below, and a revision of the amount paid to reflect the new limit. All other adjustments to the limits (that is, year-end increase factors) remain the same and should be used to compute individual HHA limits.

For an HHA with a cost reporting period other than 12 months in duration, a special calculation must be made. This calculation is necessary because the HHA market basket inflation rates are computed to the midpoint of an assumed 12-month reporting period. For cost reporting periods other than 12 months, the calculation must be done specifically to the midpoint of the particular cost reporting period. The Medicare intermediary will obtain special adjustment factors for these periods from HCFA.

TABLE V.—JULY 1, 1980, PER VISIT LIMITS FOR PROVIDER-BASED HOME HEALTH AGENCIES [1]

Type of visit	Limit for SMSA location	Labor portion (69.78 pct)	Non-labor portion (30.22 pct)
Skilled nuring care	54.54	38.06	16.48
Physical therapy	48.19	33.63	14.56
Speech pathology	47.84	33.38	14.46
Occupational therapy	50.28	35.09	15.19
Medical social services	54.91	38.32	16.59
Home health aide	47.68	33.27	14.41
NON-SMSA location			
Skilled nursing care	47.55	33.18	14.37
Physical therapy	46.68	32.57	14.11
Speech pathology	(2)	(2)	(2)
Occupational therapy	(2)	(2)	(2)
Medical social services	(2)	(2)	(2)
Home health aide	43.24	30.17	13.07

[1] Based on a final HHA market basket inflation rate of 11.7 percent for 1980.
[2] Insufficient data—Use basic service limits for free-standing non-SMSA agencies.

TABLE VI.—JULY 1, 1980 PER VISIT LIMITS FOR FREE-STANDING HOME HEALTH AGENCIES [1]

Type of visit	Limit for SMSA location	Labor portion (69.78 pct)	Non-labor portion (30.22 pct)
Skilled nursing care	42.96	29.98	12.98
Physical therapy	42.71	29.80	12.91
Speech pathology	44.34	30.94	13.40
Occupational therapy	45.55	31.78	13.77
Medical social services	49.12	34.28	14.84
Home health aide	32.48	22.66	9.82
Non-SMSA location			
Skilled nursing care	45.05	31.44	13.61
Physical therapy	49.96	34.86	15.10
Speech pathology	48.68	33.97	14.71
Occupational therapy	57.69	40.26	17.43
Medical social services	43.75	30.53	13.22
Home health aide	31.70	22.12	9.58

[1] Based on a final HHA market basket inflation rate of 11.7 percent for 1980.

HHA Cost Reporting Periods Beginning on or after August 1, 1980. The year end adjustment factor for HHA cost reporting periods beginning on or after August 1, 1980, and before July 1, 1981, are based on a projected market basket rate for 1981 of 9.9 percent. The final 1981 HHA market basket rate of increase will not be available until the close of the first quarter of 1982. Therefore, we cannot presently determine whether revised year-end adjustment factors will be required for providers with cost reporting periods beginning on or after August 1, 1980. If appropriate, these factors will be updated and the Medicare intermediaries will be advised to use the actual rate to adjust each HHA's cost limit at the time of final cost settlement.

(Sec. 1102, 1814(b), 1861(v)(1), 1866(a) and 1871 of the Social Security Act; 42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a) and 1395hh)

(Catalog of Federal Domestic Assistance Program No. 13.733, Medicare—Hospital Insurance)

Dated: June 3, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: June 24, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-19286 Filed 7-15-82; 8:45 am]

BILLING CODE 4120-03-M

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on July 9.

Public Health Service

National Institutes of Health

Subject: Telephone Survey of Physicians to Determine Awareness of National Institutes of Health Consensus Development Program—Phase 2 Total Hip Joint Replacement—NEW.

Respondents: Physicians.

Subject: Epidemiologic Case-control Study of Soft-tissue, Sarcoma, Hodgkin's Disease, and Non-Hodgkin's Lymphoma in Kansas—NEW.

Respondents: Individuals.

Subject: Evaluation of the Impact of the Coronary Prevention Risk Factor Trial and the Multiple Risk Factor Trial—NEW.

Repondents: Physicians.

Subject: Study of Mesothelioma and Employment—NEW.

Respondents: Individuals and households.

OMB Desk Officer Richard Eisinger.

Social Security Adminstration

Subject: Monthly Statistical Report on Recipients and Payments Under State Administered Assistance Programs for Aged, Blind and Disabled Recipients (SSA-9741)—EXTENSION.

Respondents: State or local governments.

Subject: Claims for Payment of Vocational Rehabilitation Services—NEW.

Respondents: State or local governments/businesses or other institutions.

OMB Desk Officer: Milo Sunderhauf.

Health Care Financing Administration

Subject: Request for Redetermination of Medicare Part A Benefits (HCFA–2649)—EXTENSION/NO CHANGES.

Respondents: Individuals and businesses.

OMB Desk Officer: Fay S. Iudicello.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to both the HHS Reports Clearance Officer and the appropriate OMB Desk Officer designated above at the following addresses:

J. J. Strnad, HHS Reports Clearance Officer, Hubert H. Humphrey Building, Room 524–F, Washington, D.C. 20201.

OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, D.C. 20503, Attn: (name of OMB Desk Officer).

Date: July 9, 1982.

Dale W. Sopper,

Assistant Secretary for Management and Budget.

[FR Doc. 82–19285 filed 7–15–82; 8:45 am]

BILLING CODE 4150–04–M

Social Security Administration

Income Maintenance Demonstrations; Urban Error Prone Profile Demonstration; Availability of Grants

The Commissioner of Social Security gives notice of availability of fiscal year (FY) 1982 funds for an income maintenance demonstration grant related to Title IV–A of the Social Security Act. The grant is authorized under Section 1115(a) of the Social Security Act. The closing date for receipt of all applications is August 13, 1982.

Project Purpose

The Demonstration project is intended to demonstrate the use of an urban error prone profile system to improve administration and to reduce errors in connection with eligibility determinations and redeterminations.

Project

This announcement is for one project as follows:

Urban Error Prone Profile Demonstration—SSA–82–1.

This project provides for the development of statistical error prone profiles which assign high or low error probabilities for AFDC cases. Error prone profiles are to be developed for a large metropolitan area. The profiles are to be used to improve administration and to reduce errors in connection with eligibiliy determinations and redeterminations. An evaluation with control groups is required for this project. This would entail a true random experiment between control and experiment groups (e.g., different offices or randomly selected cases). It is anticipated that there will be one (1) project for a two-year period. For the initial year, the grant will be up to $130,000 in special Federal project funds which may be matched with $130,000 in regular Federal funds. An equal amount is anticipated for the second year. The initial grant award will be funded for 12 months and a successive 12-month grant will also be funded depending upon the availability of funds and satisfactory performance.

Unsolicited Projects Initiated by States

Applicants may also submit proposals for projects requiring special Federal project funds other than the one specifically identified in this announcement but which are relevant to the AFDC program. These applications will be designated as nonpriority due to fund limitations, but they 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. Grant awards would be made in September 1982. Criteria for judging these projects are identified below.

Eligible Applicants

Section 1115(a) Grants. Only Title IV–A State agencies may apply for grants under Section 1115(a) authority.

The Application Process

1. *Availability of application forms.* Application Kits which contain the prescribed application forms and supplemental descriptive project development information 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. *Additional Information.* For questions concerning project development, please contact Dr. Howard Iams, Division of Family Assistance Studies, Social Security Administration, Washington, D.C., Telephone (202) 245–9657.

3. *Application submission.* To be considered for a Section 1115(a) grant, 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 and to assume for the agency 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 this announcement and must reference the unique project identifier (SSA–82–1) if the application is for the urban error profile demonstration.

4. *Grantee share of the project costs.* Special Federal project funds received under Section 1115(a) are available to be used as the single State agency matching funds to obtain regular Federal funds. State agencies conducting Section 1115 projects are expected to contribute some of the project costs for each year the project is funded. Generally, five (5) percent of the total cost is considered acceptable. No grant will be awarded which will cover 100 percent of project costs.

5. *Application consideration.* Applications are initially screened for relevance to SSA's interest in demonstrating urban error prone profiles (or other AFDC program goals if an unsolicited project). Irrelevant applications are returned to the applicant. Relevant applications are reviewed and evaluated by a review panel of not less than three experts. Written assessments of each application is made by the review panel.

6. *Application approval.* Following approval of an application selected for funding, a financial assistance award will be issued within limits of Federal funds available. The grant award 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 terms and conditions of the award, the budget period for which support is given, the total project period for which support is contemplated, and the total grantee financial participation.

Criteria for Review and Evaluation of Applications

Solicited and unsolicited applications will be reviewed and evaluated against the following criteria:

1. *Demonstration Design.* Responsiveness to the specified nature of the project and the required technical approach to be used (if applicable). (15 points)

2. *Knowledge.* Knowledge of the field, and literature. (20 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? (10 points)

4. *Experience.* Prior experience in the branch of technology or field involved. (20 points)

5. *Relevance.* Relevance of proposal to this grant's purposes. (15 points)

6. *Personnel, Budget, and Facilities.* Availability and competence of personnel. Completeness and adequacy of the budget presentation for the project. Are costs reasonable considering the anticipated tasks? Availability of necessary facilities, equipment, convenient location, etc. (10 points)

7. *Utilization.* Probability of implementation possibilities—national State, or local, etc. (10 points)

Projects which require waivers of Section 402 of the Social Security Act must list the required waivers by subsection of the Social Security Act, discuss the implications of granting the waivers and state the effect on beneficiaries participating in the project.

Closing Dates and Times

The closing date for receipt of applications in response to this announcement 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 mail) no 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 first class mail 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. These programs are not covered by the requirements of OMB Circular A–95.

(Catalog of Federal Domestic Assistance Program No. 13.812—Assistance Payments—Research/Demonstrations)

Dated: July 12, 1982.

John A. Svahn,

Commissioner of Social Security.

[FR Doc. 82–19284 Filed 7–15–82; 8:45 am]

BILLING CODE 4190–11–M

Social Security Administration, Office of Refugee Resettlement

Grant Announcement; Corrections

Correction Notice: Volume 47, No. 128, Friday, July 2, 1982; Annoucement of Availability of Grant Funds for (1) Demonstration Projects to Involve Community and Corporate Business Leadership Effectively in Refugee Job Development and Job Placement Programs, p. 29008; and (2) Technical Assistance to Mutual Assistance Associations in Business Development and Business Management, p. 29011.

Section IV, entitled *A–95 Notification Process* should in each notice read:

"Applications submitted in response to this notice are subject to review by State and areawide clearinghouses under the procedures outlined in Part I of Office of Management and Budget (OMB) Circular No. A–95."

Phillip N. Hawkes,

Director, Office of Refugee Resettlement, Social Security Administration, Human Services.

July 12, 1982.

[FR Doc. 82–19310 Filed 7–15–82; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Draft Supplemental Environmental Impact Statement for the Prototype Oil Shale Leasing Program

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the draft environmental impact statement for public review.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, notice is given that the BLM has prepared a draft supplemental environmental impact statement (EIS) to consider the leasing of up to two additional tracts of federal oil shale reserves under the prototype leasing program. Both proposed tracts lie in Rio Blanco County, Colorado.

DATES: Written comments on the draft supplemental EIS will be accepted on or before Tuesday, September 7, 1982. Public hearings to accept written comments and to receive testimony will be held:

Tuesday, August 24, 1982 at 2:00 p.m. at the Ramada Inn Foothills in Denver, Colorado;

Wednesday, August 25, 1982 at 7:00 p.m. at the Fairfield Center, 200 Main Street, Meeker, Colorado; and

Thursday, August 26, 1982 at 7:00 p.m. at the Ramada Inn, Grand Junction, Colorado.

ADDRESSES: Written comments should be sent to: EIS Team Leader, White River Resource Area, Bureau of Land Management, P.O. Box 928, Meeker, Colorado 81641.

Single copies of the draft supplemental EIS may be obtained from the address above and from:

Bureau of Land Management, Craig District Office, P.O. Box 248, 455 Emerson Street, Craig, Colorado 81625.

Bureau of Land Management, Colorado State Office, 1037 20th Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: John Singlaub, EIS Tea Leader, White River Resource Area, Bureau of Land Management, P.O. Box 928, Meeker, Colorado 81641, (303) 878–3601.

SUPPLEMENTARY INFORMATION: In 1973, the BLM issued the Final EIS for the Prototype Oil Shale Leasing Program. Following completion of that EIS, six prototype oil shale tracts were offered by BLM for lease. Four of the six tracts were leased: two in Utah and two in Colorado.

The BLM is now considering completion of the leasing phase of the prototype program in order to expand the range of technologies available.

The draft supplemental EIS analyzes the environmental and socioeconomic impacts that would result from the leasing and development of up to two proposed additional prototype oil shale tracts, both lying in Rio Blanco County, Colorado. In addition, the EIS analyzes the cumulative regional environmental and socioeconomic impacts of three levels of production using three distinct oil shale technologies.

Public comments on the draft supplemental EIS are being sought before preparing the final supplemental EIS and should be sent to the EIS Team Leader at the address above. All comments on the draft EIS, whether written or oral, which are received by September 7, 1982, will receive equal

consideration in the preparation of the final EIS.

A series of public hearings have been scheduled to accept written and/or oral comments on the draft statement. The public hearings are described above.

Those individuals wishing to testify at the public hearings should notify, in writing, the EIS Team Leader at the address listed above by Thursday, August 19, 1982. This notification should identify the organization that is being represented (if speaking for an organization), which hearing the speaker wishes to testify at, and should be signed by the individual who will be testifying. The cutoff date is necessary so that a witness list can be prepared on the day before the first public hearing.

Only one witness will be allowed to represent the views of a single organization. However, if a member of an organization wishes to speak as a private citizen, the testimony will be permitted. Speakers will be heard in the order set forth on the witness list. After the last listed speaker has been heard, if time permits, any person present who wishes to testify may do so.

At the public hearings on the draft EIS, oral testimony of ten minutes duration will be accepted from each witness in lieu of, or in addition to, any written comments. The complete text of prepared remarks should be filed at the hearing and will be included as part of the hearing record regardless of whether or not the speaker completes those remarks in the allotted ten minutes.

Copies of the draft EIS are available for inspection at the following locations:

Bureau of Land Management, Public Affairs, Interior Building, 18th and C Streets, N.W., Washington, D.C. 20240.

Bureau of Land Management, Colorado State Office, 1037 20th Street, Denver, Colorado 80202.

Bureau of Land Management, Craig District Office, P.O. Box 248, 455 Emerson Street, Craig, Colorado 81625.

Bureau of Land Management, White River Resource Area, P.O. Box 928, Meeker, Colorado 81641.

Dated: July 2, 1982.

Bob Moore,

Bureau of Land Management, Associate Colorado State Director.

[FR Doc. 82-18970 Filed 7-15-82; 8:45 am]

BILLING CODE 4310-84-M

[M 55149]

Montana; Realty Action—Exchange

Correction

In FR Doc. 82-15149 appearing on page 24451 in the issue of Friday, June 4, 1982, make the following correction:

On page 24451, bottom of the first column, "Sec. 33, E½SE¼ and SW¼" should have read "Sec. 33, E½SW¼ and SE¼".

BILLING CODE 1505-01-M

[UT-910-4310-84]

Utah; Call for Expression of Interest for Combined Hydrocarbon Leasing/ Notice of Intent To Conduct a Planning Amendment

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Call for expression of interest for combined hydrocarbon (tar sands) leasing and notice of intent to conduct a planning amendment.

FOR FURTHER INFORMATION CONTACT: Ronald Bolander or Earl Hindley, Utah State Office, BLM, 136 East South East Temple, Salt Lake City, Utah 84111, Telephone (801) 524-4257.

DATE: Responses to this notice will be accepted until August 31, 1982.

ADDRESS: Responses should be sent to State Director (U-930), Bureau of Land Management, University Club Building, 136 South Temple, Salt Lake City, Utah 84111. Proprietary data should be sent to Donald C. Alvord, District Supervisor for Resource Evaluation, 1745 West 1700 South, Room 2070, Salt Lake City, Utah 84104.

SUMMARY: This twofold notice is to first announce a call for expressions of interest for possible combined hydrocarbon leasing within certain special tar sand areas in Utah. Expressions of Interest may be made for areas of leasing interest or for identification of areas which should not be leased. Expressions of leasing will not be accepted on lands (1) currently under an oil and gas lease, (2) within Capital Reef or Canyonlands National Parks, (3) where known oil shale placer claims exist, (4) where mineral patent applications are known to exist, and (5) within the Ashley National Forest. The data received from this call will be used along with existing information to delineate tracts which would be considered for possible competitive leasing.

The second purpose of this notice is to announce BLM's intent to conduct a statewide planning amendment/ environmental impact statement to consider combined hydrocarbon leasing in several planning areas in Utah.

SUPPLEMENTARY INFORMATION:

A. Call for Expressions of Interest

This is to advise all interested parties that the official call for expressions of interest in Federal combined hydrocarbon leasing is now in effect for possible competitive leasing sales beginning in May, 1984. Expressions of interest will be accepted for lands not currently under an oil and gas lease where the Federal Government owns the tar sand deposits in the following special tar sand areas:

Special tar sand area	*BLM resource area*
Asphalt Ridge—White Rocks	Diamond Mountain.
Pariette	Diamond Mountain.
Argyle Canyon	Diamond Mountain.
Sunnyside	Diamond Mountain and Price River.
San Rafael Swell	San Rafael.
Tar Sand Triangle	Henry Mountain.
Circle Cliffs	Escalante.
White Canyon	San Juan.

A call for expressions of interest in the P.R. Springs, Hill Creek and Raven Ridge—Rimrock special tar sand areas will be made at a later date.

Maps which indicate the areas open for expressions of interest may be obtained by contacting Ronald Bolander or Earl Hindley in the BLM Utah State Office at the location indicated above. If oil shale placer claims or mineral patent applications are found on expressed areas these tracts will be deleted from leasing consideration.

This call for expressions of interest is the first step in the planning process which will lead to a planning amendment/EIS to consider site specific tract analysis and cumulative impacts of various leasing alternatives.

A major purpose of this call for expressions of interest is to integrate potential lessees' data with the process of delineating the logical tracts which will be considered prior to a lease sale. The BLM hopes to gain sufficient information from this call, as well as from its own site specific analyses, to identify areas which should not be leased as well as areas in which data are of sufficient detail to ultimately make a fair market value determination on specific tracts. It is important to note that availability of data will be an important factor in delineating tracts most likely to receive consideration for leasing.

An expression of leasing interest is not an application. The size and/or location of a proposed tract as indicated by an expression of interest may be

modified or changed if there is sufficient reason to do so. Examples of the types of concerns that may make such action necessary include: the competitive nature of the tract, access needs, mining efficiency, future development potential, resource conservation, State preferences, and environmental concerns.

Leases on or encompassing lands within the Glen Canyon National Recreation Area will be subject to agency specific surface and public protection requirements which conform to National Park Service Legislative mandates.

Those wishing to express areas of leasing interest should include the following data:

1. *Location*—Delineations should be made on a map suitable with a scale not less than ½ inch to the mile and accompanying narrative description.
2. *Extraction Technology*—List the primary and alternative technological development preferences on a general basis (not a detailed plan).
3. *Quality and Quantity*—Estimates of the quality and quantity of the tar sand resource and economic value within the expression area.
4. *Projected Production.*
5. *Transportation Needs*—Include existing and proposed facilities (i.e., pipelines, roads, etc.).
6. *Projected Impacts*—Include anticipated environmental and socio-economic impacts and anticipated mitigating measures.
7. *Other Pertinent Information.*

Data which are considered proprietary should be submitted directly to: Donald C. Alvord, District Supervisor for Resource Evaluation, 1745 West 1700 South, Room 2070, Salt Lake City, Utah 84104, any propriety data submitted to MMS at the above address will be held confidential.

For those wishing to express interest in non-development areas the following information should be included:

1. *Location*—Delineations should be made on suitable map with a scale not less than ½ inch to the mile accompanied with a narrative description.
2. *Reasons for Non-development.*
3. *Other Pertinent Information.*

B. Notice of Intent To Conduct Planning Amendment

In accordance with 43 CFR 1601.3, notice is given that the Bureau of Land Management intends to complete a planning amendment and environmental impact statement to consider combined hydrocarbon (tar sand) leasing in several districts in Utah. The amendment/EIS will consider site specific tract analysis and a cumulative impact analysis of various leasing combinations.

One amendment/EIS will be completed combining leasing proposals in the following districts and resource areas:

Cedar City District, Escalante R.A.
Richfield District, Henry Mountain R.A.
Moab District, San Juan R.A., Price River R.A., San Rafael R.A.
Vernal District, Diamond Mountain R.A.

The general issues related to combined hydrocarbon leasing which have been identified at this time include: (1) Impacts to natural resource values, (2) impacts to the social and economic structures to local communities, and (3) impacts to wilderness values.

Disciplines to be represented on the interdisciplinary teams preparing the amendment/EIS may be range, minerals, wildlife, archaeology, land use planning, socio-economics, hydrology, recreation and wilderness.

Public input is invited to identify additional issues related to the combined hydrocarbon leasing amendment. Comments will be accepted until August 31, 1982. Other public participation activities will be conducted in accordance with 43 CFR Part 1601. Dates, times, and locations will be announced through local media and mailings to interested parties.

Documents relative to the planning amendment/EIS process may be reviewed at any of the following district offices during regular office hours.

Cedar City District, 1579 North Main Street, Cedar City, Utah 84720.
Richfield District, 150 East 900 North, Richfield, Utah 84701.
Moab District, 125 West Second South Main, Moab, Utah 84532.
Vernal District, 170 South 500 East, Vernal, Utah 84078.

Dated: July 6, 1982.

Roland G. Robison,

State Director.

[FR Doc. 82-18801 Filed 7-15-82; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

Upper Colorado Region; Non-Federal Power Sharing Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Reclamation announces a public information meeting on ways non-Federal developers can share in the construction and use of two proposed Federal power projects—Diamond Fork near Spanish Fork, Utah; and Ridgway, near Ridgway, Colo.

DATE: The meeting will be held at 10 a.m., Tuesday, July 20, 1982.

ADDRESS: The meeting will be held in the Harvest Room of the Hilton Hotel in Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Upper Colorado Regional Power Supervisor Arlo Allen at (801) 524–5299, or Team Leader Marvin Hein at (801) 524–5289. Media inquiries should contact Upper Colorado Regional Public Affairs Officer Kathy Loveless at (801) 524–5403.

SUPPLEMENTARY INFORMATION: The Diamond Fork powerplant facility will have an anticipated capacity of over 1,000 megawatts, while Ridgway is expected to have 4.2 megawatts. The public information meeting is being held to discuss some of the alternative ways non-Federal developers can join with the Bureau of Reclamation and jointly develop each project. There is great flexibility in considering proposals, with the sole exception that the new generating units would be integral parts of water resource development projects and therefore, must be operated to meet the overall multi-purpose needs.

Clifford Barrett,

Regional Director.

July 6, 1982.

[FR Doc. 19174 Filed 7-15-82; 8:45 am]

BILLING CODE 4310-09-M

Bureau of Land Management

Roseburg Timber Management Draft Environmental Impact Statement; Public Hearing

A public hearing will be held August 18, 1982 to accept oral testimony and/or submission of written comments regarding the adequacy of the Roseburg Timber Management Draft Environmental Impact Statement.

The hearing will be in the Roseburg District auditorium, 777 NW Garden Valley Blvd., Roseburg, OR 97470 at 2 p.m. and 7 p.m.

The EIS has been assigned control number 820408 by EPA, Office of Federal Activities, and the BLM Notice of Availability was published in the **Federal Register** on June 24, 1982, page 27413.

Dated: July 8, 1982.

Robert A. Smith,

Acting District Manager.

[FR Doc. 82-19255 Filed 7-15-82; 8:45 am]

BILLING CODE 4310-84-M

Salt Lake District, Utah; District Grazing Advisory Board Meeting

July 9, 1982.

AGENCY: Bureau of Land Management, Salt Lake District, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Public Law 92–463 that a meeting of the Salt Lake District Grazing Advisory Board will be held on August 11, 1982. The meeting will begin at 10:00 a.m. at the BLM Conference Room at 2370 South 2300 West, Salt Lake City, Utah 84119. The purpose of the meeting will be to give advice and recommendation on the expenditure of FY–83's Range Improvement monies. The meeting is open to the public. Interested persons may make oral statements at 10:00 a.m. on August 11, 1982 at the BLM office, or file written statements for the board's consideration. Anyone wishing to make oral statements must notify the District Manager, 2370 South 2300 West, Salt Lake City, Utah 84119 by August 3, 1982. The District Manager may establish a time limit for each person.

John H. Stephenson,

Acting District Manager.

[FR Doc. 82-19256 Filed 7-15-82; 8:45 am]

BILLING CODE 4310-84-M

[W-055790, W-055807, and W-057669]

Wyoming; Notice of Termination of Proposed Withdrawal and Reservation of Lands

Notice of Bureau of Reclamation applications, W–055790, W–055807 and W–057669, for withdrawal and reservation of lands for reservoir purposes and development under reclamation law in connection with the Flaming Gorge Unit—Colorado River Storage Project, was published as FR Doc. No. 59–6905, on page 6788 of the issue for August 20, 1959. The applicant agency has cancelled its applications in their entirety affecting the following described lands.

Sixth Principal Meridian, Wyoming

T. 17 N., R. 106 W.,
- Sec. 4, lot 1;
- Sec. 6, lots 8 to 24, inclusive, (all);
- Sec. 8, W½ of lot 3, lot 4;
- Sec. 20, lots 1, 2, 4, 5, and the S½ of lot 3;
- Sec. 30, lots 5, 6, 9, to 13, inclusive, 16, 17, and the W½ of lot 7, NE¼NE¼;
- Sec. 32, W½W½NW¼, NW¼SW¼.

T. 12 N., R. 107 W.,
- Sec. 18, lots 6, 7, 8, SE¼NW¼, E½SW¼;
- Sec. 19, lots 6 to 10, inclusive, E½NW¼, NW¼SW¼.

T. 13 N., R. 107 W.,
- Sec. 6, lots 3 to 7, inclusive, SE¼NW¼, E½SW¼;
- Sec. 7, lots 1 to 4, inclusive, E½W½;
- Sec. 18, lots 1 to 4, inclusive, E½W½;
- Sec. 19, lots 1 to 4, inclusive, E½, E½W½ (all);
- Sec. 30, lots 1 to 4, inclusive, E½, E½W½ (all);
- Sec. 31, lots 1 to 4, inclusive.

T. 14 N., R. 107 W.,
- Sec. 18, lots 1 to 4, inclusive, E½W½;
- Sec. 19, lots 1 to 4, inclusive;
- Sec. 31, lots 1 to 4, inclusive, E½, E½W½.

T. 15 N., R. 107 W.,
- Sec. 4, W½ of lot 3, lot 4, N½SW¼NW¼, NW¼SE¼NW¼;
- Sec. 8, NE¼NE¼, E½NW¼NE¼.

T. 16 N., R. 107 W.,
- Sec. 2, lot 8, W½SW¼;
- Sec. 10, lots 1 to 7, inclusive, SW¼SE¼;
- Sec. 12, lot 1, S½NW¼SW¼;
- Sec. 14, lots 1 to 6, inclusive, W½NE¼, N½NW¼, E½SE¼NW¼, E½E½SE¼;
- Sec. 22, lots 1 to 8, inclusive, N½NE¼, NE¼NW¼, SE¼SE¼;
- Sec. 26, W½W½NE¼NE¼, NW¼NE¼, N½NW¼;
- Sec. 30, S½S½SE¼;
- Sec. 32, lots 1 to 8, inclusive, SE¼NE¼;
- Sec. 34, lots 1 to 3, inclusive, N½NW¼NE¼, SW¼NW¼NE¼, SE¼NW¼, N½NW¼SW¼.

T. 17 N., R. 107 W.,
- Sec. 24, E½E½.

T. 12 N., R. 108 W.,
- Sec. 1, W½W½W½;
- Sec. 2, lots 1 to 16, inclusive, S½NE¼, SE¼NE¼, N½SE¼;
- Sec. 3, lots 5 to 9, inclusive, W½NE¼, W½, W½SE¼, SE¼SE¼;
- Sec. 4, N½, N½S½;
- Sec. 5, NE¼;
- Sec. 10, lots 1, 2, 3, N½, SW¼, N½SE¼;
- Sec. 11, lots 1 to 9, inclusive, NW¼, NE¼SE¼, S½SE¼;
- Sec. 12, W½W½W½;
- Sec. 13, S½N½, W½NW¼NW¼, S½;
- Sec. 14, lot 1, N½, N½SW¼, SE¼SW¼, SE¼;
- Sec. 15, lots 1 to 10, inclusive, SE¼NE¼, W½NW¼, SW¼;
- Sec. 19, lot 9, 10, E½SW¼;
- Sec. 20, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
- Sec. 21, All;
- Sec. 22, lots 5 to 14, inclusive, N½NW¼;
- Sec. 23, lots 5, 6, 7, E½, E½W½, SW¼SW¼;
- Sec. 24, lot 5, N½, SW¼, N½SE¼, SW¼SE¼;
- Sec. 25, lots 1, 2, 3;
- Sec. 26, lots 1 to 4, inclusive;
- Sec. 28, lots 1 to 4, inclusive;
- Sec. 29, lots 1 to 4, inclusive;
- Sec. 30, lots 1 to 4, inclusive.

T. 13 N., R. 108 W.,
- Sec. 1, lots 1 to 4, inclusive, S½N½, S½ (all);
- Sec. 2, lots 1 to 10, inclusive, SW¼NW¼, SW¼ (all);
- Sec. 3, lots 1 to 4, inclusive, S½N½, S½ (all);
- Sec. 4, lots 1 to 4, inclusive, S½N½, SE¼;
- Sec. 9, NE¼;
- Sec. 10, All;
- Sec. 11, lots 1 to 5, inclusive, W½, W½SE¼, SE¼SE¼;
- Sec. 12, lots 1 to 7, inclusive, NE¼, N½NW¼, SW¼SW¼;
- Sec. 13, lots 1, 4, 5, 6, 7, 8, N½NW¼, SW¼NW¼, NW¼SW¼, SW¼SE¼, E½SE¼;
- Sec. 14, all;
- Sec. 15, all;
- Sec. 21, E½;
- Sec. 22, all;
- Sec. 23, lots 1, 2, 5, 6, NW¼NE¼, NW¼, W½SW¼, SE¼SE¼;
- Sec. 24, NE¼, SE¼NW¼, S½;
- Sec. 25, lot 1, lots 4 to 9, inclusive, N½N½, SE¼NE¼, SW¼SW¼, SE¼SE¼;
- Sec. 26, lots 2, 3, 4, 5, 7, 8, 9, 10, W½NW¼, NW¼SW¼, S½S½;
- Sec. 27, all;
- Sec. 28, E½;
- Sec. 32, SE¼;
- Sec. 33, E½, SW¼;
- Sec. 34, lot 1, N½, SW¼, W½SE¼, NE¼SE¼ (all);
- Sec. 35, lots 1 to 8, inclusive, NW¼NE¼, NW¼, NW¼SW¼, S½SE¼.

T. 14 N., R. 108 W.,
- Sec. 1, lot 5, S½N½, N½NW¼, SE¼NW¼, SE¼;
- Sec. 2, lots 3 to 8, inclusive, S½N½, SW¼SW¼;
- Sec. 3, lots 1 to 7, inclusive, S½NE¼, SW¼SW¼, E½SW¼, SE¼;
- Sec. 4, lots 1 to 13, inclusive, SW¼NE¼, S½NW¼;
- Sec. 5, lots 1 to 7, inclusive, E½ of lot 8, S½NE¼, E½SE¼NW¼, E½NE¼SW¼;
- Sec. 6, lots 1 and 2;
- Sec. 8, lots 1 to 3, inclusive, SW¼NE¼, NW¼, S½;
- Sec. 9, lots 1 to 9, inclusive, NE¼, NE¼NW¼, SW¼SW¼;
- Sec. 10, lots 1 to 8, inclusive, NW¼NE¼, N½NW¼, SW¼NW¼, S½SE¼, NE¼SE¼;
- Sec. 11, lots 1 to 5, inclusive, SW¼;
- Sec. 12, lots 1, 4, 5, 8, 9, NE¼, E½SE¼;
- Sec. 13, lots, 1, 2, 4, 5, E½, SW¼NW¼, E½SW¼;
- Sec. 14, lots 3, 4, W½;
- Sec. 15, all;
- Sec. 16, N½;
- Sec. 17 N½;
- Sec. 22, all;
- Sec. 23, lot 1, SW¼NE¼, W½, W½SE¼, SE¼SE¼;
- Sec. 24, lots 2, 3, 4, 8, E½, E½NW¼;
- Sec. 25, lots 1, 5, 6, 7, E½NE¼, SE¼SW¼, SW¼;
- Sec. 26, lots 3 to 8, inclusive, N½;
- Sec. 27, all;
- Sec. 33, S½;
- Sec. 34, all;
- Sec. 35, lots 1 to 8, inclusive, NE¼.

T. 15 N., R. 108 W.,
- Sec. 2, lots 1 to 4, inclusive, S½N½, S½ (all);
- Sec. 4, lots 1 to 4, inclusive, S½N½, S½ (all);
- Sec. 10, E½NE¼, N½NE¼SE¼;
- Sec. 12, lots 1 to 8, inclusive, E½NE¼, SW¼NE¼, SW¼SW¼, E½SE¼;
- Sec. 14, E½, E½W½, W½SW¼;
- Sec. 22, lots 1, 2, N½NE¼, NW¼, W½SW¼;
- Sec. 24, lots 2, 3, 4, SE¼NW¼, SW¼;
- Sec. 26, lots 1, 3, 4, 5, W½NW¼, S½;
- Sec. 27, lot 7, SE¼SW¼;
- Sec. 28, lots 1, 2, NE¼, SW¼, W½SE¼, NE¼SE¼;
- Sec. 30, lots 2, 3, 4, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
- Sec. 31, E½;
- Sec. 32, all;
- Sec. 33, lots 1, 2, 4, W½;
- Sec. 34, lots 1, 2, 3, N½, E½SW¼, SE¼.

T. 16 N., R. 108 W.,

Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, W½SW¼, SE¼;
Sec. 8, W½, W½SE¼;
Sec. 16, N½;
Sec. 18, lot 1, N½NE¼;
Sec. 20, E½, E½E½W½;
Sec. 22, W½E½E½, W½, S½S½SE¼;
Sec. 26, W½;
Sec. 28, E½;
Sec. 34, all.
T. 17 N., R. 108 W.,
Sec. 32, all.
T. 12 N., R. 109 W.,
Sec. 20, lot 10;
Sec. 24, lots 1 and 2, lots 5 to 8, inclusive, E½SE¼;
Sec. 25, lots 1, 2.
T. 16 N., R. 109 W.,
Sec. 12, S½S½SE¼

The areas described aggregate 50,112.64 acreas in Sweetwater County, Wyoming.

Therefore, pursuant to the regulations contained in 43 CFR 2310.2–1, such lands, at 10 a.m. on August 16, 1982, will be relieved of the segregative affect of the above mentioned applications.

The lands are within the Flaming Gorge National Recreation Area established by Pub. L. 90–540 of October 1, 1968 and are subject to the provisions of said law.

Maxwell T. Lieurance,

State Director.

[FR Doc. 82–19257 Filed 7–15–82; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

Louisiana; Application; Natural Gas Pipeline Right-of-Way

Notice is hereby given that under Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185) as amended by Pub. L. 93–153, Texas Gas Transmission Corporation has applied for a 12¾ inch natural gas pipeline right-of-way that will cross the following lands:

Louisiana Meridian

T. 12 S., R. 4. W.,

Sec. 20.

This pipeline will convey natural gas across one quarter mile of the Lacassine National Wildlife Refuge, Cameron Parish, Louisiana.

The purpose of this notice is to inform the public that the United States Fish and Wildlife Service will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so within thirty (30) days and send their name and address to the Regional Director, United States Fish and Wildlife Service, 75 Spring Street, S.W., Atlanta, Georgia 30303–3376.

Dated: July 7, 1982.

Walter O. Stieglitz,

Acting Regional Director.

[FR Doc. 82–19411 Filed 7–15–82; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

California Desert District; Chuckwalla Valley Dune Thicket Area of Critical Environmental Concern (ACEC)

AGENCY: Bureau of Land Management, Interior.

ACTION: Partial Closure of ACEC to Vehicle Use.

SUMMARY: The closure is being implemented to protect significant and sensitive wildlife values from inadvertent damage caused by vehicle use. The authorities for the management plan's vehicle closure are 43 CFR 80000.0–6, 8340, 8341, 8342, 8364, the Federal Land Policy and Management Act of 1976, the National Environmental Policy Act of 1969, and the Sikes Act of 1974. The area affected by this designation is the Chuckwalla Valley Dune Thicket ACEC. The ACEC contains approximately 2000 acres of BLM managed public land in Riverside County, California. The designation is a result of a management plan for the ACEC which included public involvement. The ACEC management plan was developed following the guidelines established for the area in the California Desert Conservation Area Plan.

DATE: Effective September 1, 1982.

ADDRESS: Send inquiries to Area Manager, Indio Resource Area, 3623 H101 Canyon Crest Drive, Riverside, California 92507. The ACEC Management Plan and public comments received will be available for public review at the above address from 8:00 a.m.–4:15 p.m. on regular working days.

FOR FURTHER INFORMATION CONTACT: Faye J. Davis at the above address or (714) 351–6663.

Under the authority provided in the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), E.O. 11644 (Use of Off Road Vehicles on Public Lands), and the Sikes Act of 1974.

Vehicle Use

1. Vehicles will not be allowed in the dune system or adjacent thicket. The area will be clearly signed. A map of the closed area is available for review at the Indio Resource Area Office, 3623 H–101 Canyon Crest Drive, Riverside, California. Copies of the map are available upon request from the same address.

2. Access in the ACEC outside of the dune system and thicket will be allowed only on existing roads.

The purpose of these regulations is to minimize conflicts between vehicle use in the area and protection and enhancement of wildlife values. The public lands within the ACEC will remain open to other resource uses not in conflict with the objectives of the ACEC management plan. Administrative access by vehicle into areas closed to vehicle access for BLM personnel, BLM contractors, licensees, permittees, lessees, and all other Federal, State and County employees is allowed when on official duty and when cleared beforehand by the authorized officer. Permission to enter areas closed to vehicular use by other people is subject to approval by the authorized officer.

Effective Date: September 1, 1982.

Signed at Riverside, California on July 6, 1982.

Gerald E. Hillier,

District Manager, California Desert District, Bureau of Land Management.

[FR Doc. 82–19405 Filed 7–15–82; 8:45 am]

BILLING CODE 4310–84–M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Atlantic Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of environmental documents prepared for OCS mineral exploration proposals on the Atlantic OCS.

SUMMARY: The Minerals Management Service (MMS) in accordance with Federal regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related environmental assessments (EA's) and findings of no significant impact (FONSI's), prepared by the MMS for the following oil and gas exploration activities proposed on the Atlantic OCS. This listing includes all proposals for lease operations for which environmental documents were prepared by the Atlantic OCS Region in the 3-month period preceding this Notice.

Operator/activity	Location	FONSI date
Tenneco/Unit Exploration Plann.	OCS Blocks 598, 599, 642 & 643 (103 miles East of Atlantic City, N.J., Mid-Atlantic).	5/05/82
Mobil/Exploration Plan.	OCS Blocks 267, 310, 311, 353, 354 & 397 (115 miles E.S.E. of Nantucket Island, MA., North Atlantic).	5/28/82
Tenneco/ Exploration Plan.	OCS Block 172 (105 miles E.S.E. of Nantucket Island, MA., North Atlantic).	6/17/82
Chevron/ Exploration Plan.	OCS Block 510 (42 miles E.N.E. of Cape Hatteras, N.C., South Atlantic).	7/09/82

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Atlantic OCS are encouraged to contact the appropriate offices in the Atlantic OCS Region.

FOR FURTHER INFORMATION CONTACT:
Deputy Minerals Manager, Offshore Field Operations, Atlantic OCS Region, Minerals Management Service, Tyson's Beltway Office Centre, Suite 601, 1951 Kidwell Drive, Vienna, Virginia 22180, (703) 285–2169, FTS–8–285–2169.
District Supervisor, North Atlantic District, Atlantic OCS Region, Minerals Management Service, Mary Dunn Road, Barnstable Municipal Airport/East Ramp, Hyannis, Massachusetts 02601, (617) 771–8506.
District Supervisor, Mid-Atlantic District, Atlantic OCS Region, Minerals Management Service, Mainland Professional Plaza, 515 Tilton Road, Northfield, New Jersey 08225, (609) 641–7966, FTS–8–483–4311.

FOR COPIES CONTACT: Records Management Section, Minerals Management Service, Tyson's Beltway Office Centre, Suite 601, 1951 Kidwell Drive, Vienna, Virginia 22180, (703) 285–2191, FTS–8–285–2191.

There will be a charge for the reproduction of these documents.

SUPPLEMENTARY INFORMATION: The Minerals Management Service prepares EA's and FONSI's for proposals which relate to exploration for oil and gas resources on the Atlantic OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. EA's are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA regulations.

Richard B. Krahl,

Acting Minerals Manager, Atlantic OCS Region.

[FR Doc. 82–19282 Filed 7–15–82; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167 (Sub-156N)]

Conrail Abandonment Between Rives Jct and Eaton Rapids, MI; Notice of 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 Rives Jct and Eaton in the Counties of Eaton, Jackson and Ingham, MI, a total distance of 14.3 miles effective on June 11, 1982.

The Commission has decided that the net liquidation value of this line is $302,520. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line is shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–19267 Filed 7–15–82; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–167 (Sub-216N)]

Conrail Abandonment Between North Tonawanda and the End of the Line in Niagara County, NY; Notice of Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 3 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its rail line between North Tonawanda and the end of the line in the County of Niagara, NY, a total distance of 1.5 miles effective on June 11, 1982.

The Commission has decided that the net liquidation value of this line is $23,540.[1] If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–19266 Filed 7–15–82; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–167 (Sub-108N)]

Conrail Abandonment Between Frankstown and Williamsburg, 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 2 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its rail line between Frankstown and Williamsburg in the County of Blair, PA, a total distance of 10.9 miles effective on June 8, 1982.

The Commission has decided that the net liquidation value of this line is $466,707. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–19265 Filed 7–15–82; 8:45 am]

BILLING CODE 7035–01–M

[Docket AB–167 (Sub-227N)]

Conrail Abandonment in Dowingtown, PA; Notice of 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 in Dowington between milepost 0.4 and milepost 0.8 in the County of Chester, PA, a total distance of 0.4 miles effective on June 23, 1982.

The Commission has decided that the net liquidation value of this line is

[1] Since Conrail holds no interest in the land underlying the right-of-way, the purchase price reflects net salvage value only.

$46,328. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-19264 Filed 7-15-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-297N)]

Conrail Abandonment Between Brook and Bedford, PA, and Bedford and Mr. Dallas, 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 2 has issued a certificate authorizing the Consolidated Rail Corporation to abandon (1) 32.4 miles of its rail line known as the Bedford Secondary Track and (2) 6.9 miles of its line known as the Mt. Dallas Secondary Track, located in Blaine and Bedford Counties, PA, effective on June 18, 1982.

The net liquidation value of this line is $739,968. If within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-19263 Filed 7-15-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Air Products and Chemicals, Inc., Box 538, Allentown, Pennsylvania 18105.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation: (i) Air Products Transportation Company, Delaware. (ii) Catalytic Enterprises Limited, Dominion of Canada.

1. Parent corporation and address of principal office: Ashland Oil, Inc., 1000 Ashland Drive, Russell, KY 41114.

2. Wholly-owned subsidiaries which will participate in the operations and states of incorporation:

Subsidiary	Jurisdiction of incorporation
Ashland-Breckinridge, Inc	Delaware.
Ashland Chemical, Inc	Do.
Ashland Development, Inc	Do.
Ashland Ethanol, Inc	Do.
Ashland Oil and Transportation Co	Kentucky.
Ashland Petroleum, Inc	Delaware.
Ashland Pipe Line Co	Ohio.
Ashland Synthetic Fuels, Inc	Delaware.
Eastates Petroleum Company, Inc	Do.
Eastern Seaboard Petroleum Co., Inc	Florida.
Inland Towing Co	Delaware.
Lexington Pipe Line Co	Do.
Mid-Valley Supply Co	Kentucky.
Southern Oil Company of New York, Inc	New York.
Tri-State Marketing Services, Inc	Delaware.
Valvoline Oil Co	Ohio.
APAC-Alabama, Inc	Delaware.
APAC-Arkansas, Inc	Do.
APAC-Carolina, Inc	Do.
APAC-Georgia, Inc	Do.
APAC, Inc	Do.
APAC-Kansas, Inc	Do.
APAC-Mississippi, Inc	Do.
APAC-Tennessee, Inc	Do.
APAC-Texas, Inc	Do.
APAC-Virginia, Inc	Do.
MacAsphalt, Inc	Do.
MacDougald Construction, Inc	Georgia.
Magaw Construction, Inc	Indiana.
Magaw Hot Mix, Inc	Do.
Muncie Paving Asphalt, Inc	Do.
Reg X Condor, Inc	Delaware.
Scurlock Oil Co	Do.
TAP-CO, Inc	North Carolina.
United States Filter Corp.	Delaware.
Algonquin Pipe Line Co	Illinois.
Ohio River Pipe Line Co	Delaware.
Owensboro-Ashland Co	Do.
SOCO Pipeline Co	Texas.
Transport Supply Co., Inc	Do.
Blanton Marine Corp	Do.

1. Parent corporation and address of principal office: Bienenfeld Glass Corporation (Il. Corp.), 4161 South Morgan, Chicago, IL 60609.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

A. Macor Inc. (IL. Corp.), 801 North State St., Elgin, IL 60120

B. Macor Cabinetry Inc. (IL. Corp.), 801 North State St., Elgin, IL 60120

C. Macor Arch. Products (IL. Corp.), 801 North State St., Elgin, IL 60120

D. BIG Shop (IL. Corp.), 1020 North McLean, Elgin, IL 60120

E. Macor Great Lakes Inc. (Wisc. Corp.), 325 Industrial Park Rd., Deerfield, Wisc. 53531

1. The parent corporation is: James River Corporation, Tredegar Street, P.O. Box 2218, Richmond VA 23217.

2. The wholly-owned subsidiaries which will participate in the operations are as follows:

Riverside Transportation, Inc. (formerly Riverside Trucking, Co.), 802 Holly Springs Rd., Richmond VA 23224

James River Paper Co., Tredegar St., P.O. Box 2218, Richmond, Virginia 23217

James River—Rochester, Inc., Adams Division, 115 Howland Ave., Adams, Massachusetts 01220

James River—Rochester, Inc., Rochester Division, 340 Mill St., Rochester, Michigan 48663

Riegel Products Corp., Frenchtown Road, Milford, New Jersey 08848

Curtis Paper Co., Paper Mill Road, Newark, Delaware Mill, Newark, Delaware 19711

Peninsular Paper Co., Ypsilanti, Michigan Mill, 100 North Huron, Ypsilanti, Michigan 48197

James River—Fitchburg, Inc., Old Princeton Road, Fitchburg, Massachusetts 01220

*James River—Massachusetts, Inc., 701 Westminster St., Fitchburg, Massachusetts 01420

*James River—Graphics, Inc., 28 Gaylord St., South Hadley, Massachusetts 01075

James River—Otis, Inc., P.O. Box 10, Jay, Maine 04239

James River—KVP, Inc., Island Ave., Parchment, Michigan 49008

James River—Patapar, Inc., 7900 N. Radcliff St., P.O. Box 230, Bristol, Pennsylvania 19007

* James River Board and Carton Co., 243 East Paterson St., Kalamazoo, Michigan 49007

James River—Berlin/Gorham, Inc., 650 Main St., Berlin, New Hampshire 03570

James River—New Hampshire Electric, Inc., 650 Main St., Berlin, New Hampshire 03570

Paterson Services Co., 243 East Paterson St., Kalamazoo, Michigan 47007

Industrial Leaseholds, Inc., 243 East Paterson St., Kalamazoo, Michigan 47007

James River—Gilco, Inc., 28740 Glenwood, Perrysburg, Ohio 43551

Minerva Wax Paper Co., 310 Grant Blvd., Minerva, Ohio 44657

* James River—Dixie/Northern, Inc., P.O. Box 2260, Greenwich, Connecticut 06830

The above subsidiaries indicated by an asterisk (*) each have truck fleets of their own. James River—Dixie/Northern, Inc. has truck fleets operating in Neenah, Wisconsin; Darlington, South Carolina and Fort Smith, Arkansas. Also, James River—Dixie/Northern, Inc. has a private truck fleet division operating under the name of Bigbee Xpress in Meridian, Mississippi. Compensated intercorporate hauling

operations will be performed by and between the subsidiaries of James River Corporation.

1. Parent corporation and address of principal office: Northland Woodplex Inc., 5550 Hinman Road, Lockport, New York 14094.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Pontiac Industries, Inc., 5550 Hinman Road, Lockport, New York 14094
(b) Mohawk Forest Industries, Inc., Rt. No. 3, Hunt, New York 14846
(c) Bio Thermo Utilities, Inc., 5550 Hinman Road, Lockport, New York 14094

1. Parent corporation and address of principal office: The Sherwin-Williams Company, 101 Prospect Avenue, Cleveland, Ohio 44115.

2. Wholly-owned subsidiary which will participate in the operations, and State(s) of Incorporation:

(i) Contract Transportation Systems Co., a Delaware corporation
(ii) Gray Drug Fair, an Ohio Corporation
(iii) Marshall Drug Co. an Ohio Corporation
(iv) Gray Drug, Inc., an Ohio corporation
(v) GDF, Inc., a Maryland Corporation
(vi) Drug Fair, Inc., a Maryland Corporation
(vii) Drug Way, Inc., a Virginia Corporation
(viii) Drug Fair of Pennsylvania, a Pennsylvania Corporation

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-19268 Filed 7-15-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OP1-116

Decided: July 6, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 82841 (Sub-326), filed June 14, 1982. Applicant: HUNT TRANSPORTATION, INC., 10070 I St., Omaha, NE 68127. Representative: Marshall D. Becker, Suite 610, 7171 Mercy Road, Omaha, NE 68106, (402) 392-1220. 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 contracts(s) with The Bendix Corp., Aerospace-Electronics Group, of Arlington, VA, Bendix Air Tansport Avionics Div., and Bendix General Aviation Avionics Div., both of Fort Lauderdale, FL, Bendix Aircraft Brake & Strut Div., Bendix Energy Controls Div., Bendix Automotive Control Systems Group, Bendix Brake & Steering Div., and Bendix Bicycle & Ignition Components Div., all five of South Bend, IN, Bendix Communication Div., of Baltimore, MD, Bendix Electric Power Div., of Eatontown, NJ, Bendix Electrical Components Div., and Bendix Engine Products Div., both of Sidney, NY, Bendix Electrodynamics Div., of North Hollywood, CA, Continental Controls Corp., of San Diego, CA, Bendix Energy, Environment & Technology Office, of Englewood, CO, Bendix Environmental & Process Instruments Div., of Lewisburg, WV, Bendix Field Engineering Corp., Bendix Advanced Technology Center, and Bendix Process Technology Development Center, all three of Columbia, MD, Bendix Flight Systems Division, Bendix Guidance Systems Div., and Bendix Test Systems Div., all three of Teterboro, NJ, Instruments & Life Support Operations, Bendix Flight Systems Div., of Davenport, IA, Bendix Fluid Power Div., of Utica, NY, Courter, Inc., of Boyne City, MI, Mishawaka Operations, Bendix Guidance Systems Div., of Mishawaka, IN, Bendix Kansas City Div., of Kansas City, MO, Bendix Oceanics Div., of Sylmar, CA, The Bendix Corp. Automotive Group, Bendix Transportation Management Corp., Bendix Trucking Services Div., Bendix Manufacturing Systems Div., and Bendix Robotics, all five of Southfield, MI, Bendix Automotive Proving Grounds, of New Carlisle, IN, Bendix Hydraulics Div., of St. Joseph, MI, Toledo Stamping & Manufacturing Co., of Toledo, OH, and the Dubuque Div., of Dubuque, IA, Bendix Diesel Engine Controls, of Oak Park, MI, Bendix Engine Controls Div., of Newport News, VA, Bendix Engine Controls Div. (Sales Office), and Bendix Test Service Operations, both of Troy, MI, Bendix Friction Materials Div., of Troy, NY, Tennessee Plant Bendix Friction Materials Div., of Cleveland, TN, Bendix Heavy Vehicle Systems Group, of Elyria, OH, Fram Corp., of Providence, RI, Bendix Autolite Corp., of

Fostoria, OH, Bendix Automotive Aftermarket Operations, of Jackson, TN, The Bendix Corp., Bendix Warner & Swasey Finance Corp., and Midwest Machine & Tool Company, all three of Cleveland, OH, Bendix Abrasives Div., of Westfield, MA, Bendix Automation & Measurement Div., of Dayton, OH, Bendix Industrial Controls Div., of Detroit, MI, Bendix Industrial Group, of Solon, OH, Bendix Industrial Tools Div., of South Beloit, IL, Chicago Facility, Bendix Industrial Tools Div., of Chicago, IL, Bendix Machine Tool Corp., and Drillunit, Inc., both of Warren, MI, Texas Pipe Bending Co., of Houston, TX, and Warner & Swasey's Manchester Div., of Akron, OH, Gradall Div., of New Philadelphia, OH, G.A. Gray Div., of Cincinnati, OH, Grinding Machine Div., of Worcester, MA, MSC Div., of Nashville, TN, Sterling Castings Div., of Wellington, OH, Textile Machine Div., of Bessemer City, NC, Haskell-Dawes Plant Textile Machine Div., of Philadelphia, PA, Turbo Plan, of Gastonia, NC, Turning Machine Div., of Cleveland, OH, and Wiedemann Div., of King of Prussia, PA.

MC 102520 (Sub-7), filed June 28, 1982. Applicant: RIC's TRANSFER COMPANY, INC., d.b.a. RIC's TRANSFER AND 20th CENTURY DELIVERY, 3300 6th Ave. S., Seattle, WA 98134. Representative: Jim Pitzer, 15 S. Grady Way, Suite 321, Renton, WA 98055–3273, (206) 235–1111. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in WA, OR, and ID.

MC 147631 (Sub-3), filed June 25, 1982. Applicant: FRED L. WILLIAMS, d.b.a. TAOS INTERSTATE EXPRESS, P.O. Box 262, Alamosa, CO 81101. Representative: Fred L. Williams (same address as applicant). Over regular routes, transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), (1) between Costilla, NM, and Amalia, NM, over NM Hwy 196, (2) between Questa, NM, and Red River, NM, over NM Hwy 38, and (3) between Alamosa, CO, and junction U.S. Hwy 64 and NM Hwy 3, from Alamosa, CO, over U.S. Hwy 285 to junction U.S. Hwy 64, then over U.S. Hwy 64 to junction NM Hwy 3 and return over the same route, serving all intermediate points in routes (1) through (3) above.

Note.—Applicant intends to tack this authority with its existing authority.

MC 150700 (Sub-8), filed June 28, 1982 Applicant: OLIN WOOTEN TRANSPORT CO., INC., P.O. Box 731, Hazelhurst, GA 31539. Representative: Sol H. Proctor, 1191 Blackstone Bldg., Jacksonville, FL 32202, (904) 632–2300. Transporting *General commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in FL, GA, SC, NC, VA, MD, DE, NJ, NY, CT, PA, OH, WV, TN, KY, IN, IL, AL, MS, LA, and TX.

MC 154380 (Sub-1), filed June 21, 1982. Applicant: INTERMARK EXPRESS CORPORATION, 437 Broad Avenue, Palisades Park, NJ 07650. Representative: James A. Russo, P.O. Box 9005, Paramus, NJ 07652, (201) 265–3250. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in NY and NJ, on the one hand, and, on the other, points in MA, NH, RI, and CT.

MC 161531, filed June 29, 1982. Applicant: POWDER RIVER TRANSPORTATION SERVICES, INC., P.O. Box 2578, Gillette, WY 82716. Representative: Lawrence E. Lindeman, P.C., 4660 Kenmore Ave., Suite 1203, Alexandria, VA 22304, (703) 751–2441. Transporting *passengers and their baggage,* in the same vehicle with passengers, in charter and special operations, beginning and ending at points in WY and extending to points in the U.S. (except HI). CONDITION: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. 11343(A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to team 1, Room 6358.

MC 162690, filed June 28, 1982. Applicant: W & R TRUCKING, 1305 Carlton Drive, Springdale, AR 72764. Representative: George Spencer, 7 North Block, Fayetteville, AR 72701, (501) 442–0585. 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 Ozark Truck Brokers, Inc., of Springdale, AR.

Volume No. OP2–148

Decided: July 8, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 119192 (Sub-20), filed June 25, 1982. Applicant: EASTERN DELIVERY SERVICE, INC., 80 Central Ave., Bridgeport, CT 06607. Representative: Gerald A. Joseloff, 410 Asylum St., Hartford, CT 06103, 203–728–0700. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with J. C. Penney Company, Inc., of Langhorn, PA.

MC 162712, filed June 25, 1982. Applicant: ARNOLD M. SCHILAM, d.b.a. AMS TRUCKING, P.O. Box 5278–71, Santa Ana, CA 92704. Representative: Arnold M. Schilam, (Same as applicant), (714) 835–0575. Transporting *spas and hot tubs and accessories and components needed for installation* of the foregoing commodities, between points in CA, on the one hand, and, on the other points in the U.S. (except AK and HI).

Volume No. OP3–108

Decided: July 12, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 48374 (Sub-11), filed July 1, 1982. Applicant: FERNSTROM STORAGE AND VAN COMPANY, Rosemont, IL 60666. Representative: Andrew R. Clark, 1600 TCF Tower, Minneapolis, MN 55402, (612) 333–1341. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. under continuing contract(s) with Stacy-Taylor, Inc. of Lenior, NC.

MC 73865 (Sub-1), filed July 1, 1982. Applicant: HUGH F. GANNON TRUCKING, INC., 510 N. Front St., Philadelphia, PA 19123. Representative: James H. Sweeney, P.O. Box 9023, Lester, PA 19113, (215) 365–5141. Transporting *pulp, paper and related products, rubber and plastic products,* and *metal products,* between points in DE, MD, NJ, NY, PA, and DC.

MC 115495 (Sub-42), filed June 1, 1982, previously published in the **Federal Register** issue of June 22, 1982. Applicant: UNITED PARCEL SERVICE, INC., 3755 East Main St., Room 112, St. Charles, IL 60174. Representative: Everett Hutchinson, 1150 Connecticut Ave., NW., Washington, DC 20036. Transporting *general commodities* (except those of unusual value, commodities in bulk, classes A and B explosives, household goods as defined by the Commission, and those requiring special equipment), between points in AL, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, SC, SD, TN, TX, UT, WA, WI, WY, PA, WV, and VA, restricted to the following condition: No service shall be rendered in the transportation of any package or article weighing more than 50 pounds of exceeding 108 inches in length and girth combined and each package or article

shall be considered as a separate and distinct shipment.

Note.—Applicant states the sole purpose of this application is to consolidate applicant's present authority at Certificate No. MC–115495 Subs 37 and 41X into one simplified certificate. No additional authority is sought by this application states the applicant and the applicant will voluntarily surrender for revocation its present certificates concurrently with the issuance of the new simplified certificate. The purpose of this republication is to correctly state applicant's existing commodity description.

MC 120184 (Sub-16), filed July 1, 1982. Applicant: PEP LINES TRUCKING CO., 32600 Dequindre Rd., Warren, MI 48092. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114, (216) 566–5639. Transporting *metals, metal products, and scrap metals,* between points in the U.S., under continuing contract(s) with Bohn Metal Division of Gulf & Western Manufacturing Co., of Southfield, MI.

MC 123395 (Sub-1), filed June 30, 1982. Applicant: J. W. DOUGLASS, 23 Trip St., P.O. Box "K" South Station, Fall River, MA 02724. Representative: Russell B. Curnett, 826 Orleans Rd., P.O. Box 366, Harwich, MA 02645, (617) 432–0907. Transporting (1) *highway construction materials,* between points in CT, MA, and RI, and, (2) *lime, magnesium lime,* and *limestone,* between Canaan, CT, and points in Berkshire County, MA, on the one hand, and, on the other, points in CT, MA, and RI.

MC 128685 (Sub-42), filed June 1, 1982, and previously noticed in the **Federal Register** issue of June 22, 1982. Applicant: DIXON BROS., INC., P.O. Drawer 8, Newcastle, WY 82701. Representative: Jerome Anderson, 100 Transwestern I, Billings, MT 59101, (406) 248–2611. Transporting *metal products,* between points in CO, SD, NE, KS, OK, MN, IA, MO, IL, MI, IN, UT and WY, on the one hand, and, on the other, points in MT, ND, WY, SD, NE, IA, CO and NM.

Note.—The purpose of this republication is to correctly reflect the territorial description.

MC 135634 (Sub-12), filed July 6, 1982. Applicant: J. M. HANEY COMPANY, INC., 4754 Mahoning Ave., Youngstown, OH 44515. Representative: Robert J. Gill, First Commercial Bank Bldg., 410 Cortez Rd. W., Bradenton, FL 33507, (813) 758–4153. Transporting *metal products, non-metallic strappings and building insulation materials,* between points in Mahoning County, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 136844 (Sub-8), filed July 1, 1982. Applicant: HENRY BRISTOL, d.b.a. B & B TRANSPORT & LEASE, P.O. Box 877, Palatine, IL 60067. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 234–0301. 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).

MC 144485 (Sub-4), filed July 6, 1982. Applicant: WEST COAST DISTRIBUTING CO., INC., 539 N. 170th Place, Seattle, WA 98133. Representative: Henry C. Winters, 12600 S.E. 38th, Suite 200, Bellevue WA 98006, (206) 644–2100. Transporting *paper and paper products,* between points in the U.S., under continuing contract(s) with Everett Pad & Paper Co., Inc., of Everett, WA.

MC 147544 (Sub-2), filed July 1, 1982. Applicant: CARL E. MEDLIN d.b.a. MEDLIN TRUCKING, 5890 S. Wood Sorrel Dr., Littleton, CO 80123. Representative: Charles M. Williams, 1600 Sherman St., No. 665, Denver, CO 80203, (303) 839–5856. Transporting *general commodities* (except commodities in bulk, classes A and B explosives, and household goods), between points in PA, NJ, NY, MA, CO, NE, and KS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 147824 (Sub-2), filed July 2, 1982. Applicant: COBB FROZEN TRANSPORT, INC., 4524 Salida Blvd., Salida, CA 95368. Representative: Robert Fuller, 13215 E. Penn St., Suite 90602, Whittier, CA 90602, (213) 945–3002. Transporting *canned and preserved foodstuffs,* between points in the U.S. (except AK and HI), under continuing contract(s) with M. Polaner, Inc., of Roseland, NJ.

MC 155224, filed July 7, 1982. Applicant: STEINFELD'S PRODUCTS COMPANY, 10001 N. Rivergate Blvd., Portland, OR 97203. Representative: Earle V. White, 2400 S. W. Fourth Ave., Portland, OR 97201, (503) 226–6491. Transporting *food and related products,* between points in CA, OR and WA.

MC 158105 (Sub-1), filed July 6, 1982. Applicant: TIPTON TRUCKING COMPANY, INC., 25 South Heald St., Wilmington, DE 19801. Representative: David E. Fox, 1629 K St., N.W., Suite 801, Washington, D.C. 20006, (202) 293–3150. Transporting (1) *lumber and wood products,* between points in the U.S., under continuing contract(s) with (a) Poore Lumber Co., Inc., of Troy, VA, (b) Directway Sales, Inc., of Cheltendham, PA, (c) Commonwealth Wood Preservers, Inc., of Newport News, VA, (d) Edward J. Moran Lumber Corp., of Bryn Mawr, PA, and (e) Germain Timber Co., of Keswick, VA, and (2) *fuel,* between points in the U.S., under continuing contract(s) with Anthony Oil, of Middletown, DE.

MC 159025, filed June 30, 1982. Applicant: JAMES F. MOSBY, d.b.a. PDQ TRUCKING, 1601 Symphony Lane, P.O. Box 10437, Midwest City, OK 73140. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154, (405) 424–3301. Transporting (1) *metal products,* and (2) *machinery,* between points in OK, on the one hand, and, on the other, points in U.S. (except AK and HI).

MC 160625 (Sub-1), filed July 2, 1982. Applicant: THE W. H. FAY COMPANY, 3020 Quigley Ave., Cleveland, OH 44113. Representative: Frank Sgro, (same address as applicant), (216) 861–4232. Transporting *general comodities* (except classes A and B explosives, household goods and commodities in bulk), between points in OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 162784, filed July 2, 1982. Applicant: FIRMINO D. SOUSA, 53 Norfolk St., Fall River, MA 02720. Representative: Russell B. Curnett, 826 Orleans Rd., P.O. Box 366, Harwich, MA 02645, (617) 432–0907. Transporting *passengers and their baggage,* in special and charter operations, between points in MA and RI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 162795, filed July 6, 1982. Applicant: WILLIAM P. DALTON, d.b.a. DALTON TRUCKING, P.O. Box 20, Centerton, IN 46116. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846–6655. Transporting *food and related products,* between Indianapolis, IN, on the one hand, and, on the other, points in MI, KY, OH, TN, WV, IL, and PA.

MC 162805, filed July 6, 1982. Applicant: ROBERT P. BOCKO, d.b.a. WEYER TRUCKING, 14921 McCallum N.E., Alliance, OH 44601. Representative: Edward P. Bocko, P.O. Box 496, Mineral Ridge, OH 44440, (216) 652–2789. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Fibrex, Inc., of Alliance, OH.

MC 162835, filed July 6, 1982. Applicant: T. R. SNOW TRUCKING, 16574 Dillion Ave., Visalia, CA 93277. Representative: Tex R. Snow, P.O. Box 1970, Lake Oswego, OR 97034, (209) 747–0670. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, WY and

TX, under continuing contract(s) with Cascade West Materials, Inc. of Lake Oswego, OR.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-19273 Filed 7-15-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested only on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later 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. OP1-117

Decided: July 6, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 162661, filed June 28, 1982. Applicant: FILLMORE ASSOCIATES, 1310 Warwick Drive, Lutherville, MD 21093. Representative: James T. Darby, 1021 Irving Avenue, 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 162670, filed June 25, 1982. Applicant: LOUISIANA TRAFFIC BROKERS, INC., 2138 Woodale Suite NO. 15, Baton Rouga, LA 70806. Representative: Thomas R. Lipscomb (same address as applicant), (504) 927-5712. As a *broker* of *General commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 162721, filed June 28, 1982. Applicant: UNIVERSAL MAIL DELIVERY SERVICE, 925 W. Hyde Park Blvd., Inglewood, CA 90302. Representative: Bernard Reznick (same address as applicant), (213) 673-0803. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

Volume No. OP2-145

Decided: July 7, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 162272, filed June 1, 1982. Applicant: BURSHEM FREIGHT SERVICE, Box 321, Ellendale, MN 56026. Representative: Gary W. Burshem (same as applicant), (507) 684-3041. 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 162273, filed June 1, 1982. Applicant: THRU STATES FREIGHT LINES, INC., 515 Gardner Ave., Brooklyn, NY 11222. Representative: Lawrence A. Rigano (same as applicant), (212) 388-2300. As a broker of *general commodities (except household goods), between points in the U.S. (except AK and HI).*

Volume No. OP2-147

Decided: July 8, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 135283 (Sub-75) filed June 21, 1982. Applicant: GRAND ISLAND EXPRESS, INC., 432 South Stuhr Rd., P.O. Box 2122, Grand Island, NE 68802. Representative: Lloyd A. Mettenbrink (same address as applicant), 308-384-8555. Transporting *general commodities* (except classes A and B explosives, household good and commodities in bulk), between Irvington, NE, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—The purpose of this application is to substitute motor carrier service for abandoned rail service.

MC 161202 (Sub-1), filed June 28, 1982 Applicant: FLINT T.B.A., INC., P. O. Box 1335, Industrial Air Park, Bainbridge, GA 31717. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202, 904-632-2300. Transporting for or on behalf of the United States Government, *general commodities* (except household goods, hazardous or secret materials and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 162583, filed June 21, 1982. Applicant: FREIGHT SERVICE COMPANY, 4343 South Pulaski, Chicago, IL 60632. Representative: Martin J. Warren (Same address as applicant), (312) 254-8945. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 162602, filed June 22, 1982. Applicant: HOWARD DIETZLER, d.b.a. DIETZLER REFRIGERATED TRANSPORT, R. R. 3 Box 199, Ellsworth,

WI 54011. Representative: Howard Dietzler (same as applicant), (715) 594–3168. 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 162672, filed June 28, 1982. Applicant: JOHN P. NAYLOR AND PAUL DIJULIO, d.b.a. WESTERN DISTRIBUTION SERVICES, INC., 8809 S. 190th, Kent, WA 98031. Representative: John P. Naylor (same address as applicant), 206–251–5980. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP3–109

Decided: July 9, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 147114, filed June 30, 1982. Applicant: ARTHUR YORK, d.b.a. GARDEN STATE EXPRESS, 143 Engle St., Englewood, NJ 07631. Representative: Arthur York (same address as applicant), (201) 837–4483. Transporting, for or on behalf of the U.S. Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 157204 (Sub-3), filed June 30, 1982. Applicant: SUR-WAY TRANSPORT, INC., 1506 Radium Springs Rd., Albany, GA 31705. Representative: James J. Glass (same address as applicant) (912) 436–1688. Transporting, for or on behalf of the U.S. Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 159474 (Sub-3), filed July 1, 1982. Applicant: U.S. EXPRESS, INC., P.O. Box 9652, Little Rock, AR 72219. Representative: Stephen F. Grinnell, 1600 TCF Tower, 121 So. 8th St., Minneapolis, MN 55402, (612) 333–1341. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 162754, filed July 1, 1982. Applicant: AERONAUTICS COURIER EXPRESS, INC., 161 Prescott St., Boston, MA 12128. Representative: Arthur Piken, 95–25 Queens Blvd., Rego Park, NY 11374, (212) 275–1000. Transporting, *shipments weighing 100 pounds* or less if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 162774, filed July 1, 1982. Applicant: STEEL AWAY TRANSPORTATION, INC., 1900 Hamilton Ave., Cleveland, OH 44114. Representative: Arthur E. Gogol, 7723 Greenwich Rd., Lodi, OH 44254, (216) 948–2531. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 162785, filed July 1, I982. Applicant: EAGLE COURIER, LTD., 231 West Huron St., Chicago, IL 60610. Representative: Albert A. Andrin, 180 North La Salle St., Chicago, IL 60601, (312) 332–5106. Transporting *shipments weighing 100 pounds or less,* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 162834, filed July 6, I982. Applicant: JAMES E. CHAMBERS d.b.a. T. A. D. SERVICES, 35023 16th Ave., South, Suite 14, Federal Way, WA 98003. Representative: James E. Chambers (same address as applicant), (206) 838–0839. As a *broker of general commodities* (except household goods), between points in the U.S.

Volume No. OP4–252

Decided: July 9, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 160046, (Sub-1), filed July 1, 1982. Applicant: MICHAEL R. IRVIN d.b.a IRVIN TRANSFER P.O. Box 506, Shelby, MT 59474. Representative: W. E. Seliski, 2 Commerce St., P.O. 8255, Missoula, MT 59807, (406) 543–8369. Transporting, for or on behalf of the United States Government *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 162766, filed July 1, 1982. Applicant: RUSSELL S. HRON, Box 50 A, Aladdin Rd., Colesville, WA 99114. Representative: Charles E. Dye, Swan Lake Village, Saddle Ridge No. 832, Portage, WI 53901, (608) 742–3579. 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. 19272 Filed 7–15–82; 8:45 am]

BILLING CODE 7035–01–M

[Permanent Authority Volume 115]

Motor Carriers; Republications of Grants of Operating Rights Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the **Federal Register.**

An original and one copy of petitions for leave to intervene must be filed with the Commission within 30 days after the date of this **Federal Register** notice. Such pleadings shall comply with 49 CFR 1100.252 addressing specifically the issue(s) indicated as the purpose for republication.

MC 147021 (Sub-9), (republication), filed March 5, 1982, published in the **Federal Register** April 8, 1982, and republished this issue. Applicant: C. SUMMERS, INC., 112 Spruce St., Elizabethville, PA 17023. Representative: Daniel W. Krane, P.O. Box E, Shiremanstown, PA 17011. A decision by the Commission, Review Board No. 2, decided June 23, 1982, served July 6, 1982, finds that applicant is authorized to operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *food and related products,* between Kankakee County, IL, Tarrant County, TX, Hamilton County, TN, Dade County, FL, Douglas County, NE, Hudson County, NJ, and Suffolk County, MA, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), (2) *rubber and plastic products,* (a) between York and Westmoreland Counties, PA, and New Hanover County, NC, and St. Louis, MO, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), and (b) between points in York County, PA, on the one hand, and, on the other, points in Dane County, WI, (3) *such commodities as are dealt in or used by chain grocery and food business houses,* between those points in the United States in and east of Minnesota, Iowa, Nebraska, Kansas, Oklahoma, and Texas, (4) *general commodities* (except classes A and B explosives, household goods, and

commodities in bulk), between points in Northumberland County, PA, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), and (5) *chemicals and related products* (except classes A and B explosives and radioactive material), between the District of Columbia, Lycoming County, PA, and Lake County, OH, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii). Applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements. The purpose of this republication is to indicate the origin points in (1) and (2) in geographical terms.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-19271 Filed 7-15-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket AB-6 (Sub-116)]

Rail Carriers; Burlington Northern Railroad Co.—Abandonment in LaSalle County, IL; Notice of Findings

The Commission has issued a certificate authorizing the Burlington Northern Railroad Company to abandon its 6.51 mile rail line between Earlville, IL (milepost 7.21) and Baker, IL (milepost 13.72) in LaSalle County, IL. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Mr. Louis E. Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be resubmitted within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1121.38.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-19270 Filed 7-15-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket 29980]

Rail Carriers; S. M. Pinsly Co.—Control—Pioneer Valley Railroad Co.; Notice of Exemption

July 12, 1982.

Petitioner S. M. Pinsly Company (Pinsly) is a holding company now controlling three Class III railroads subject to the Commission's jurisdiction. These are the Clermont & Concord Railway Company (Clermont), the Greenville & Northern Railway Company (Greenville), and the Frankfort & Cincinnati Railroad Company (Frankfort).

Pursuant to an order dated May 27, 1982, the Federal Railroad Administration (FRA) ordered the transfer of Conrail's Holyoke and Florence Secondary branch lines in the State of Massachusetts to Pinsly. This was done pursuant to the provisions of Section 305(g) of the Regional Rail Reorganization Act of 1973 (3-R Act), added by section 1155 of the Northeast Rail Service Act of 1981 (NERSA).

Pinsly intends to operate the two former Conrail lines through Pioneer Valley Railroad Company (Pioneer), a wholly-owned subsidiary. Pioneer will provide freight service as a common carrier.

By letter filed June 23, 1982, Pinsly has given notice that the proposed transaction is exempt under 49 CFR 1111.2(d)(2).

The transaction whereby Pinsly will obtain control of Pioneer is a transaction which is an acquisition of a nonconnecting carrier or one of its lines where the railroads would not connect with each other or any railroads in their corporate family.[1] Thus, it is an exempted transaction pursuant to 49 CFR 1111.2(d)(2). See *Railroad Consolidation Procedures*, 366 I.C.C. 75, 94 (1982).

As a condition to the use of this exemption, any employees affected by this transaction shall be protected pursuant to *New York Dock Ry.—Control—Brooklyn Eastern Dis.*, 360 I.C.C. 60 (1989). This will satisfy the statutory requirements of 49 U.S.C. 10505(g)(2).

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-19269 Filed 7-15-82; 8:45 am]

BILLING CODE 7035-01-M

[1] I am taking official notice of the *Official Railway Guide* indicating that Pioneer, Clermont, Greeville, and Frankfort's lines do not connect with each other.

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 82-17616, at page 28466, in the issue of Wednesday, June 30, 1982, on page 28470, in the middle column, first full paragaph, first line, correct "MC16245" to read "MC162452".

BILLING CODE 1505-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-12,881]

Jafree Shirt Co., Inc., Wytheville, Virginia; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 31, 1981 in response to a worker petition received on July 31, 1981 which was filed on behalf of workers at Jafree Shirt Company, Incorporated, Wytheville, Virginia.

The petitioner requested withdrawal of the petition. On the basis of this request, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 8th day of July 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-19330 Filed 7-15-82; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-12,727]

Oxwall Tool Co., Oxford, New Jersey, Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation (TA-W-12,727) was initiated on May 29, 1981 in response to a petition received on May 22, 1981 which was filed on behalf of workers at Oxwall Tool Company, Oxford, New Jersey. The workers produce hand tools.

The petitioning worker, Mr. Roland Bakonyi, requested in a letter that the petition be withdrawn, on the basis of this request, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 8th day of July 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-19329 Filed 7-15-82; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-12,846]

Port Huron Brass Foundry Co., Marysville, Michigan; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 20, 1981 in response to a worker petition received on July 15, 1981 which was filed on behalf of workers at Port Huron Brass Foundry Company, Marysville, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 8th day of July 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-19332 Filed 7-15-82; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-12,870 and 12,872]

Roller Bearing Co. of America, Aiken, South Carolina, and Hartsville, South Carolina; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 31, 1981 in response to a worker petition received on July 14, 1981 which was filed by the United Auto Workers on behalf of workers at the Roller Bearing Company of America, Aiken, South Carolina and Hartsville, South Carolina.

Section 221(a) of the Trade Act of 1974 states that a petition for certification of eligibility to apply for adjustment assistance may be file with the Secretary of Labor by a group of workers or by their certified or recognized union or other duly authorized representive. During the course of the investigation, it was established that the United Auto Workers is not an authorized representative of the workers at the Aiken, South Carolina or Hartsville, South Carolina plants of the Roller Bearing Company of America. Consequently, the investigations have been terminated.

Signed at Washington, D.C. this 8th day of July 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-19331 Filed 7-15-82; 8:45 am]

BILLING CODE 4310-30-M

[TA-W-12,789]

Royal Dorchester, Inc., Millville, New Jersey; Termination of Investigation

Pursuant of Section 221 of the Trade Act of 1974, an investigation was initiated on June 22, 1981 in response to a worker petition received on June 18, 1981 which was filed on behalf of workers at Royal Dorchester, Inc., Millville, New Jersey.

The petitioner has requested that the petition be withdrawn. Consquently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 8th day of July 1982

Marvin M. Fooks

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-19328 Filedl 7-15-82; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Indiana State Standards; Approval

1. *Background:* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On March 6, 1974, notice was published in the **Federal Register** (39 FR 8611) of the approval of the Indiana plan and the adoption of Subpart Z to Part 1952 containing the decision.

Access to Employee Medical Records

The Indiana plan provides for the adoption of Federal standards as State standards after a public hearing. By letter dated January 20, 1981, from the Commissioner, Indiana Division of Labor, to the Regional Administrator, Occupational Safety and Health Administration, and incorporated as part of the plan, the State submitted a State standard comparable to: 29 CFR 1910.20, Agency Practice and Procedure Concerning IOSHA Access to Employee Medical Records, as published in the **Federal Register** (45 FR 35277), dated May 23, 1980. This stndard, which is contained in the Indiana Occupational Safety and Health Standard, was promulgated after public comment was requested September 25, 1981, by a notice published in a newspaper of general circulation within the State. A public hearing was held October 30, 1981, at which time the standard was adopted. The Attorney General approved its legality on December 17, 1981, the Governor approved it on January 15, 1982, it was filed with the Secretary of State on January 20, 1982, and it was registered with the Legislative Council on January 20, 1982, pursuant to the Indiana Administrative Adjudication Act.

Corrections to Access to Employee Medical Records

The Indiana plan provides for the adoption of Federal standards as State standards after public hearing. By letter dated January 20, 1982, from the Commissioner, Indiana Division of Labor, to the Regional Administrator, Occupational Safety and Health Administration, and incorporated as part of the plan, the State submitted a State standard comparable to: 29 CFR 1910.20, Corrections to Access to Employee Medical Records, as published in the **Federal Register** (45 FR 54333), dated August 15, 1980. This standard, which is contained in the Indiana Occupational Safety and Health Standard, was promulgated after public comment was requested on September 25, 1981, by a notice published in a newspaper of general circulation within the State. A public hearing was held October 30, 1981 at which time the standard was adopted. The Attorney General approved its legality on December 17, 1981, the Governor approved it on January 15, 1982, it was filed with the Secretary of State on January 20, 1982, and it was registered with the Legislative Council on January 20, 1982, pursuant to the Indiana Administrative Adjudication Act.

Electrical Standards

The Indiana plan provides for the adoption of Federal standards as State standards after public hearing. By letter dated January 20, 1982, from the Commissioner, Indiana Division of Labor, to the Regional Administrator, Occupational Safety and Health

Administration, and incorporated as part of the plan, the State submitted a State standard comparable to: 29 CFR 1910.301, Subpart S, Electrical Standards as published in the **Federal Register** (46 FR 4034) August 7, 1981. This standard, which is contained in the Indiana Occupational Safety and Health Standard, was promulgated after public comment was requested on October 16, 1981 by a notice published in a newspaper of general circulation within the State. A public hearing was held December 4, 1981, at which time the standard was adopted. The Attorney General approved its legality on December 29, 1981, the Governor approved it on January 15, 1982, it was filed with the Secretary of State on January 20, 1982, and it was registered with the Legislative Council on January 20, 1982, pursuant to the Indiana Administrative Adjudication Act.

Occupational Noise Exposure

The Indiana plan provides for the adoption of Federal standards as State standards after public hearing. By letter dated January 20, 1982, from the Commissioner, Indiana Division of Labor, to the Regional Administrator, Occupational Safety and Health Administration, and incorporated as part of the plan, the State submitted a State standard comparable to: 29 CFR 1910.95 Occupational Noise Exposure, as published in the **Federal Register** (46 FR 4078) January 16, 1981. This standard, which is contained in the Indiana Occupational Safety and Health Standard, was promulgated after public comment was requested on October 28, 1981, by a notice published in a newspaper of general circulation within the State. A public hearing was held December 4, 1981, at which time the standard was adopted. The Attorney General approved its legality on December 29, 1981, the Governor approved it on January 15, 1982, it was filed with the Secretary of State on January 20, 1982 and it was registered with the Legislative Council on January 20, 1982, pursuant to the Indiana Administrative Adjudication Act.

The Indiana plan provides for the adoption of Federal standards as State standards after public hearing. By letter dated January 20, 1982, from the Commissioner, Indiana Division of Labor, to the Regional Administrator, Occupational Safety and Health Administration, and incorporated as part of the plan, the State submitted a State standard comparable to: 29 CFR (46 FR 42622), August 21, 1981. This standard, which is contained in the Indiana Occupational Safety and Health Standard, was promulgated after public comment was requested on October 28, 1981, by a notice published in a newspaper of general circulation within the State. A public hearing was held December 4, 1981, at which time the standard was adopted. The Attorney General approved its legality on December 29, 1981, the Governor approved it on January 15, 1982, it was filed with the Secretary of State on January 20, 1982, and it was registered with the Legislative Council on January 20, 1982, pursuant to the Indiana Administrative Adjudication Act.

Corrections to Noise Occupational Noise Exposure

The Indiana plan provides for the adoption of Federal standards as State standards after public hearing. By letter dated January 20, 1982, from the Commissioner, Indiana Division of Labor, to the Regional Administrator, Occupational Safety and Health Administration, and incorporated as part of the plan, the State submitted a State standard comparable to: 29 CFR 1910.95 Corrections to Occupational Noise Exposure, as published in the **Federal Register** (46 FR 45333), September 11, 1981. This standard, which is contained in the Indiana Occupational Safety and Health Standard, was promulgated after public comment was requested on October 28, 1981, by a notice published in a newspaper of general circulation within the State. A public hearing was held December 4, 1981, at which time the standard was adopted. The Attorney General approved its legality on December 29, 1981, the Governor approved it on January 15, 1982, it was filed with the Secretary of State on January 20, 1982, and it was registered with the Legislative Council on January 20, 1982, pursuant to the Indiana Administrative Adjudication Act.

2. *Decision:* Having reviewed the State submissions in comparison with the Federal standards it has been determined that the State standards are identical to the Federal standards and accordingly should be approved.

3. *Location of Supplement for Inspection and Copying:* A copy of the Indiana standard supplements along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 230 South Dearborn Street, Chicago, Illinois 60604; State of Indiana, Division of Labor, 1013 State Office Building, Indianapolis, Indiana 46204; and the Office of the Directorate of Federal Compliance and State Programs, U.S. Department of Labor—OSHA, Room N3619, 200 Constitution Avenue, NW., Washington, D.C. 20210.

4. *Public Participation:* Under § 1953.2(c) of this Chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with the applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Indiana State plan as proposed changes and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards and are therefore deemed to be at least as effective.

2. The standards were adopted in accordance with the procedural requirements of the State law and further participation would be unnecessary.

This decision is effective July 16, 1982.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Chicago, Illinois, this 21st day of April 1982.

Alan C. McMillan,

Regional Administrator.

[FR Doc. 82-19327 Filed 7-15-82; 8:45 am]

BILLING CODE 4510-26-M

[V-82-5]

Lenox China, Inc.; Application for Variance; Interim Order

AGENCY: Occupational Safety and Health Administration, Labor.

ACTIONS: Notice of application for variance and interim order; and grant of interim order.

SUMMARY: This notice announces the application of Lenox China, Inc. for variance and interim order pending a decision on the application for variance from the standards prescribed in 29 CFR 1910.1025 concerning lead.

It also announces the granting of an interim order until a decision is rendered on the application for variance. This interim order was originally granted by letter on June 11, 1982.

DATES: The effective date of the interim order is June 11, 1982. The last date for interested persons to submit comments is August 16, 1982. The last date for affected employers and employees to request a hearing on the application is August 16, 1982.

ADDRESSES: Send comments or requests for hearing to: Office of Variance Determination, Occupational Safety and

Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N–3662, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Concannon, Director, Office of Variance Determination at the above address; Telephone: (202) 523–7182, or the following Regional and Area Offices:

U.S. Department of Labor—OSHA, 1515 Broadway (1 Astor Plaza), Room 3445, New York, New York 10036; Telephone: (212) 944–3426

U.S. Department of Labor—OSHA, 2101 Ferry Avenue, Room 4003, Camden, New Jersey 08104; Telephone: (609) 757–5181

Notice of Application

Notice is hereby given that Lenox China, Inc., Pomona, New Jersey 08240, has made application pursuant to Section 6(d) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for variance, and interim order pending a decision on the application for variance, from certain paragraphs of 29 CFR 1910.1025 concerning Lead.

The address of the place of employment that is affected by the application is: Lenox China Manufacturing Facility, Pomona, New Jersey 08240.

The applicant certifies that employees who would be affected by the variance have been notified of the application by giving copies of them to their authorized employee representatives, and by posting copies at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

Regarding the merits of the application, the applicant contends that the method it proposes will provide a place of employment as safe as those required by § 1910.1025 which contains regulations concerning Lead.

The applicant's facility manufactures glazed fine china dinnerware. The source of exposure to lead is the glaze, and the processes in which lead exposure occurs are those involved in the preparation of glaze, the application of glaze to the ware, and the handling of glazed ware prior to firing.

The applicant states that the glaze contains ceramic frits which are specially developed and prepared low solubility lead-bearing compounds in glass form. These frits, in either granular or flake form, are blended with certain non lead-bearing minerals and ground to specification to produce glaze.

The applicant further states that the glaze is transported in liquid form to the Glaze Department where it is applied to the ware by dipping or spraying. Dipping and some spraying are hand operations because of the great variety of sizes and shapes produced in very limited quantities. These operations are labor intensive and mechanization is virtually impossible.

Of the 1200 hourly employees at Pomona, 120 have some exposure to lead and these employees participate in a blood lead monitoring program. This program is as old as the plant itself, dating from 1954. Hourly and salaried employees assigned to the Glaze Department are tested twice a year while those who are assigned to support activities and adjacent operations are tested at least once a year, according to the applicant.

In November 1978, when OSHA published the present lead standard, Lenox China's blood leads, according to the applicant, were well within prescribed limits, but air lead levels in the Glaze Department were not, i.e., not at or below 50 $\mu g/m^3$.

Since that date, the Company stated that it has been their policy, to achieve full compliance with the lead standard if at all possible and regardless of cost. In keeping with this policy, the applicant states that 59 engineering projects have been implemented, a 6 point preventive maintenance program instituted, and extensive training and housekeeping programs adopted.

However, as of this date according to the applicant, while the Company has been able to further reduce blood leads, it has not yet been able to achieve compliance with the 50 $\mu g/m^3$ PEL in the Glaze Department, nor is there any assurance that it will even be able to do so.

However, according to the applicant, if as requested in the application for permanent variance, the analytical procedures for determining a low solubility inorganic lead compound developed by the British Ceramic Research Association and found in Appendix 2 of the Approved Code of Practice; Control of Lead at Work, of the British Health and Safety Commission, were used in lieu of the OSHA required test procedure, it is estimated that approximately 57 percent fewer employees of those presenlty exposed to air levels of lead determined to be greater than the PEL, would be considered exposed.

The applicant states that investigations of lead poisoning in the British Pottery Industry date back to the late 19th century when Sir Thomas Thorpe initiated his research into the development of low solubility lead frits and glazes. His efforts and the efforts of others since have produced commercially available low solubility frits and conversion to these frits has totally eliminated lead poisoning as an industrial disease. This fact is well documented in Britain, the United States and elsewhere.

According to the applicant, the Company has been working with its suppliers, since 1972, to convert to fritted glazes. They intensified their efforts starting in 1978 and have now completed their conversion program. The results have been dramatic. In January of this year, blood leads averaged 19 micrograms (144 samples), down 44% from July of 1980. The benefits of this conversion are obvious, according to the applicant.

But the lead standard, the applicant states, unlike comparable regulations in Britain, fails to distinguish between high solubility lead-bearing compounds and low solubility fritted lead-bearing compounds. Whereas the British Ceramic Research Association air lead test procedure prescribes 0.07N hydrochloric acid as the test dissolvent (vis-a-vis the human digestive system), the NIOSH test procedure prescribes hot concentrated nitric acid which destroys the glass structure of the fritted glaze and bears little or no resemblance to the human digestive system.

The Company states that hot concentrated nitric acid is a totally inappropriate test solvent now that it has completed its conversion program. It is indiscriminate in that it treats high and low solubility compounds pretty much alike and it ignores what is probably the greatest single contribution that the world of ceramic research has made to mankind.

By failing to distinguish between high solubility lead-bearing compounds and low solubility fritted lead-bearing compounds, the applicant asserts, the lead standard fails to provide a vital incentive which would encourage frit producers to intensify their efforts to further reduce solubility to make the work place even safer in the future, in which event Lenox China and its employees would be co-beneficiaries.

Specifically, the applicant requests variance from that aspect of the lead standard which requires determination of lead in air values based on total lead. The applicant proposes the use of test procedures used by the British Health and Safety Commission in Appendix 2 of Control of Lead at Work: Regulations and Approved Code of Practice, for defining a low solubility inorganic compound, for the determination of lead in air.

All interested persons, including employers and employees who believe they would be affected by the grant or denial of the application for variance are invited to submit written data, views, and arguments relating to the application no later than August 16, 1982, in conformance with the requirements of CFR 29 1905.15. Submission of written comments and requests for a hearing should be in quadruplicate, and must be addressed to the Office of Variance Determination at the above address.

Grant of Interim Order

The applicant also requested an interim order to be effective until a decision is made on the application for variance.

Based upon a preliminary review of the data which the applicant submitted and in light of OSHA's present in-dept review of the lead standard, an investigation of the analytical test procedure for determining a low solubility inorganic lead compound as developed by the British Ceramic Research Association and detailed in Appendix 2 of the British Health and Safety Commission Consultive Document; Control of Lead at Work: Regulations and Approved Code of Practice, appears to be in order. During the time necessary to conduct this investigation, OSHA has determined that an interim order from the lead standard should be issued. Therefore, it is ordered, pursuant to the authority in Section 6(d) of the Occupational Safety and Health Act of 1970, in 29 CFR 1905.11(c), and in Secretary of Labor's Order No. 8–76 (41 FR 25059) that Lenox China, Inc. is hereby subject to the following conditions in lieu of complying with § 1910.1025(e)(2) which requires that respirators shall be utilized where engineering and work practice controls do not reduce employee exposure to lead to or below the permissible exposure limit (PEL) of 50 micrograms per cubic meter of air (50 $\mu g/m^3$) averaged over an 8-hour period.

The applicant shall comply with all provisions of the lead standard from which variance has not been requested and granted.

(1) Respiratory protection, as required by 29 CFR 1910.1025(e)(2), need not be worn where the concentration of lead in air (as determined by the presently required procedure) is at or less than 150 micrograms per cubic meter of air (150 $\mu g/m^3$) averaged over an 8-hour period, provided:

(a) All employees who will be affected by this grant in interim order shall have blood lead monitoring conducted at least every two months; and,

(b) Blood lead values for these employees remain below 40 micrograms per 100 grams of whole blood (40 $\mu g/100g$).

(2) Records shall be maintained for all work areas where this interim order applies and sent to the Office of Variance Determination every six months for the following:

(a) Each employee exposed to airborne lead, identified by some form of coding, and specifying his occupation, number of hours per week of lead exposure, location by department, and blood lead values (including value for sample analyzed prior to issuance of this grant of interim order), and the number of hours per week respirators were worn, if any;

(b) Airborne lead concentrations for location of each employee identified in (2)(a) above; and,

(c) Identification of lead-bearing compounds used, dates of use, and percentage of soluble lead for each product (as determined by split-sample analysis using both the BCRA and the OSHA required test procedures).

(3) The employer shall provide appropriate respiratory protection to any employee who may desire to use it at airborne concentrations of lead greater than 50 micrograms per cubic meter of air.

(4) Any employee whose blood lead value has increased by at least 10 micrograms per 100 grams of whole blood (10 $\mu g/100g$) from one sampling to another shall be retested immediately, even though the higher level is below 40 $\mu g/100g$. If the retest confirms this increase, the employer shall investigate to determine the cause.

(5) The employer shall agree to allow OSHA to inspect its premises in connection with this variance application and this interim order.

(6) The employer shall comply with all provisions in this grant of interim order and, in addition, shall not be relieved from compliance with all other applicable provisions of the standard for Occupational Exposure to Lead.

Lenox China, Inc. shall give notice of this grant of interim order to employees affected thereby by the same means required to be used to inform them of the application for variance. This interim order has been in effect since June 11, 1982. The Assistant Secretary may revoke this interim order at any time if the applicant does not comply with any requirement of the interim order or the relevant standard; or if other information indicates that revocation of the interim order is warranted.

Unless revoked, the interim order will remain in effect until a decision is made on the application for variance.

Signed at Washington, D.C. this 10th day of July 1982.

Mark D. Cowan,

Deputy Assistant Secretary of Labor.

[FR Doc. 82–19300 Filed 7–15–82; 8:45 am]

BILLING CODE 4510–26–M

National Advisory Committee on Occupational Safety and Health; Appointment of Members

Notice is hereby given that appointments have been made to fill the vacancies on the National Advisory Committee on Occupational Safety and Health (NACOSH) created by the expiration of the terms of six members on June 30, 1982.

New members appointed to the Committee are:

Mr. Frank R. Barnako, Public Representative
Dr. Sidney Shindell, Public Representative
Mr. Russell B. Swanson, Public Representative
Mr. Tom Baker, Management Representative
Mr. A. Bennett Hill, Labor Representative
Mr. Ronald H. Davis, Safety Representative.

The members selected on the basis of their experience and competence in the field of occupational safety and health.

The full membership of the Committee and the categories represented are as follows:

Public
Frank R. Barnako, Chairman of the Board, National Safety Council
Joyce C. Hearn, Representative, South Carolina Legislature
Dr. Sidney Shindell, Chairman, Department of Preventive Medicine, The Medical College of Wisconsin
Russell B. Swanson, Commissioner, Minnesota Department of Labor and Industry

Management
Tom Baker, President, Electric Company
Dr. Bruce W. Karrh, Medical Director, E.I. duPont deNemours and Co., Inc.

Labor
A. Bennett Hill, Director of Safety, International Union of Operating Engineers
George H.R. Taylor, Director, Department of Occupational Safety and Health, AFL–CIO

Safety
B. Gawain Bonner, Director, Safety and Health, Tenneco, Inc.
Ronald H. Davis, Vice President, Industrial Relations, Carolina Steel Corporation

Health
Dr. Marcus H. Key, Professor of Occupational Medicine, The University of Texas Health Science Center

Dr. Richard P. Miethke, Medical Director, Delco Electronic Division, GMC

The newly appointed members will serve two year terms expiring on June 30, 1984. The remaining members are serving the second year of a two year term ending on June 30, 1983.

The National Advisory Committee was established under Section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act.

For additional information contact: Clarence Page, Excecutive Secretary, NACOSH, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3635, Washington, D.C. 20210.

Signed at Washington this 13th day of July 1982.

John W. Ready,

Acting Assistant Secretary.

[FR Doc. 82-19348 Filed 7-15-82; 8:45 am]

BILLING CODE 4510-26-M

Advisory Committee on Construction Safety and Health; Appointment of Members

Notice is hereby given that appointments have been made to fill the vacancies on the Advisory Committee on Construction Safety and Health (ACCSH) created by the expiration of the terms of fifteen members on June 30, 1982.

New members appointed to the Committee are:

Employee Representative

James Lapping, Director of Safety and Health, Building and Construction Trades, Department—AFL-CIO

Employer Representatives

W. Brock Carter, Safety Counselling, Inc.

Leonard E. Dodson, Executive Vice President and Secretary, Olson Construction Company

V. Sherwood Kelly, Corporate Safety Director, J.A. Jones Construction Co.

Paul V. Voinovich, George S. Voinovich, Inc.

State Representatives

Larry Etchechury, Division of Occupational Safety and Health, Industrial Commission of Arizona

Donald G. Wiseman, Principal Safety Engineer, Nevada Department of Industrial Relations

Federal Representative

Dr. James Oppold, Division of Safety Research, National Institute on Occupational Safety and Health

Members reappointed to the Committee are:

Employee Representatives

Joe A. Adam, Department of Safety and Health, United Association of Journeymen and Apprentices of the PLumbing and Pipe Fitting Industry

Robert E. P. Cooney, General Vice President, International Association of Bridge Structural and Ornamental Iron Workers

Roy Steinfurth, Administrator, Health Hazard Programs, International Association of Heat and Frost Insulators and Asbestors Workers

George E. Smith, Safety Department, International Brotherhood of Electrical Workers

Employer Representative

James Pakenham, Safety Manager, Ebasco Services, Inc.

Public Representatives

H. Edgar Lore, Labor Relations Consultant

Dr. Jack L. Mickle, Professor of Civil Engineering, Iowa State University

The members were selected on the basis of their experience and competence in the field of occupational safety and health in construction. Each of these members has been appointed for a term which will end on June 30, 1984.

The Advisory Committee on Construction Safety and Health was established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656).

For additional information contact: Ken Hunt, Committee Management Officer, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N3635, Washington, D.C. 20210.

Signed at Washington this 13th day of July 1982.

[FR Doc. 19349 Filed 7-15-82; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (82-40)]

Intent To Grant An Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to Foster Grant Corporation, Leominster, Massachusetts, a limited, exclusive, royalty-bearing, revocable license to practice the invention described in U.S. Patent No. 4,137,365 and Canadian Patent No. 1,077,787 for an "Oxygen Post-Treatment of Plastic Surfaces Coated with Plasma Polymerized Silicon-Containing Monomers" which issued to the Administrator of the National Aeronautics and Space Administration on behalf on the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by September 14, 1982.

ADDRESS: National Aeronautics and Space Administration, Code GP-4, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, Director of Patent Licensing, (202) 755-3954.

Dated: July 9, 1982.

S. Neil Hosenball,

General Counsel.

[FR Doc. 82-19243 Filed 7-15-82; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Conference on New Strategies For the Future For Intergovernmental Programs; Meeting

The National Science Foundation announces a meeting of representatives of the State and local government,

academic, research, and business communities to assist the Intergovernmental Programs as it develops new strategies for the future. Also in attendance will be NSF's Intergovernmental Programs staff and representatives of NSF management.

Although this *ad hoc* discussion does not constitute a meeting of an "advisory committee" as that term is defined in section 3 of the Federal Advisory Committee Act (PL 92–463), the meeting will be open to public attendance and observation.

The meeting will be held on Monday, July 26, 1982 from 9:00 a.m. to 5:00 p.m. and on Tuesday, July 27, 1982 from 9:00 a.m. to 1:00 p.m. at the O'Hare Hilton Hotel in Chicago, Illinois.

For additional information, please contact Mr. Edward T. Kelly, Director, Intergovernmental Programs, Division of Intergovernmental and Public Service Science and Technology, National Science Foundation, Room 1144, 1800 G Street NW., Washington, DC 20550. Telephone: 357–7560.

Edward T. Kelly,

Director, Intergovernmental Programs.

July 12, 1982.

[FR Doc. 82–19250 Filed 7–15–82; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Reliability and Probabilistic Assessment; Meeting

The ACRS Subcommittee on Reliability and Probabilistic Assessment will hold a meeting on August 6, 1982, Room 1046, at 1717 H Street, NW, Washington, D.C. The Subcommittee will discuss the draft NRC Staff Action Plan for implementing the Commission's proposed safety goals.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Tuesday, August 6, 1982—8:30 a.m. until the conclusion of business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding the topics to be discussed.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Staff Engineer, Mr. J. Michael Griesmeyer (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., e.d.t. The Designated Federal Employee for this meeting is Mr. Gary Quittschreiber.

Dated: July 12, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82–19314 Filed 7–15–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corp. and Jersey Central Power & Light Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 62 to Provisional Operating License No. DPR–16, issued to GPU Nuclear Corporation and Jersey Central Power & Light Company (the licensees), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station (the facility) located in Ocean County, New Jersey. The amendment is effective as of its date of issuance.

The amendment authorizes changes to the limiting setpoints for five electramatic relief values for the Reactor Coolant System.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) and environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated August 27, 1981, (2) Amendment No. 62 to License No. DPR–16, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington D.C., and the Local Public Document Room, 101 Washington Street, Toms River, New Jersey 08753. A single 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 12th day of July 1982.

For the Nuclear Regulatory Commission.

Paul W. O'Connor,

Acting Chief, Operating Reactors Branch #5, Division of Licensing.

[FR Doc. 82–19311 Filed 7–15–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–336]

Northeast Nuclear Energy Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 79 to Facility Operating License No. DPR–65, issued to Northeast Nuclear Energy Company, the Connecticut Light and Power Company, the Hartford Electric Light Company, and the Western Massachusetts Electric Company (the licensee), which revised Technical Specifications for operation of the Millstone Nuclear Power Station, Unit No. 2 (the facility) located in the Town of Waterford, Connecticut. The amendment is effective upon issuance.

This amendment reduces the design reactor coolant flow rate from 370,000 to 362,600 gpm (2 percent reduction) and compensates for this reduction by reducing the allowable total planar and total integrated radial peaking factors by 2 percent. These changes are desirable to improve plant reliability by compensating for reduced reactor

coolant flow after plugging 704 steam generator tubes earlier this year.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated June 18, 1982 (2) Amendment No. 79 to License No. DPR-65, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Waterford Public Library, Rope Ferry Road, Waterford, Connecticut. 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 2nd day of July 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch #3, Division of Licensing.

[FR Doc. 82-19312 Filed 7-15-82; 8:45 am]

BILLING CODE 7590-01-M

[Dockets 50-443 and 50-444]

Public Service Company of New Hampshire, et al., Seabrook Station, Units 1 and 2; Issuance of Amendments to Construction Permits

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 5 to Construction Permit Nos. CPPR-135 and CPPR-136. The amendments add Washington Electric Cooperative, Inc. and reflect a transfer of ownership interest from Commonwealth Electric Company (formerly New Bedford Gas and Edison Light Company) to Canal Electric Company for the Seabrook Station, Units 1 and 2 (the facilities), located in Rockingham County, New Hampshire. The amendments are effective as of their date of issuance.

The applications for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter 1, which are set forth in the amendments. The Commission has also concluded that the amendments involve actions which are insignificant from the standpoint of environmental impact and that, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and an environmental impact appraisal need not be prepared in connection with the issuance of the amendments. Prior public notice of the amendments was not required since the amendments do not involve a significant hazards consideration.

For further details with respect to this action, see (1) the applications for amendments, dated May 13 and December 16, 1981, and a supplemental letter dated October 8, 1981; (2) Amendments No. 5 to Construction Permit Nos. CPPR-135 and CPPR-136 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection in the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Exeter Public Library, Front Street, Exeter, New Hampshire 03833. Items 2 and 3 may be requested by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 23 day of June 1982.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 82-19313 Filed 7-15-82; 8:45 am]

BILLING CODE 7590-01-M

Applications for Licenses To Export Nuclear Facilities or Materials

Correction

In FR Doc. 82-17565 appearing at page 28184 in the issue of Tuesday, June 29, 1982, make the following changes:

1. On page 28184, middle column, first full paragraph, third line, "June 29, 1982" should read "July 29, 1982".

2. On page 28184, in the table, first column, last entry, "XSNMO1971." should read "XSNMO1972."

BILLING CODE 1505-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Extension of Forms for OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed extension of forms submitted to OMB for clearance.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, this notice announces a proposed extension of forms which collect information from the public. Standard Form 85, Data for Nonsensitive or Noncritical-Sensitive Positions, and Standard Form 86, Security Investigations Data for Sensitive Positions, are completed by applicants for Federal positions throughout the Government. OPM uses the information to conduct investigations required by Executive Order 10450, Security Requirements for Government Employment, issued April 27, 1953, or various public laws. For copies of this proposal, call John F. Weld, Agency Clearance Officer, on (202) 632-7720.

DATES: Comments on this proposal should be received on or before July 26, 1982.

ADDRESSES: Send or deliver comments to:

John P. Weld, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6H28, Washington, D.C. 20415; and

Frank Reeder, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: John F. Weld, (202) 632-7720.

Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 82-19409 Filed 7-15-82; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Public Hearings

SUMMARY: The purpose of this notice is (1) to announce the acceptance for review of petitions to modify the list of articles eligible to receive duty-free treatment under the Generalized System

of Preferences (GSP) (2) to announce the timetable for public hearings to consider petitions accepted for review; and (3) to announce that the list of articles herein is to be sent by the United States Trade Representative to the United States International Trade Commission with respect to designating articles as eligible for GSP.

I. Acceptance of Petitions for Review

Notice is hereby given of acceptance for review of petitions requesting modification of the list of articles eligible to receive duty-free treatment under the GSP, as provided for in Title V of the Trade Act of 1974 (19 U.S.C. 2461–2465). These petitions were submitted, and will be reviewed, pursuant to regulations codified at 15 CFR Part 2007.

1. Requests for "Graduation" of Countries

As part of this and future product reviews, a special effort will be made to include on the GSP list products of interest to low income beneficiary countries, including certain agricultural and handicraft articles. In addition, requests to add products to or remove them from the list of articles eligible for GSP duty-free treatment will be evaluated in accordance with the "graduation" policy. In considering GSP eligibility for products, limitations on GSP benefits will be considered for the more economically advanced beneficiary developing countries in specific products where it is determined that they have demonstrated international competitiveness. This approach will help to ensure that a greater share of GSP benefits is reserved for less competitive beneficiaries. Three criteria will be taken into account when any such "graduation" action is considered: the development level of individual beneficiary countries, their competitive position in the product concerned and the overall economic interests of the United States. The GSP Subcommittee will review information for the relevant United States industry as enumerated in 15 CFR 2007.1(5) when considering the removal of any beneficiary developing country from GSP eligibility with respect to a specific designated product or from proposed GSP eligibility with respect to a petition requesting the designation of an item.

Product designations announced at the conclusion of the review process, therefore, may be made on a differential basis. This means that certain beneficiary developing countries may not be designated for GSP benefits on certain products even though those countries are not excluded under the competitive need provisions set forth in section 504(c)(1) of the Trade Act of 1974, as amended. It also is possible to withdraw GSP treatment from certain beneficiary developing countries rather than remove the product entirely from GSP coverage. The competitive need limitations of the program will continue to apply to countries remaining eligible for GSP treatment with respect to particular products.

The implementation of this policy is designed to provide increased opportunities for less developed, less competitive beneficiary developing countries to benefit from GSP duty-free treatment. In accordance with U.S. trade policy toward developing countries this action is designed also to promote continued graduation of more advanced developing countries from GSP benefits in products where they have demonstrated competitiveness. Over time, such action should provide a more balanced distribution of GSP benefits among developing countries by helping to shift more of the program's benefits to the less competitive developing countries.

For additional information on this policy, refer to the Report to the Congress on the First Five Years' Operation of the U.S. Generalized System of Preferences (GSP), transmitted by the President of the United States on April 17, 1980. A copy is available for inspection at the GSP Information Center, Office of the United States Trade Representative, 600 Seventeenth Street, NW., Room 316, Washington, D.C. 20506. Information also can be obtained by calling the GSP Information Center at (202) 395–6971.

2. Information Subject to Public Inspection

Information submitted in connection with the hearings will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2006.10. Parties submitting briefs or statements containing confidential information must indicate clearly on the cover page of each of the twenty copies submitted and on each page within the document, where appropriate, that confidential material is included. Non-confidential summaries of all confidential material must be submitted in twenty copies, in English, at the same time that confidential submissions are filed.

3. Communications

All communications with regard to these hearings should be addressed to: GSP Subcommittee, Office of the United States Trade Representative, 600 Seventeenth Street, NW., Room 316, Washington, D.C. 20506. The telephone number of the Secretary of the GSP Subcommittee is (202) 395–6971. Questions may also be directed to any member of the staff of the GSP Information Center.

Acceptance for review of the petitions listed herein does not indicate any opinion with respect to a disposition on the merits of the petitions. Acceptance indicates only that the listed petitions have been found to be eligible for review by the GSP Subcommittee and the TPSC, and that such reviews will take place.

II. Deadline for Receipt of Requests To Participate in the Public Hearings

The GSP Subcommittee of the Trade Policy Staff Committee invites submissions in support of or in opposition to any petition contained in this notice. All such submissions should conform to 15 CFR Part 2007, particularly §§ 2007.0, 2007.1(1), 2007.1(2), and 2007.1(3).

Requests to present oral testimony in connection with public hearings should be accompanied by twenty copies, in English, of all written briefs or statements and should be received by the Chairman of the GSP Subcommittee not later than the close of business Thursday, September 23, 1982. Oral testimony before the GSP Subcommittee will be limited to five minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Post-hearing briefs or statements will be accepted if submitted in twenty copies in English within one week after the close of the hearings (but in no case later than close of business Friday, October 15, 1982) and rebuttal briefs should be submitted in twenty copies, in English, by close of business Friday, October 29, 1982.

Parties not wishing to appear may submit written briefs or statements in twenty copies, in English, in connection with articles under consideration in the public hearings, provided that such submissions are filed on October 15 and conform with the regulations cited above.

Hearings will begin at 9:00 a.m. on Monday, October 4, in the hearing room of the U.S. International Trade Commission (701 E Street, N.W.) Washington, D.C. and will continue on that and subsequent days until all witnesses have been heard.

The hearings will be open to the public and transcripts of the hearings will be made available for public

inspection or purchase from the reporting company.

III. List of Articles Which May Be Considered for Designation as Eligible Articles for Purposes of the GSP and on Which the United States International Trade Commission Will Be Asked To Provide Advice

1. In conformity with section 502(a) and 131(a) of the Trade Act of 1974 as amended (19 U.S.C. 2463(a) and 2151(a)), notice is hereby given that the articles listed herein may be considered for designation as eligible articles for purposes of the GSP.

An article which is determined to be import sensitive in the context of the GSP cannot be designated as an eligible article. Recommendations with respect to the eligibility of any listed article will be made after public hearings have been held and advice has been received from the U.S. International Trade Commission on the probable effects of GSP designation on industries producing like or directly competitive articles and on consumers.

2. Advice of the United States International Trade Commission. On behalf of the President and in accordance with sections 503(a) and 131(a) of the Trade Act of 1974 as amended, the U.S. International Trade Commission is being furnished with a list of the articles published herein for the purpose of securing from the Commission its advice on the probable economic effect on United States industries producing like or directly competitive articles, and on consumers, of the designation of such articles as eligible articles for purposes of the GSP.

Fredercik L. Montgomery,

Chairman, Trade Policy Staff Committee.

BILLING CODE 3190-01-M

Annex I

Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered items which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
		A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences.	
		Fish prepared or preserved in any manner, in oil, in airtight containers:	
		Sardines:	
82-1	112.54	Valued not over 18 cents per pound (including weight of immediate container)	Andean Group 2/, Government of Chile
		Valued over 23 but not over 30 cents per pound (including weight of immediate container):	
		Neither skinned nor boned:	
82-2	112.71	Smoked	do.
82-3	112.73	Not smoked	do.
82-4	112.74	Skinned or boned	do.
		Valued over 30 cents per pound (including weight of immediate container):	
		Neither skinned nor boned:	
		Smoked:	
82-5	112.79	Valued 45 cents or more per pound in tin-plate containers or 50 cents or more per pound in other containers	do.
82-6	112.80	Other	do.
		Milled grain products:	
		Not fit for human consumption:	
		Wheat:	
82-7	131.75pt.	Bran	do.
		Vegetables fresh, chilled, or frozen (but not reduced in size nor otherwise prepared or preserved):	
		[Products provided for in item numbers 135.10 through 137.66]	
		Other:	
		[Brussels sprouts; chayote (sechium edule); fiddlehead ferns; jicamas, fresh or chilled; parsnips; water chestnuts, frozen; yams and sweet potatoes]	

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).
2/ Petitions submitted on behalf of five member countries--Bolivia, Colombia, Ecuador, Peru, and Venezuela.

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Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.)			
		Vegetables fresh, chilled, or frozen, etc. (con.): Other: Other: Fresh or chilled: [Asparagus; broccoli]	
82-8	137.9575 or 137.9575pt. or 137.9575pt.	Other or Pumpkins or Breadfruit	Government of Jamaica do. do.
		Other edible nuts, shelled or not shelled, blanched, or otherwise prepared or preserved: Not shelled:	
82-9	145.26	Pistache	Government of Turkey
		Berries, fresh, or prepared or preserved: Frozen:	
82-10	146.74	Raspberries	Government of Chile
		Cherries, fresh, or prepared or preserved: Fresh:	
82-11	146.90	Not in airtight containers or watertight containers	do.
		[Dried; in brine; frozen]	
82-12	146.99	Otherwise prepared or preserved	do.
		Figs, fresh, or prepared or preserved: [Fresh or in brine] Dried:	
82-13	147.51	In immediate containers weighing with their contents over 1 pound each	Government of Turkey
82-14	147.53	Other	do.
82-15	147.54	Otherwise prepared or preserved	do.
		Grapes, fresh, or prepared or preserved: Fresh (in bulk, or in crates, barrels or other packages): Other than hothouse:	
82-16	147.61	If entered during the period from February 15 to March 31, inclusive, in any year	Andean Group 2/, Government of Colombia
		[If entered during the period from April 1 to June 30, inclusive, in any year]	

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

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Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
		A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.)	
		Grapes, fresh, or prepared or preserved (con.): Fresh (in bulk, or in crates, etc.) (con.): Other than hothouse (con.):	
82-17	147.64	If entered at any other time	Andean Group 2/, Government of Colombia
		Olives, fresh, or prepared or preserved: In brine, whether or not pitted or stuffed: Not ripe and not pitted or stuffed: [Not green in color and not packed in airtight containers of glass, metal, or glass and metal]	
82-18	148.44	Other	Shan Olives, Ltd. (Hazayith), Israel, Government of Morocco
		Pears, fresh, or prepared or preserved: Fresh or in brine:	
82-19	148.81	If entered during the period from April 1 to June 30, inclusive, in any year	Government of Chile, Government of Uruguay
		Plums, prunes, and prunelles, fresh, or prepared or preserved: Fresh:	
82-20	149.18	If entered during the period from January 1 to May 31, inclusive in any year	Government of Chile
		[In brine; dried]	
82-21	149.28	Otherwise prepared or preserved	do.
		Fruit pastes and fruit pulps: [Apricot; cashew apple, mamey colorado, sapodilla, soursop and sweet sop]	
82-22	152.50	Fig	Government of Turkey
		[Guava; mango; tamarind; orange; papaya; banana and plantain; pear]	
		Other:	
82-23	152.8140pt.	Quince and apple	Government of Uruguay

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).
2/ Petitions submitted on behalf of five member countries--Bolivia, Colombia, Ecuador, Peru, and Venezuela.

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Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
A.	Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.)		
		All jellies, jams, marmalades, and fruit butters:	
82-24	153.06pt.	Mulberry	Government of Honduras
82-25	153.20	Papaya	Andean Group 2/, Government of Honduras
		Basil:	
		[Crude or not manufactured]	
82-26	161.05	Other	Government of Egypt
		Hops, hop extract, and lupulin:	
82-27	192.25	Hops	Hmezad Export-Import and Koprodukt Novi Sad, Yugoslavia
		Wool:	
		Aleppo, Arabian, Bagdad, Black Spanish, Chinese, Cordova, Cyprus, Donskoi, East Indian, Ecuadorean, Egyptian, Georgian, Haslock, Iceland, Kerry, Manchurian, Mongolian, Oporto, Persian, Pyrenean, Sardinian, Scotch Blackface, Sistan, Smyrna, Sudan, Syrian, Thibetan, Turkestan, Valparaiso, and Welsh Mountain Wool; similar wool not improved by the admixture of merino or English blood; and other wool of whatever blood or origin not finer than 40s; all the foregoing:	
		In the grease or washed:	
82-28	306.11	Not sorted	Government of Chile
		Waste of wool or hair and advanced waste of wool or hair:	
		Noils, whether or not advanced:	
82-29	307.08	Advanced	Government of Egypt
		Belting and belts, for machinery, of textile fibers or of such fibers and rubber or plastics:	
		[V-belts]	
		Other:	
		Of vegetable fibers, or of such fibers and rubber or plastics:	
82-30	358.06	In part of rubber or plastics	Andean Group 2/, Government of Colombia
82-31	358.14	Of man-made fibers	Andean Group 2/, Government of Colombia
		Floor covering underlays:	
		[Over 50 percent by weight of wool]	
82-32	361.85	Other	Government of Egypt

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).
2/ Petitions submitted on behalf of five member countries--Bolivia, Colombia, Ecuador, Peru, and Venezuela.

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Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.)			
		Articles not specially provided for, of textile materials: [Lace or net articles, whether or not ornamented, and other articles ornamented]	
		Other articles not ornamented: Of man-made fibers: [Knit (except pile or tufted construction)]	
82-33	389.50pt.	Pile or tufted construction: Fasteners consisting of two mating knit or woven textile strips	Government of Uruguay
		Other: [Artificial flowers] Other:	
82-34	389.6265pt.	Fasteners consisting of two mating knit or woven textile strips	do.
		Cyclic organic chemical products in any physical form having a benzenoid, quinoid, or modified benzenoid structure, not provided for in subpart A or C of part 1 of schedule 4 of the Tariff Schedules of the United States: [Articles provided for in items 402.00 thru 403.32]	
		Other: Alcohols, phenols, ethers (including epoxides and acetals), aldehydes, ketones, alcohol peroxides, ether peroxides, ketone peroxides, and their derivatives:	
82-35	403.28pt.	α-Naphthols	Makteshim Chemical Works Ltd., Israel
		Carboxylic acids, anhydrides, halides, acyl peroxides, peroxyacids, and their derivatives: Other: Carboxylic acids with alcohol, phenol, aldehyde, or ketone function and other single or complex oxygen-function carboxylic acids and their anhydrides, halides, peroxides, and peracids, and their halogenated, sulfonated, nitrated, or nitrosated derivatives:	
82-36	404.44pt.	p-Hydroxybenzoic acid	Makteshim Chemical Works Ltd., Israel

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

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Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
A.	Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.)		
		Cyclic organic chemical products, etc. (con.): Other (con.): Carboxylic acids, anhydrides, etc. (con.): Other (con.): Carboxylic acids with alcohol, phenol, etc. (con.):	
82-37	404.46pt.	Methylparaben; and propylparaben	Makteshim Chemical Works Ltd., Israel
		Amides and their derivatives: Other:	
82-38	405.32pt.	N-Acetylsulfanilyl chloride	Government of Korea
		All other products, by whatever name known, not provided for in subpart A or C of part 1, schedule 4 of the Tariff Schedules of the United States including acyclic organic chemical products, which are obtained, derived, or manufactured in whole or in part from any of the cyclic products having a benzenoid, quinoid, or modified benzenoid structure provided for in the foregoing provisions of subpart B or in subpart A of part 1 of schedule 4 of the Tariff Schedules of the United States:	
82-39	406.81	Cyclohexane	Andean Group 2/
		Products suitable for medicinal use, and drugs: Obtained, derived, or manufactured in whole or in part from any product provided for in subpart A or B of part 1 of schedule 4 of the Tariff Schedules of the United States: Drugs:	
82-40	411.24	Sulfamethazine	Pliva of Zagreb, Yugoslavia
82-41	411.28pt.	Sulfamerazine	do.
		Other: Anti-infective agents: Anti-infective sulfonamides:	
82-42	411.80	Sulfathiazole and sulfathiazole, sodium	do.
		Other:	
82-43	411.84pt.	Sulfadimidine, sodium; sulfamethoxazole; and sulfisoxazole	do.

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).
2/ Petitions submitted on behalf of five member countries--Bolivia, Colombia, Ecuador, Peru, and Venezuela.

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Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
A.	Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.)		
		Products suitable for medicinal use, etc. (con.): Obtained, derived, or manufactured in whole or in part, etc. (con.): Drugs (con.): Other (con.): Anti-infective agents (con.): Anti-infective sulfonamides (con.): Other (con.):	
82-44	411.84pt.	Sodium sulfacetamide; sulfanilamide; sulfaguniоxaline; and tolbutamide	Government of Romania
		Anti-infective agents, not specially provided for: Other:	
82-45	411.94pt.	Mandelic acid	Conray Chemicals, New York, NY
		Other:	
82-46	412.68pt.	Hydrochlorothiazide	Pliva of Zagreb, Yugoslavia
		Alcohols, polyhydric (including glycols, polyglycols, diols, and polyols), and esters, ethers, and ether-esters and substituted derivatives of any of the foregoing: Glycerine:	
82-47	428.38	Refined	Andean Group 2/, Government of Colombia
		Articles chiefly used in the household or elsewhere for preparing, serving, or storing food or beverages, or food or beverage ingredients; smokers' articles, household articles, and art and ornamental articles, all the foregoing not specially provided for: [Glassware provided for in items 546.11 thru 546.25]	
		Glassware, other than the foregoing, colored prior to solidification, and characterized by random distribution of numerous bubbles, seeds, or stones, throughout the mass of the glass:	
82-48	546.3540pt.	Hand-blown votives	Glass Products, Inc., Dallas, TX

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).
2/ Petitions submitted on behalf of five member countries--Bolivia, Colombia, Ecuador, Peru, and Venezuela.

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Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
A.	Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.)		
		Articles chiefly used in the household, etc. (con.): [Glassware, other than the foregoing, pressed and toughened (specially tempered), chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients]	
		Other glassware:	
		Other:	
		Valued over $0.30 but not over $3 each:	
82-49	546.6060pt.	Hand-blown votives	Glass Products, Inc., Dallas, TX
		Locks and padlocks (whether key, combination, or electrically operated), luggage frames incorporating locks, all the foregoing, and parts thereof, of base metal; lock keys:	
		Padlocks:	
		Not of cylinder or pin tumbler construction:	
82-50	646.80	Not over 1.5 inches in width	Government of India
		Of cylinder or pin tumbler construction:	
82-51	646.83	Not over 1.5 inches in width	do.
82-52	646.84	Over 1.5 but not over 2.5 inches in width	do.
		Electrical capacitors, fixed or variable:	
		Fixed capacitors:	
		Ceramic:	
		Multilayer:	
82-53	685.8013	Axial leads	AVX Ceramics, Myrtle Beach, SC
82-54	685.8016	Radial leads	do.
82-55	685.8017	Chips	do.
		Other footwear:	
		[Of wood]	
		Other:	
82-56	700.90	Disposable footwear, designed for one-time use	Government of Haiti
		Gloves of rubber or plastics:	
		[Seamless]	
		[With textile fabric fourchettes or sidewalls; or with the outer surface thereof (except as to applied cuffs, if any) wholly of plastics, and the seams of which are heat sealed and not sewn or stitched]	
82-57	705.86	Other	Government of Thailand

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

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Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
		B. Petitions to remove products from the list of eligible articles for the Generalized System of Tariff Preferences.	
		Mixtures in whole or in part of any of the products provided for in subpart B of part 1 of schedule 4 of the Tariff Schedules of the United States: [Solvents which contain over 25 percent by weight of any of the products provided for in this subpart]	
82-58	407.16pt.	Other: Mixtures of Toluene-2,4-diisocyanate and Toluene-2,6-diisocyanate	Ad Hoc Group of Domestic TDI Producers, New York, NY
82-59	418.78pt.	Copper compounds: Hydroxide	Kocide Chemical Corporation, Houston, TX
82-60	425.22pt.	Nitrogenous compounds: 1,1'-Azobisformamide	Uniroyal Chemical, Naugatuck, CT
		Bolts, nuts, studs and studding, screws, and washers (including bolts and their nuts imported in the same shipment, and assembled bolts or screws and washers, with or without nuts); screw eyes, screw hooks and screw rings; turnbuckles; all the foregoing not described in the foregoing provisions of subpart D of part 3 of schedule 6 of the Tariff Schedules of the United States, of base metal:	
82-61	646.54	Of iron or steel: Bolts and bolts and their nuts imported in the same shipment	United States Fastener Manufacturing Group, Washington, DC
82-62	646.56	Nuts	do.

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

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Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
	C. Petitions to remove duty-free status from a beneficiary developing country for a product on the list of eligible articles for the Generalized System of Preferences.2/		
82-63	167.05 (Mexico)	Ale, porter, stout, and beer	United States Brewers Association, Inc., Washington, DC
82-64	240.14 (Taiwan)	Plywood, whether or not face finished: Not face finished, or face finished with a clear or transparent material which does not obscure the grain, texture, or markings of the face ply: With a face ply of birch (Betula spp.)	Patat Plywood Corporation, Rockmart, GA
82-65	493.6820 (Republic of Korea, Mexico)	Polysaccharides, rare saccharides, and their polyhydric alcohols: [Lactose; levulose; salicine] Other: Sorbitol	Pfizer, Inc., New York, NY
82-66	649.3716 (Taiwan)	Vises and clamps (except parts of, or accessories for, machine tools): Vises: [Pipe; woodworking] Other	Wilton Corporation, Des Plaines, IL
82-67	654.0525 (Republic of Korea, Portugal, Taiwan)	Articles not specially provided for of a type used for household, table, or kitchen use; toilet and sanitary wares; all the foregoing and parts thereof, of metal: Articles, wares, and parts, of base metal, not coated or plated with precious metal: Of copper: [Of brass] Other: Cooking and kitchen ware	American Trading and Production Company, Baltimore, MD

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).
2/ The country or countries named are those beneficiary developing countries specified by the petitioner. While the Trade Policy Staff Committee's (TPSC) review will focus on those countries, the TPSC reserves the right to address removal of GSP status for countries other than those specified by the petitioner.

Annex I

Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
	C. Petitions to remove duty-free status from a beneficiary developing country for a product on the list of eligible articles for the Generalized System of Preferences (con)2/		
82-68	682.0520 (Hong Kong)	Generators, motors, motor-generators, converters (rotary or static), transformers, rectifiers and rectifying apparatus, and inductors; all the foregoing which are electrical goods, and parts thereof: Transformers: Rated at less than 1 kva: Rated at less than 40 va	France, Fairview, TN
82-69	730.9035 (Republic of Korea)	Bombs, grenades, torpedoes, mines, guided weapons and missiles and similar munitions of war, and parts thereof; ammunition, and parts thereof: Cartridges and empty cartridge shells: Containing a projectile: For rifles or pistols: [.22 caliber] Other	Sporting Arms and Ammunition Manufacturers Institute, Washington, DC
82-70	772.60 (Republic of Korea)	Tires, and tubes for tires, of rubber or plastics: Tubes: [Bicycle; designed for tires provided for in item 772.50] Other	Rubber Manufacturers Association, Washington, DC United Rubber, Cork, Linoleum and Plastic Workers of America, East Gadsden, AL

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).
2/ The country or countries named are those beneficiary developing countries specified by the petitioner. While the Trade Policy Staff Committee's (TPSC) review will focus on those countries, the TPSC reserves the right to address removal of GSP status for countries other than those specified by the petitioner.

Annex I

Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
	D. Petitions to determine an eligible article as not like or directly competitive with any article produced in the United States on January 3, 1975, in order to avoid loss of GSP duty-free treatment under the provisions of section 504(c)(1)(B) of the Trade Act of 1974.		
82-71	169.46pt.	Other spirits, and preparations in chief value of distilled spirits, fit for use as beverages or for beverage purposes: Spirits: Mescal, in containers each holding not over 1 gallon	Barton Brands, Ltd., Chicago, IL Capital Importers, Los Angeles, CA, Government of Mexico
82-72	727.12pt.	Furniture, and parts thereof, not specially provided for: Of unspun fibrous vegetable materials: Of buri	Government of the Philippines

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

[FR Doc. 82-19415 Filed 7-15-82; 8:45 am]
BILLING CODE 3190-01-C

PENSION BENEFIT GUARANTY CORPORATION

Exemption From Bond Escrow and Sale-Contract Requirements Relating to Sale of Assets by an Employer; Philadelphia National League Club and the Phillies

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted the Philadelphia National League Club and The Phillies an exemption from the bond/escrow and sale-contract requirements of section 4204(a)(1)(B) and (C) of the Employee Retirement Income Security Act of 1974, as amended. A notice of the request for exemption from these requirements was published on February 26, 1982 (47 FR 8440). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESS: The request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Public Affairs Office, Suite 7100, 2020 K Street, NW., Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (160) at the above address.

FOR FURTHER INFORMATION CONTACT: James M. Graham, Office of the Executive Director, Policy and Planning (140), 2020 K Street, NW., Washington, D.C. 20006; (202) 254–4862.

SUPPLEMENTARY INFORMATION:

Background

Section 4204(a)(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. 1384, provides that the sale of assets of an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for five plan years after the sale. Another condition is that the sales agreement provide that the seller will be secondarily liable for its withdrawal liability if the purchaser withdraw as within the first five plan years after the sale and fails to pay withdrawal liability.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow and sale-contract requirements of section 4204(a)(1)(B) and (C). Under § 2643.3(a) of the PBGC's regulation on procedures for variances for sales of assets (46 FR 46127, September 17, 1981), the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions.

Section 4204(c) and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or an exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

Decision

On February 26, 1982 (47 FR 8440), the PBGC published a notice of the pendency of a joint request from the seller, the Philadelphia National League Club (the "Club") and the purchaser, The Phillies ("Phillies"), a limited partnership, (collectively referred to as the "Parties") for an exemption from the requirements of section 4204(a)(1)(B) and (C) of ERISA. No comments were received in response to the notice.

The Club was a participating employer in the Major League Baseball Players Benefit Plan (the "Plan"), which is established and maintained pursuant to a collective bargaining agreement between the 26 professional major league baseball teams and the Major League Baseball Players Association.

The major league clubs have established the Major League's Central Fund (the "Central Fund") pursuant to the "Major League Agreement in re Major League's Central Fund." Under this Agreement, the revenues to fund the Plan for all participating employers are received by the Office of the Commissioner of Baseball and are then remitted on behalf of the clubs in satisfaction of their pension liability arising under the Plan's funding agreement. In addition, other expenditures on behalf of all 26 clubs are made from the Central Fund. The monies in the Fund are derived directly from gate receipts from All-Star games and radio and television rights to certain other events.

The major league clubs are currently obligated to contribute the sum of $15,500,000 per year to cover both pension and welfare benefits; approximately $13 million of which is remitted to the pension plan for the current plan year. Each major league club is responsible for 1/26 of that amount. In 1980, the Central Fund paid $500,000 as pension contributions to the Plan on behalf of the Club.

Payment of employer contributions is made directly to the Plan from the Central Fund and the revenue of the Fund comes directly from certain gate receipts and radio and television rights. A change in team ownership has no direct effect on the Plan's funding and does not create any risk to the plan that there will be difficulty in collecting Plan contributions.

Based on the facts of this case and the representations and statements made in connection with the request for exemption, PBGC has determined that an exemption under section 4204(c) would more effectively or equitably carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the plan. Therefore, PBGC has granted the Parties' request for an exemption from the bond/escrow and sale-contract requirements. The granting of an exemption or variance from the requirements of section 4204(a)(1) (B) and (C) does not constitute a finding by PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the plan sponsor.

Issued at Washington, D.C. on this 1st day of July 1982.

Edwin M. Jones,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 82-19267 Filed 7-15-82; 8:45 am]

BILLING CODE 7708-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 03/02-0273]

Inverness Capital Corp.; Filing of Application for Transfer of Control and Ownership of Licensed Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.701 of the Regulations governing small business investment companies (13 CFR 107.701 (1982)) for the transfer of control and ownership of Inverness

Capital Corporation, 424 N. Washington Street, Alexandria, Virginia 22314.

Inverness was licensed on October 1, 1969. Its present combined paid-in capital and paid-in surplus (private capital) is $1,364,778. The proposed transfer of control and ownership is subject to and contingent upon approval by SBA.

Old Port Company, which is located at the same address as Inverness, owns about 80 percent of the licensee and is the only ten or more percent shareholder. The name of the licensee will remain the same. Inverness will be moved to Tennessee and be located at Suite 1205, 210 25th Avenue, North, Nashville, Tennessee 37203.

The proposed officers, directors and stockholders are:

Floyd W. Kephart, Jr., 640 Timber Lane, Nashville, Tenn. 37215—President, Director

Ronald H. Bice, Jr., 4004 Lake Parkway, Hermitage, Tenn. 37076—Treasurer, Secretary.

Joaquin de Navasques, 210 25th Avenue, North, Nashville, Tenn. 37203—Director

Ms. Kirsten P. Murchison, 3857 So. Versailles, Dallas, Texas 75209—Director

Capital Communications and Management Corporation, 210 25th Avenue, North, Nashville, Tenn. 37203—100 percent

Capital Communications and Management Corporation is a holding company formed to purchase the stock of Inverness from Old Port and the other less than ten percent shareholders. Mr. Navasques owns all of the stock of Capital Communications and Management Corporation.

Matters involved in SBA's consideration of the application include the general business reputation and character of the new owner and the probability of successful operation of Inverness under the new control and ownership arrangement (including adequate profitability and financial soundness) in accordance with the Act and Regulations.

Notice is hereby given that any interested persons may, not later than August 2, 1982, submit to SBA, in writing, any relevant comments on the transfer of control and ownership. Any such comments should be addressed to the Associate Administrator for Finance & Investment, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this Notice shall be published by the transferee in newspapers of general circulation in Nashville, Tennessee and Alexandria, Virginia.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: July 12, 1982.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 82-19316 Filed 7-15-82; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03/03-0146]

James River Capital Associates; Filing of an Application for Approval of a Conflict of Interest Transaction

Notice is hereby given that James River Capital Associates (Licensee) 9 South 12th Street, Richmond, Virginia 23219, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application pursuant to Section 107.1004 of the Regulations governing small business investment companies (13 CFR 107.1004 (1982)) for an exemption from the provisions of the conflict of interest regulation.

This exemption, if granted will permit the Licensee to provide financing of $170,000 to La Vogue Holdings, Inc. (La Vogue), 451 East Belt Boulevard, Richmond, Virginia 23224.

Mr. James B. Farinbolt, Jr., President of the Licensee, is also a director and 43.5 percent shareholder of La Vogue.

Pursuant to Paragraph (f) of the definition of "Associate of a Licensee" in § 107.3 of the SBA Regulations, La Vogue is considered to be an associate of the Licensee. As such, the transaction will require an exemption from the provisions of § 107.1004(b)(1) of the Regulations.

Notice is hereby given that any person may, no later than August 2, 1982, sumbit to the Small Business Administration, in writing, relevant comments on the proposed transaction. Any such communications should be addressed to the Acting Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in Richmond, Virginia.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 12, 1982.

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-19315 Filed 7-15-82; 8:45 am]

BILLING CODE 8025-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 137
Friday, July 16, 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).

CONTENTS

	Items
Commodity Futures Trading Commission	1
Federal Home Loan Bank Board	2
Federal Maritime Commission	3
International Trade Commission	4
Postal Rate Commission	5
Postal Service (Board of Governors)	6

1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., July 20, 1982.

PLACE: 2033 K Street, NW., Washington, D.C., fifth floor hearing room.

STATUS: Partially open and closed.

MATTERS TO BE CONSIDERED: Budget Categories, Plans, Programs and Priorities.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1050-82 Filed 7-14-82; 3:40 pm]

BILLING CODE 6351-01-M

2

FEDERAL HOME LOAN BANK BOARD

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 30351, Tuesday, July 13, 1982.

DATE: Thursday, July 15, 1982.

PLACE: Board room, fifth floor, 1700 G Street NW., Washington, D.C.

TIME: 10:00 a.m.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6679).

CHANGES IN THE MEETING: The following item has been withdrawn from the open portion of the Bank Board meeting scheduled Thursday, July 15, 1982:

Liquidity Amendments

[No. 50, July 14, 1982]

[S-1044-82 Filed 7-14-82; 11:44 am]

BILLING CODE 6720-01-M

3

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9 a.m., July 21, 1982.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Report on Notation Items disposed of during June 1982.
2. Report of the Secretary on times shortened for submitting comments on section 15 agreements pursuant to delegated authority during June 1982.
3. Report of the Secretary on Applications for Admission to Practice approved during June 1982, pursuant to delegated authority.
4. Agreement No. 5600-34: Modification of the Marseilles North Atlantic U.S.A. Freight Conference to revise voting requirements on intermodal rate matters.
5. Special Docket No. 919: Application of Pacific Westbound Conference on Behalf of Korea Marine Transport Co., Ltd. for the Benefit of Mitsui and Company (USA) Inc.—Consideration of the record.

Portions closed to the public:

1. Docket No. 79-2: Agreement No. 10293 and Docket No. 79-3: Agreement No. 10295—Appeal of denial of petition to intervene of the Government of Colombia.
2. Docket No. 81-57: Tractors & Farm Equipment Ltd. v. Waterman Steamship Corp. and Cosmos Shipping Company, Ltd.—Consideration of the record.
3. Docket No. 81-10: Sea-Land Service, Inc., Trailer Marine Transport Corporation; Gulf-Caribbean Marine Lines, Inc., Puerto Rico Maritime Shipping Authority—Proposed General Rate Increases in the Puerto Rico and Virgin Islands Trades—Consideration of petition of PRMSA for relief; motion of PRMSA to file reply; request of PRMSA for oral argument; and petition of Department of Transportation to intervene.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523-5725.

[S-1041-82 Filed 7-13-82; 4:45 pm]

BILLING CODE 6730-01-M

4

INTERNATIONAL TRADE COMMISSION

[USITC SE-82-27]

TIME AND DATE: 2:30 p.m., Tuesday, July 27, 1982.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary:
   a. Textile spinning frames (Docket No. 849).
   b. Panel inserts (Inv. 377-TA-99)—possible institution of a second investigation.
5. Investigations 701-TA-179/181 (Certain Steel Products from Brazil)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

[S-1040-82 Filed 7-13-82; 4:14 pm]

BILLING CODE 7020-02-M

5

POSTAL RATE COMMISSION

TIME AND DATE: 2 p.m., Tuesday, July 20, 1982.

PLACE: Conference Room, Room 500, 2000 L Street, NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: [Closed pursuant to 5 U.S.C. 552b(c)(10)]:

Warshawsky and Company v. Postal Rate Commission and Board of Governors, USPS (Suit filed 3-26-82 in United States District Court for the Northern District of Illinous—Docket No. 82C1895.)

CONTACT PERSON FOR MORE INFORMATION: Dennis Watson, Information Officer, Postal Rate Commission, Room 500, 2000 L Street, NW., Washington, D.C. 20268, Telephone (202) 254-5614.

[S-1049-82 Filed 7-14-82; 3:16 pm]

BILLING CODE 7715-01-M

6

POSTAL SERVICE

.(Board of Governors)

Vote to Close Meeting

On July 6, 1982, the Board of Governors of the United States Postal Service unanimously voted to close to public observation a portion of the meeting of the Board to be held on September 9. The meeting is expected to be attended by the following persons: Governors Hardesty, Babcock, Camp, Hughes, Jenkins, McKean, and Sullivan; Postmaster General Bolger; Deputy Postmaster General Benson; Secretary of the Board Cox; Counsel to the Governors Califano; Assistant Postmaster General Cummings; and

Executive Assistant to the Postmaster General Coughlin.

The portion of the Board meeting to be closed will consist of a discussion of Postal Service strategic planning.

The Board is of the opinion that public access to this discussion would be likely to disclose information in connection with future collective bargaining and information that will become involved in future rate litigation.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and § 7.3(c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the opening meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552(b)), because it is likely to disclose information in connection with proceedings under chapter 36 of Title 39 (having to do with postal ratemaking, mail classification, and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code. The Board determined further that, pursuant to section 552b(c)(10) of title 5 and § 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern the participation of the Postal Service in a civil action or proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing. It also determined, pursuant to section 552b(c)(9)(B) and § 7.3(i) of Title 39, Code of Federal Regulations, that the discussion is exempt because premature disclosure of information to be discussed would be likely significantly to frustrate implementation of future action in regard to future collective bargaining. The Board further determined that the public interest does not require that the Board's discussion of this matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the portion of the meeting to be closed may properly be closed to public observation, pursuant to sections 552b(c)(3), (9)(B) and (10) of title 5 and sections 410(c)(3) and (4) of Title 39, United States Code, and § 7.3(c), (i), and (j) of Title 39, Code of Federal Regulations.

Louis A. Cox,

Secretary.

[S-1043-82 Filed 7-14-82; 10:12 am]

BILLING CODE 7710-12-M

federal register

Friday
July 16, 1982

Part II

Department of Health and Human Services

Food and Drug Administration

Anesthesiology Devices; General Provisions and Classification of 134 Devices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 868

[Docket No. 78N-1648]

Anesthesiology Devices; General Provisions and Classification of 134 Devices

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule regarding general provisions applicable to the classification of anesthesiology devices. The final rule also includes the classification of 134 of these devices. The preamble to this rule responds to comments received on the proposals regarding classification of anesthesiology devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: August 16, 1982.

FOR FURTHER INFORMATION CONTACT: David S. Shindell, Bureau of Medical Devices (HFK-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7226.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 2, 1979 (44 FR 63292-63426), FDA published proposed regulations containing general provisions applicable to the classification of anesthesiology devices and individual proposed regulations to classify 149 anesthesiology devices into one or more of three regulatory classes: class I (general controls), class II (performance standards), and class III (premarket approval). Of the 149 anesthesiology devices subject to proposals, FDA is classifying 134; 21 devices into class I, 105 devices into class II, 7 devices into class III, and 1 device into either class II or class III, depending upon the intended use of the device. For the reasons described below, final regulations for 15 anesthesiology devices will not be published at this time.

Classification of medical devices in commercial distribution is required by the Medical Devices Amendments of 1976 (Pub. L. 94-295) (the amendments) to the Federal Food, Drug, and Comestic Act (the act) (21 U.S.C. 301-392). The effect of classifying a device into class I is to require that the device continue to meet only the general controls applicable to all devices. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application that includes information concerning safety and effectiveness tests for the device. For a class III device not considered a new drug before the amendments and that either was in commercial distribution before May 28, 1976, or in substantially equivalent on or before February 28, 1985, or 90 days after promulgation of a separate regulation requiring premarket approval of the device, whichever occurs later. For a class III device previously considered a new drug, the requirement of having premarket approval is already in effect. See section 520(1) of the act (21 U.S.C. 360j(1)).

The preamble to the general provisions regulation described the development of the general provisions and the proposed regulations classifying anesthesiology devices and the activities of the Anesthesiology Device Section of the Respiratory and Nervous System Devices Panel (formerly the Anesthesiology Device Classification Panel), and FDA advisory committee that makes recommendations to FDA concerning the classification of anesthesiology devices. FDA provided a period of 60 days for interested persons to submit written comments on these proposals. The comments received and FDA's responses to comments are discussed below.

Change in Format of Final Rules for Classification of Devices

To reduce printing costs, FDA is publishing as one final regulation the general provisions and classification of 134 anesthesiology devices. Formerly, a separate final classification regulation was published in the **Federal Register** for each generic type of device. The docket number used to identify each of the proposed classification regulations continues to be used in this final regulation to identify each generic type of device.

Exemptions for Class I Devices

FDA proposed to exempt 11 anesthesiology devices from certain requirements of the good manufacturing practice (GMP) regulation in Part 820 (21 CFR Part 820). The 11 devices are the manual algesimeter (Docket No. 78N-1649), the uncalibrated breathing system collection bottle (Docket No. 78N-1665), the stethoscope head (Docket No. 78N-1690), the switching valve (Ploss) (Docket No. 78N-1691), the blow bottle (Docket No. 78N-1726), the posture chair for cardiac and pulmonary treatment (Docket No. 78N-1738), the ether hook (Docket No. 78N-1743), the rebreathing device (Docket No. 78N-1767), the cuff spreader (Docket No. 78N-1775), the cardiopulmonary emergency cart (Docket No. 78N-1798), and the nose clip (Docket No. 78N-1799). The agency is publishing in this final rule the classification of 10 of these 11 devices; the final rule for 1 device (Docket No. 78N-1665) was published with the final rule classifying general hospital and personal use devices (Docket No. 78N-1357). The final rule for each of these devices exempts the device from all of the GMP requirements with the exception of §§ 820.180 and 820.198 relating to records and complaint files. The agency has determined that exemption of devices from §§ 820.180 and 820.198 of the GMP regulation would not be in the public interest. Moreover, compliance with these sections is not unduly burdensome for device manufacturers. The complaint file requirements of § 820.198 ensure that device manufacturers have adequate systems for complaint investigation and followup. The general requirements concerning records in § 820.180 ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, can determine whether the manufacturer's corrective actions are adequate, and can determine whether an exemption from other sections of the GMP regulation, if one has been granted, is still appropriate.

FDA has prepared guidelines on the procedures that should be followed by persons who wish to submit petitions for exemption or variance from the device GMP regulation. These petitions may be submitted in accordance with provisions of section 520(f)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(f)(2)). The agency announced the availability of the guidelines in a notice published in the **Federal Register** of Friday, January 18, 1980 (45 FR 3671).

Devices That Have Both Medical and Nonmedical Uses

FDA has clarified several regulations classifying products that have both medical and nonmedical uses. FDA will regulate a multipurpose product as a medical device if it is intended for a medical purpose, i.e., for "use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease," or "to affect the structure or any function of the body." (Section 201(h) of the act (21 U.S.C. 321(h)).) FDA will determine the intended use of a product based upon the expressions of the person legally

responsible for its labeling and by the circumstances surrounding its distribution. The most important factors the agency will consider in determining the intended use of a particular product are the labeling, advertising, and other representations accompanying the product. Products that have medical uses only are clearly intended for medical purposes and, therefore, will be regulated as medical devices whether or not medical claims are made for them.

Relationship Between the Device Names in the Device Registration and Listing Codes and the Device Names in Classification Regulations

Some manufacturers have become accustomed to identifying a device by its registration and listing name and three-letter code used for purposes of device listing under section 510 of the act (21 U.S.C. 360). However, FDA is still making changes in the names and identifications of generic types of devices in the classification regulations for all devices for which final regulations have not been published. Because FDA has not used the present device registration and listing names in the proposed and final classification regulations, FDA has prepared an index of names of generic types of medical devices used in classification regulations to aid a manufacturer in matching its device with the proper classification regulation. The index shows the device registration and listing product code for each device reviewed by a classification panel and the corresponding name of the generic type of device and classification panel in which the device classification will be published in the **Federal Register**. The agency announced the availability of this index in the **Federal Register** of March 6, 1979 (44 FR 12269). If necessary, this index will be updated and the availability of the revised index will be reannounced in the **Federal Register**. FDA believes that, because this index is available, it is unnecessary to include or cross-reference the present device registration and listing name and product code in the classification regulations. In the future, following publication of most of the device classification regulations, the agency will revise and reissue the device registration and listing product code, so the device names to be used for registration and listing correspond to the device names in the final device classification regulations.

Final Regulations Not Published at This Time

The Anesthesiology Device Section of the Respiratory and Nervous System Devices Panel made recommendations for, and FDA proposed classification of, 149 anesthesiology devices. After publishing the proposals, the agency determined not to publish at this time final regulations on 15 devices, for the reasons described below. A separate notice withdrawing these proposed regulations will be, or has been, published in the **Federal Register**.

1. FDA proposed that the nonindwelling blood carbon monoxide analyzer (44 FR 63303) be classified into class II. After publishing the proposal to classify the device as part of the anesthesiology device classification proceeding, the agency determined that the device is the same generic type of device as the carbon monoxide test system that the Clinical Toxicology Device Section of the Clinical Chemistry and Hematology Devices Panel recommends be classified into class II. The agency has determined that the generic type of device will be the carbon monoxide test system and its classification regulation will be published in the **Federal Register** with clinical chemistry and clinical toxicology devices.

Any comments submitted by the public and other parts of the administrative record for the anesthesiology proposal will be included in the administrative record for the carbon monoxide test system (Docket No. 78N–2503).

2. FDA proposed that the following three devices be classified into class II: the nonindwelling blood carbon dioxide (PCO_2) analyzer (44 FR 63307), the nonindwelling blood hydrogen ion (pH) concentration analyzer (44 FR 63309), and the nonindwelling oxygen partial pressure (PO_2) analyzer (44 FR 63311). After publishing the proposals to classify the three devices as part of the anesthesiology device classification proceeding, the agency determined that the three devices are the same generic type of device as the blood gases (PCO_2, PO_2) and blood pH test system that the Clinical Chemistry Device Section of the Clinical Chemistry and Hematology Devices Panel recommends be classified into class II. The agency has determined that the generic type of device will be the blood gases (PCO_2, PO_2) and blood pH test system, and its classification regulation will be published in the **Federal Register** with clinical chemistry and clinical toxicology devices. Any comments submitted by the public and other parts of the administrative record for the three anesthesiology proposals will be included in the administrative record for the blood gases (PCO_2, PO_2) and blood pH test system (Docket No. 78N–2305).

3. FDA proposed that the nonindwelling blood nitrogen partial pressure (PN_2) analyzer be classified into class II (44 FR 63309). After publishing the proposal as part of the anesthesiology device classification proceeding (Docket No. 78N–1661), the agency determined that the device was not in commercial distribution before May 28, 1976, the enactment date of the amendments. Because the device was not in commercial distribution, it is classified into class III by statute as provided in section 513(f) of the act (21 U.S.C. 360c), without agency publication of a classification regulation for the device.

4. FDA proposed that both the gas cylinder (44 FR 63421) and the gas cylinder holder (44 FR 63422) be classified into class II. After publishing the two proposals as part of the anesthesiology device classification proceeding, the agency determined that the two products are not medical devices. Thus, it is inappropriate to classify them. When a gas cylinder contains a gas, such as oxygen, that is intended for inhalation, the product is a drug.

5. FDA proposed that the calibrated breathing system collection bottle be classified into class II (44 FR 63312), the uncalibrated breathing system collection bottle be classified into class I (44 FR 63313) and the water-seal thoracic drainage system be classified into class II (44 FR 63371). After publishing the proposals to classify the three devices as part of the anesthesiology device classification proceeding, the agency determined that the three devices are included in another generic type of device, the vacuum-powered body fluid suction apparatus. A final regulation classifying into class II the vacuum-powered body fluid suction apparatus was published in the **Federal Register** of October 21, 1980 (45 FR 69729) with general hospital and personal use devices. Any comments submitted by the public and other parts of the administrative record for the three anesthesiology proposals will be included in the administrative record for the vacuum-powered body fluid suction apparatus (Docket No. 78N–1357).

6. FDA proposed that the automatic catheter flushing device be classified into class II (44 FR 63380). After publishing the proposal to classify the device as part of the anesthesiology device classification proceeding, the agency determined that the device is the same generic type of device as the cardiovascular continuous flush

catheter. On February 5, 1980, the agency published in the **Federal Register** (45 FR 7910), a final regulation classifying the cardiovascular continuous flush catheter into class II (Docket No. 78N–1414). Therefore, the agency has determined that the anesthesiology automatic catheter flushing device has already been classified into class II, following opportunity for public comment.

7. FDA proposed that the blood transfusion microfilter be classified into class II (44 FR 63406). After publishing the proposal to classify the device as part of the anesthesiology device classification proceeding, the agency determined that the device is included in another generic type of device, the intravascular administration set. FDA published in the **Federal Register** of August 24, 1979 (44 FR 49888), a proposal to classify the intravascular administration set into class II. A final regulation classifying the intravascular administration set was published in the **Federal Register** (45 FR 69702) with general hospital and personal use devices. Any comments submitted by the public and other parts of the administrative record for the anesthesiology proposal will be included in the administrative record for the intravasuclar administration set (Docket No. 78N–1309).

8. FDA proposed that both the hyperthermia device (44 FR 63378) and the hypothermia device (44 FR 63379) be classified into class II. After publishing the proposals to classify the two devices as part of the anesthesiology device classification proceeding, the agency determined that the two devices are included in another generic type of device, the cardiovascular thermal regulating system. On February 5, 1980, the agency published in the **Federal Register** (45 FR 7971) a final regulation classifying the thermal regulating system into class II (Docket No. 78N–1547).

9. FDA proposed that the nonindwelling blood oxyhemoglobin concentration analyzer be classified into class II (44 FR 63305). No comments were received on the proposal. After publishing the proposal to classify the device as part of the anesthesiology device classification proceeding, the agency determined that the device is part of another generic type of device, the whole blood hemoglobin assays. FDA published in the **Federal Register** of September 11, 1979 (44 FR 53019), a proposal to classify the whole blood hemoglobin assays into class II. A final regulation classifying the whole blood hemoglobin assays into class II was published in the **Federal Register** (45 FR 60622) with hematology and pathology devices (Docket No. 78N–1896). The administrative record for the anesthesiology proposal will be included in the administrative record for the whole blood hemoglobin assays. Therefore, the agency has determined that the anesthesiology nonindwelling blood oxyhemoglobin concentration anylyzer device has already been classified into class II, following opportunity for public comment.

Cigarette Filters

In the preamble to the proposed regulation setting forth general provisions for the proposed classification of anesthesiology devices, published in the **Federal Register** of November 2, 1979 (44 FR 63292–63299), FDA stated that the Anesthesiology Device Section of the Respiratory and Nervous System Devices Panel had recommended that attached and detached cigarette filters be classified into class III (premarket approval), that a citizen petition had been filed by Action on Smoking and Health (ASH) concerning cigarette filters, and that FDA was not at that time issuing a proposed classification regulation for cigarette filters. ASH's citizen petition (Docket No. 78P–0338/CP) had requested that FDA recognize jurisdiction over cigarette filters as medical "devices" as defined in section 201(h) of the act (21 U.S.C. 321(h)). On November 25, 1980, FDA issued a letter responding to the petition. FDA concluded that attached cigarette filters, as customarily marketed, are not devices and that some, but not all, detached cigarette filters are devices. FDA is preparing a proposed classification regulation for detached cigarette filters that are medical devices and intends to publish it in a separate notice.

Order Issued in Response to a Reclassification Petition on an Anesthesiology Device

In addition to classifying commercially marketed preamendment devices, FDA also announces its decisions on reclassification petitions for devices first marketed after the enactment date of the amendments. Postamendments devices that are not substantially equivalent to devices marketed before the amendments are classified by statute into class III by action of section 513(f)(1) of the act without FDA rulemaking. In response to a petition received by FDA under section 513(f)(2) of the act and 21 CFR Part 860 of the regulations, FDA may reclassify a new device into class I or class II. The agency has received one such petition concerning an anesthesiology device. FDA is announcing the agency's decision on the petition. FDA also is issuing a final regulation that describes the agency's reclassification of the device that was the subject of the petition.

Petition 77P–0398; § 868.5895, Docket No. 78N–1787; Continuous Ventilator

On October 24, 1977, FDA received petition 77P–0398 under section 513(f) of the act requesting that the agency reclassify the petitioner's "O.H.C. ventilator" from class III to class II. In the **Federal Register** (43 FR 12379) of March 24, 1978, FDA published the recommendation of the Anesthesiology Device Section of the Respiratory and Nervous System Devices Panel that the device be reclassified from class III to class II. The agency provided a period of 30 days for interested persons to submit written comments on the recommendation. No comments were received. FDA agreed with the panel's recommendation that the device be reclassified. In accordance with section 523(f)(c)(i) of the act and 21 CFR 860.134(b)(6) of the regulations, FDA approved the petition and, by order in the form of a letter dated April 25, 1978 and sent to the petitioner, reclassified the device from class III to class II.

FDA advises that the O.H.C. ventilator reclassified into class II in response to the petition is included in the generic type of device in this final rule identified § 868.5895 Continuous ventilator (Docket No. 78N–1787). Accordingly, FDA announces the agency's decision on reclassification petition 77P–0398 as provided in 21 CFR 860.134(b)(7).

Changes in Classification in Final Regulations

Based on the comments received or upon consideration of additional information, FDA has changed the classifications of several devices in the final regulations from those classifications originally proposed. Changes in classification were made in each of the following regulations with respect to all or some devices subject to the regulation: Cutaneous oxygen monitor (Docket No. 78N–1700), oxygen mask (Docket No. 78N–1757), breathing mouthpiece (Docket No. 78N–1761), and autotransfusion apparatus (Docket No. 78N–1782). FDA does not believe that it is necessary to issue a new proposal concerning these changes. The purpose of publishing a proposal and soliciting comments is to enable the agency to determine whether its proposed classification of a device is correct.

After reviewing the comments submitted on a proposal, the agency may be persuaded that its proposed classification is incorrect. Persons interested in the classification process should therefore anticipate that in a final regulation a device may be placed in a class different from the one originally proposed. This possibility was specifically identified in the proposed general provisions for anesthesiology devices (see 44 FR 63292; November 2, 1979). Persons who disagree with a final classification for a device may petition for reclassification of the device under Subpart C of Part 860 (21 CFR Part 860). Occasionally, FDA has made minor changes in the names or identifications of devices to clarify the final regulation. Additionally, the agency is adding an explanation in § 868.1 that references in Part 868 to other regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

Changes in Device Advisory Committee Names

On April 28, 1978, the agency terminated all of the device classification panels, then reestablished them under new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). The Anesthesiology Device Classification Panel was terminated, and its functions are now conducted by the Anesthesiology Device Section of the Respiratory and Nervous System Devices Panel.

Classification Regulations Published To Date

The following table shows the current structure of the advisory committees involved with the classification of medical devices and a list of all proposed and final classification regulations published to date:

Panel and section name	Publication date in FEDERAL REGISTER
Circulatory Systems Devices Panel.	Mar. 9, 1979, 44 FR 13284–13434 (proposals); Feb. 5, 1980, 45 FR 7904–7971 (final regulations).
Clinical Chemistry and Hematology Devices Panel:	
Clinical chemistry device section.	Feb. 2, 1982; 47 FR 4802–4929 (proposals).
Clinical toxicology device section.	Feb. 2, 1982; 47 FR 4802–4929 (proposals).
Hematology and pathology device section.	Sept. 11, 1979, 44 FR 52950–53063 (proposals); Sept. 12, 1980, 45 FR 60576–60651 (final regulations).
General Medical Devices Panel:	
General hospital and personal use device section.	Aug. 24, 1979, 44 FR 49844–49954 (proposals); Oct. 21, 1980, 45 FR 69678–69737 (final regulations).
Gastroenterology-urology device section.	Jan. 23, 1981, 46 FR 7562–7641 (proposals).
Immunology and Microbiology Devices Panel:	
Immunology device section.	Apr. 22, 1980, 45 FR 27204–27359 (proposals).
Microbiology device section.	Apr. 22, 1980, 45 FR 27204–27359 (proposals).
Obstetrics-Gynecology and Radiologic Devices Panel:	
Obstetrics-gynecology device section.	Apr. 3, 1979, 44 FR 19894–19971 (proposals); Feb. 26, 1980, 45 FR 12682–12720 (final regulations).
Radiology device section.	Jan. 29, 1982, 47 FR 4408–4451 (proposals).
Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel:	
Ophthalmic device section.	Jan. 26, 1982, 47 FR 3694–3749 (proposals).
Ear, nose, and throat device section.	Jan. 22, 1982, 47 FR 3280–3325 (proposals).
Dental device section.	Dec. 30, 1980, 45 FR 85962–86168 (proposals).
Respiratory and Nervous System Devices Panel:	
Anesthesiology device section.	Nov. 2, 1979, 44 FR 63292–63426 (proposals); July 16, 1982 (final regulations).
Neurological device section.	Nov. 23, 1978, 43 FR 54640–55732 (proposals); Sept. 4, 1979, 44 FR 51726–51778 (final regulations).
Surgical and Rehabilitation Devices Panel:	
Physical medicine device section.	Aug. 28, 1979, 44 FR 50458–50537 (proposals).
Orthopedic device section.	
General and plastic surgery device section.	Jan. 19, 1982, 47 FR 2810–2853 (proposals).

List of Anesthesiology Devices and an Identification of Those Proposed Classification Regulations That Received Public Comment

The following is a list of anesthesiology devices being classified in this final regulation. The list shows the section of the Code of Federal Regulations under which the device classification is being codified, the docket number of the classification regulation, the classification of each device, and an identification (yes or no) of whether public comments were received on the proposed classification regulation. If no comments were received, the classification of the device is being adopted as proposed.

Section	Device	Docket No.	Class	Comments
	Subpart B—Diagnostic Devices			
868.1030	Manual algesimeter	78N-1649	I	No.
868.1040	Powered algesimeter	78N-1650	II	No.
868.1075	Argon gas analyzer	78N-1651	II	Yes.
868.1100	Arterial blood sampling kit	78N-1652	II	No.
868.1120	Indwelling blood oxyhemoglobin concentration analyzer	78N-1654	III	No.
868.1150	Indwelling blood carbon dioxide partial pressure (PCO_2) analyzer	78N-1657	III	No.
868.1170	Indwelling blood hydrogen ion concentration (pH) analyzer	78N-1659	III	No.
868.1200	Indwelling blood oxygen partial pressure (PO_2) analyzer	78N-1662	III	No.
868.1400	Carbon dioxide gas analyzer	78N-1666	II	Yes.
868.1430	Carbon monoxide gas analyzer	78N-1667	II	Yes.
868.1500	Enflurane gas analyzer	78N-1668	II	Yes.
868.1575	Gas collection vessel	78N-1669	II	No.
868.1620	Halothane gas analyzer	78N-1670	II	Yes.
868.1640	Helium gas analyzer	78N-1671	II	Yes.
868.1670	Neon gas analyzer	78N-1672	II	Yes.
868.1690	Nitrogen gas analyzer	78N-1673	II	Yes.
868.1700	Nitrous oxide gas analyzer	78N-1674	II	Yes.
868.1720	Oxygen gas analyzer	78N-1675	II	Yes.
868.1730	Oxygen uptake computer	78N-1676	II	No.
868.1750	Pressure plethysmograph	78N-1677	II	No.
868.1760	Volume plethysmograph	78N-1678	II	No.
868.1780	Inspiratory airway pressure meter	78N-1679	II	No.
868.1800	Rhinoanemometer	78N-1680	II	No.
868.1840	Diagnostic spirometer	78N-1681	II	Yes.
868.1850	Monitoring spirometer	78N-1682	II	No.
868.1860	Peak-flow meter for spirometry	78N-1683	II	No.
868.1870	Gas volume calibrator	78N-1684	II	Yes.
868.1880	Pulmonary-function data calculator	78N-1685	II	No.
868.1890	Predictive pulmonary-function value calculator	78N-1686	II	No.
868.1900	Diagnostic pulmonary-function interpretation calculator	78N-1687	II	No.
868.1910	Esophageal stethoscope	78N-1688	I	No.

Section	Device	Docket No.	Class	Comments
868.1920	Esophageal stethoscope with electrical conductors	78N-1689	II	No.
868.1930	Stethoscope head	78N-1690	I	No.
868.1965	Switching valve (ploss)	78N-1691	I	No.
868.1975	Water vapor analyzer	78N-1692	II	Yes.
	Subpart C—Monitoring Devices			
868.2025	Ultrasonic air embolism monitor	78N-1693	II	No.
868.2300	Bourdon gauge flowmeter	78N-1694	II	No.
868.2320	Uncompensated thorpe tube flowmeter	78N-1695	II	No.
868.2340	Compensated thorpe tube flowmeter	78N-1696	II	No.
868.2350	Gas calibration flowmeter	78N-1697	II	Yes.
868.2375	Breathing frequency monitor	78N-1698	II	No.
868.2450	Lung water monitor	78N-1699	III	No.
868.2500	Cutaneous oxygen monitor	78N-1700	II, III	Yes.
868.2550	Pneumotachometer	78N-1702	II	No.
868.2600	Airway pressure monitor	78N-1703	II	No.
868.2610	Gas pressure gauge	78N-1704	II	Yes.
868.2620	Gas pressure calibrator	78N-1705	II	Yes.
868.2700	Pressure regulator	78N-1706	II	Yes.
868.2775	Electrical peripheral nerve stimulator	78N-1707	II	No.
868.2875	Differential pressure transducer	78N-1708	II	Yes.
868.2885	Gas flow transducer	78N-1709	II	Yes.
868.2900	Gas pressure transducer	78N-1710	II	Yes.
	Subparts D–E [Reserved]			
	Subpart F—Therapeutic Devices			
868.5090	Emergency airway needle	78N-1714	II	No.
868.5100	Nasopharyngeal airway	78N-1715	II	Yes.
868.5110	Oropharyngeal airway	78N-1716	II	No.
868.5120	Anesthesia conduction catheter	78N-1717	II	No.
868.5130	Anesthesia conduction filter	78N-1718	II	No.
868.5140	Anesthesia conduction kit	78N-1719	II	No.
868.5150	Anesthesia conduction needle	78N-1720	II	No.
868.5160	Gas machines for anesthesia or analgesia	78N-1721	II	Yes.
868.5170	Laryngotracheal topical anesthesia applicator	78N-1722	II	No.
868.5180	Rocking bed	78N-1723	II	No.
868.5220	Blow bottle	78N-1726	I	No.
868.5240	Anesthesia breathing circuit	78N-1727	II	No.
868.5250	Breathing circuit circulator	78N-1728	II	No.
868.5260	Breathing circuit bacterial filter	78N-1729	II	No.
868.5270	Breathing system heater	78N-1730	II	No.
868.5280	Breathing tube support	78N-1731	I	Yes.
868.5300	Carbon dioxide absorbent	78N-1732	II	Yes.
868.5310	Carbon dioxide absorber	78N-1733	II	No.
868.5320	Reservoir bag	78N-1734	II	No.
868.5330	Breathing gas mixer	78N-1735	II	No.
868.5340	Nasal oxygen cannula	78N-1736	I	Yes.
868.5350	Nasal oxygen catheter	78N-1737	I	Yes.
868.5365	Posture chair for cardiac or pulmonary treatment	78N-1738	I	No.
868.5375	Heat and moisture condenser (artificial nose)	78N-1739	II	No.
868.5400	Electroanesthesia apparatus	78N-1741	III	No.
868.5420	Ether hook	78N-1743	I	No.
868.5430	Gas-scavenging apparatus	78N-1744	II	Yes.
868.5440	Portable oxygen generator	78N-1745	II	No.
868.5450	Respiratory gas humidifier	78N-1746	II	No.
868.5460	Therapeutic humidifier for home use	78N-1747	II	Yes.
868.5470	Hyperbaric chamber	78N-1748	II	No.
868.5530	Flexible laryngoscope	78N-1752	II	No.
868.5540	Rigid laryngoscope	78N-1753	II	No.
868.5550	Anesthetic gas mask	78N-1754	II	No.
868.5560	Gas mask head strap	78N-1755	I	Yes.
868.5570	Nonrebreathing mask	78N-1756	II	No.
868.5580	Oxygen mask	78N-1757	II	Yes.
868.5590	Scavenging mask	78N-1758	II	No.
868.5600	Venturi mask	78N-1759	II	No.
868.5610	Membrane lung for long-term pulmonary support	78N-1760	III	No.
868.5620	Breathing mouthpiece	78N-1761	I	Yes.
868.5630	Nebulizer	78N-1762	II	No.
868.5640	Medicinal nonventilatory nebulizer (atomizer)	78N-1763	I	No.
868.5650	Esophageal obturator	78N-1764	II	No.
868.5655	Portable liquid oxygen unit	78N-1765	II	No.
868.5665	Powered percussor	78N-1766	II	No.
868.5675	Rebreathing device	78N-1767	I	No.
868.5690	Incentive spirometer	78N-1768	II	Yes.
868.5700	Nonpowered oxygen tent	78N-1769	I	No.
868.5710	Electrically powered oxygen tent	78N-1770	II	Yes.
868.5720	Bronchial tube	78N-1771	II	No.
868.5730	Tracheal tube	78N-1772	II	Yes.
868.5740	Tracheal/bronchial differential ventilation tube	78N-1773	II	Yes.
868.5750	Inflatable tracheal tube cuff	78N-1774	II	No.
868.5760	Cuff spreader	78N-1775	I	Yes.
868.5770	Tracheal tube fixation device	78N-1776	II	No.
868.5780	Tube introduction forceps	78N-1777	II	No.
868.5790	Tracheal tube stylet	78N-1778	II	No.
868.5810	Airway connector	78N-1780	II	No.
868.5820	Dental protector	78N-1781	II	No.
868.5830	Autotransfusion apparatus	78N-1782	II	Yes.
868.5860	Pressure tubing and accessories	78N-1784	II	No.
868.5870	Nonrebreathing valve	78N-1785	II	Yes.
868.5880	Anesthetic vaporizer	78N-1786	II	Yes.
868.5895	Continuous ventilator	78N-1787	II	No.
868.5905	Noncontinuous ventilator (IPPB)	78N-1788	II	No.

Section	Device	Docket No.	Class	Comments
868.5915	Manual emergency ventilator	78N-1789	II	No.
868.5925	Powered emergency ventilator	78N-1790	II	No.
868.5935	External negative pressure ventilator	78N-1791	II	No.
868.5955	Intermittent mandatory ventilation attachment	78N-1793	II	No.
868.5965	Positive end expiratory pressure breathing attachment	78N-1794	II	No.
868.5975	Ventilator tubing	78N-1795	II	No.
868.5995	Tee drain (water trap)	78N-1796	II	No.
	Subpart G—Miscellaneous			
868.6100	Anesthetic cabinet, table, or tray	78N-1797	I	No.
868.6175	Cardiopulmonary emergency cart	78N-1798	I	No.
868.6225	Nose clip	78N-1799	I	No.
868.6250	Portable air compressor	78N-1800	II	No.
868.6400	Calibration gas	78N-1805	II	Yes.
868.6700	Anesthesia stool	78N-1806	I	No.
868.6810	Tracheobronchial suction catheter	78N-1810	I	No.
868.6820	Patient position support	78N-1807	II	No.
868.6885	Medical gas yoke assembly	78N-1808	II	Yes.

Summaries of Comments and FDA's Responses to Comments

FDA is responding to specific comments received on 42 of the proposed regulations for anesthesiology devices and to several general comments as follows:

1. FDA received two general comments regarding the classification process and the classification proposals for anesthesiology devices.

a. A comment objected to the publication of final rules for anesthesiology devices at this time. The comment recommended that the publication of these rules await completion of rulemaking that specifies the requirements for good manufacturing practices (GMP).

FDA rejects the comment. FDA published in the Federal Register of July 21, 1978, a final regulation establishing good manufacturing practice for the manufacture, packing, storage, and installation of medical devices. See Part 820 of the regulations (21 CFR Part 820).

b. A comment also expressed concern that the risks to health listed in each proposed classification regulation might lead to a standard requirement for all devices reflecting the risks to health described by the Panel.

FDA rejects the comment. The anesthesiology regulations only classify devices into class I, class II, or class III. Classification regulations do not require that devices by labeled to warn of, or marketed in a way that eliminates, the risks to health stated in the proposals.

Therefore, FDA is proceeding with the publication of the final regulation classifying anesthesiology devices.

2. Section 868.1075; Docket No. 78N-1651; Argon gas analyzer.

FDA published in the Federal Register (44 FR 63302) a proposed regulation to classify argon gas analyzers into class II.

Two comments were received on the proposal. The comments stated that many types of nonindwelling analyzers are manufactured and sold for commercial, laboratory, or calibration applications including use in a hospital laboratory. The comments suggested that general use analyzers are not medical devices because there is no direct contact with the patient and recommended that the proposed classification not apply to these devices.

FDA disagrees with the comments. The regulation classifies only argon gas analyzers that are intended for medical purposes and that, therefore, are medical devices. Direct patient contact is not a legal prerequisite to the regulation of a product as a medical device. No comments have been received that disagreed with classifying the argon gas analyzers that are medical devices into class II. Accordingly, the proposed regulation is being adopted with only a minor change.

3. Section 868.1400; Docket No. 78N-1666; Carbon dioxide gas analyzer.

FDA published in the Federal Register (44 FR 63314) a proposed regulation to classify carbon dioxide gas analyzers into class II.

Two comments were received on the proposal. The comments stated that many types of nonindwelling analyzers are manufactured and sold for commercial, laboratory, or calibration applications including use in a hospital laboratory. The comments suggested that general use analyzers are not medical devices because there is no direct contact with the patient and recommended that the proposed classification not apply to these devices.

FDA disagrees with the comments. The regulation classifies only carbon dioxide gas analyzers that are intended for medical purposes and that, therefore, are medical devices. Direct patient contact is not a legal prerequisite to the regulation of a product as a medical device. No comments have been received that disagreed with classifying carbon dioxide gas analyzers that are medical devices into class II. Accordingly, the proposed regulation is being adopted with only a minor change.

4. Section 868.1430; Docket No. 78N-1667; Carbon monoxide gas analyzer.

FDA published in the Federal Register (44 FR 63315) a proposed regulation to classify carbon monoxide gas analyzers into class II.

Two comments were received on the proposal. The comments stated that many types of nonindwelling analyzers are manufactured and sold for commercial, laboratory, or calibration applications including use in a hospital laboratory. The comments suggested that general use analyzers are not medical devices because there is no direct contact with the patient and recommended that the proposed classification not apply to these devices.

FDA disagrees with the comments. The regulation classifies only carbon monoxide gas analyzers that are intended for medical purposes and that, therefore, are medical devices. Direct patient contact is not a legal prerequisite to the regulation of a product as a medical device. No comments have been received that disagreed with classifying carbon monoxide gas analyzers that are medical devices into class II. Accordingly, the proposed regulation is being adopted with only a minor change.

5. Section 868.1500; Docket No. 78N-1668; Enflurane gas analyzer.

FDA published in the Federal Register (44 FR 63316) a proposed regulation to classify enflurane gas analyzers into class II.

Two comments were received on the proposal. The comments stated that many types of nonindwelling analyzers are manufactured and sold for commercial, laboratory, or calibration applications including use in a hospital laboratory. The comments suggested that general use analyzers are not medical devices because there is no

direct contact with the patient and recommended that the proposed classification not apply to these devices.

FDA disagrees with the comments. The regulation classifies only enflurane gas analyzers that are intended for medical purposes and that, therefore, are medical devices. Direct patient contact is not a legal prerequisite to the regulation of a product as a medical device. No comments have been received that disagreed with classifying enflurane gas analyzers that are medical devices into class II. Accordingly, the proposed regulation is being adopted with only a minor change.

6. Section 868.1620; Docket No. 78N-1670; Halothane gas analyzer.

FDA published in the **Federal Register** (44 FR 63317) a proposed regulation to classify halothane gas analyzers into class II.

Two comments were received on the proposal. The comments stated that many types of nonindwelling analyzers are manufactured and sold for commercial, laboratory, or calibration applications including use in a hospital laboratory. The comments suggested that general use analyzers are not medical devices because there is no direct contact with the patient and recommended that the proposed classification not apply to these devices.

FDA disagrees with the comments. The regulation classifies only halothane gas analyzers intended for medical purposes and that, therefore, are medical devices. Direct patient contact is not a legal prerequisite to the regulation of a product as a medical device. No comments have been received that disagreed with classifying halothane gas analyzers that are medical devices into class II. Accordingly, the proposed regulation is being adopted with only a minor change.

7. Section 868.1640; Docket No. 78N-1671; Helium gas analyzer.

FDA published in the **Federal Register** (44 FR 63318) a proposed regulation to classify helium gas analyzers into class II.

Two comments were received on the proposal. The comments stated that many types of nonindwelling analyzers are manufactured and sold for commercial, laboratory, or calibration applications including use in a hospital laboratory. The comments suggested that general use analyzers are not medical devices because there is no direct contact with the patient and recommended that the proposed classification not apply to these devices.

FDA disagrees with the comments. The regulation classifies only helium gas analyzers that are intended for medical purposes and that, therefore, are medical devices. Direct patient contact is not a legal prerequisite to the regulation of a product as a medical device. No comments have been received that disagreed with classifying helium gas analyzers that are medical devices into class II. Accordingly, the proposed regulation is being adopted with only a minor change.

8. Section 868.1670; Docket No. 78N-1672; Neon gas analyzer.

FDA published in the **Federal Register** (44 FR 63319) a proposed regulation to classify neon gas analyzers into class II.

Two comments were received on the proposal. The comments stated that many types of nonindwelling analyzers are manufactured and sold for commercial, laboratory, or calibration applications including use in a hospital laboratory. The comments suggested that general use analyzers are not medical devices because there is no direct contact with the patient and recommended that the proposed classification not apply to these devices.

FDA disagrees with the comments. The regulation classifies only neon gas analyzers that are intended for medical purposes and that, therefore, are medical devices. Direct patient contact is not a legal prerequisite to the regulation of a product as a medical device. No comments have been received that disagreed with classifying neon gas analyzers that are medical devices into class II. Accordingly, the proposed regulation is being adopted with only a minor change.

9. Section 868.1690; Docket No. 78N-1673; Nitrogen gas analyzer.

FDA published in the **Federal Register** (44 FR 63319) a proposed regulation to classify nitrogen gas analyzers into class II.

Two comments were received on the proposal. The comments stated that many types of nonindwelling analyzers are manufactured and sold for commercial, laboratory, or calibration applications including use in a hospital laboratory. The comments suggested that general use analyzers are not medical devices because there is no direct contact with the patient and recommended that the proposed classification not apply to these devices.

FDA disagrees with the comments. The regulation classified only nitrogen gas analyzers that are intended for medical purposes and that, therefore, are medical devices. Direct patient contact is not a legal prerequisite to the regulation of a product as a medical device. No comments have been received that disagreed with classifying nitrogen gas analyzers that are medical devices into class II. Accordingly, the proposed regulation is being adopted with only minor changes.

10. Section 868.1700; Docket No. 78N-1674; Nitrous oxide gas analyzer.

FDA published in the **Federal Register** (44 FR 63320) a proposed regulation to classify nitrous oxide gas analyzers into class II.

Two comments were received on the proposal. The comments stated that many types of nonindwelling analyzers are manufactured and sold for commercial, laboratory, or calibration applications including use in a hospital laboratory. The comments suggested that general use analyzers are not medical devices because there is no direct contact with the patient and recommended that the proposed classification not apply to these devices.

FDA disagrees with the comments. The regulation classifies only nitrous oxide gas analyzers that are intended for medical purposes and that, therefore, are medical devices. Direct patient contact is not a legal prerequisite to the regulation of a product as a medical device. No comments have been received that disagreed with classifying nitrous oxide gas analyzers that are medical devices into class II. Accordingly, the proposed regulation is being adopted with only a minor change.

11. Section 868.1720; Docket No. 78N-1675; Oxygen gas analyzer.

FDA published in the **Federal Register** (44 FR 63321) a proposed regulation to classify oxygen gas analyzers into class II.

Two comments were received on the proposal. The comments stated that many types of nonindwelling analyzers are manufactured and sold for commercial, laboratory, or calibration applications including use in a hospital laboratory. The comments suggested that general use analyzers are not medical devices because there is no direct contact with the patient and recommended that the proposed classification not apply to these devices.

FDA disagrees with the comments. The regulation classifies only oxygen gas analyzers that are intended for medical purposes and that, therefore, are medical devices. Direct patient contact is not a legal prerequisite to the regulation of a product as a medical device. No comments have been received that disagreed with classifying oxygen gas analyzers that are medical devices into class II. Accordingly, the proposed regulation is being adopted with only a minor change.

12. Section 868.1840; Docket No. 78N-1681; Diagnostic spirometer.

FDA published in the **Federal Register** (44 FR 63326) a proposed regulation to

classify diagnostic spirometers into class II.

One comment was received on the proposal. The comment suggested that diagnostic spirometers intended to be used in routine clinical practice do not require the same level of performance accuracy as those devices that are intended to be used in epidemiologic and research studies. The comment suggested specific performance requirements for office spirometers.

FDA agrees that devices intended to be used in different circumstances may require different levels of accuracy. FDA believes that performance standards for diagnostic spirometers should include only those performance requirements that are necessary to assure the safety and effectiveness of the device. No comments were received that disagreed with classifying diagnostic spirometers into class II. Accordingly, the proposed regulation is being adopted with minor editorial changes only.

13. Section 868.1870; Docket No. 78N-1684; Gas volume calibrator.

FDA published in the **Federal Register** (44 FR 63328) a proposed regulation to classify gas volume calibrators into class II.

Two comments were received on the proposal. The comments stated that many types of gas volume calibrators are manufactured and sold for commercial, laboratory, or calibration applications including use in a hospital laboratory. The comments suggested that general use calibrators are not medical devices because there is no direct contact with the patient and recommended that the proposed classification not apply to these devices.

FDA disagrees with the comments. The regulation classifies only gas volume calibrators that are intended for medical purposes and that, therefore, are medical devices. Direct patient contact is not a legal prerequisite to the regulation of a product as a medical device. No comments have been received that disagreed with classifying gas volume calibrators that are medical devices into class II. Accordingly, the proposed regulation is being adopted with only a clarifying change.

14. Section 868.1975; Docket No. 78N-1692; Water vapor analyzer.

FDA published in the **Federal Register** (44 FR 63335) a proposed regulation to classify water vapor analyzers into class II.

Two comments were received on the proposal. The comments stated that many types of nonindwelling analyzers are manufactured and sold for commercial, laboratory, or calibration applications including use in a hospital laboratory. The comments suggested that general use analyzers are not medical devices because there is no direct contact with the patient and recommended that the proposed classification not apply to the devices.

FDA disagrees with the comments. The regulation classifies only water vapor analyzers intended for medical purposes and that, therefore, are medical devices. Direct patient contact is not a legal prerequisite to the regulation of a product as a medical device. No comments have been received that disagreed with classifying water vapor analyzers that are medical devices into class II. Accordingly, the proposed regulation is being adopted with only a minor change.

15. Section 868.2350; Docket No. 78N-1697; Gas calibration flowmeter.

FDA published in the **Federal Register** (44 FR 63339) a proposed regulation to classify gas calibration flowmeters into class II.

Three comments were received on the proposal. The comments stated that gas calibration flowmeters are not medical devices because the devices are used in industrial applications as well as in hospital laboratories. The comments pointed out that the devices never come into direct contact with patients and suggested that FDA not classify these devices.

FDA disagrees with the comments. The regulation classifies only gas calibration flowmeters that are intended for medical purposes and that, therefore, are medical devices. Direct patient contact is not a legal prerequisite to the regulation of a product as a medical device. Medical purposes include claibration of other medical devices, or measurement of medical gas flow, when performed in health care facilities. Accordingly, the proposed regulation is being adopted with only a clarifying change.

16. Section 868.2500; Docket No. 78N-1700; Cutaneous oxygen monitor.

FDA published in the **Federal Register** (44 FR 63341) a proposed regulation to classify cutaneous oxygen monitors into class II.

Three comments were received on the proposal. All three comments agreed with the proposal to classify cutaneous oxygen monitors into class II. One comment noted that the primary application of the device has been for monitoring newborn infants. Another comment stated that the device is also useful for monitoring patients in the operating room and in surgical intensive care.

On January 21, 1980, FDA held a public meeting of the Anesthesiology Device Section of the Respiratory and Nervous System Devices Panel for discussion of the comments received on the proposal to classify this device. The discussion focused on the questions whether the device should be classified into class II for all indications as proposed, or whether the device should be classified into class II for some indications and class III for others. Also present at the meeting were representatives of companies that manufacture the device who supported the proposal to classify the device into class II and who stated that sufficient information exists to develop a performance standard for the device. During the meeting, the Panel members reconsidered their recommendation respecting the classification of the device. Recent reports have indicated that cutaneous oxygen monitors may vary widely in performance depending on the conditions of use. Some of the devices may produce inaccurate readings when used in the presence of certain anesthetics in the operating room. Virtually all of the data on this device have been on monitoring of newborn infants, and very little data are available for other uses, such as monitoring patients during surgery.

FDA has carefully considered the comments, available information, and the Panel's recommendation that the device be classified into class II, as proposed, when it is intended for use in monitoring infant patients who are not under gas anesthesia and into class III for other uses. The Panel's recommendation was based on its belief that the device has been shown to be safe and effective for use in monitoring infant patients who are not under gas anesthesia, but has not been shown to be safe and effective for other uses.

Based on the findings above, FDA is classifying the device into class II when it is intended for use in monitoring infant patients who are not under gas anesthesia and into class III when the device is intended for other uses. The device is purported or represented for a use (monitoring oxygen tension) that is of substantial importance in preventing impairment of human health. The use of the device for noninfant patients or for any patient while under gas anesthesia, presents a potential unreasonable risk of illness or injury to the patient, because of the variability of the data obtained. There is insufficient information, including clinical data, available to determine that general controls will provide reasonable assurance of the safety and effectiveness of the device or to establish a standard that assures the safety and effectiveness of the device when it is intended for these purposes. This conclusion, which differs from the

tentative judgment contained in the proposed regulation, is prompted by FDA's belief that the device is still undergoing development which will show whether it may be safely and effectively used for these applications. FDA is issuing a final regulation to classify the cutaneous oxygen monitor into class II when it is intended for use in monitoring infants who are not under gas anesthesia. FDA has decided that there is sufficient data to show that the device is both safe and effective when used for this purpose. Therefore, premarket approval is not necessary for cutaneous oxygen monitors when intended for this purpose and a performance standard will provide reasonable assurance of the safety and effectiveness of the device when intended for this purpose.

Accordingly, FDA is adopting the proposed regulation for cutaneous oxygen monitors with a change in the classification, in that the device is in class II for use in monitoring infants who are not under gas anesthesia and in class III for all other uses. For the reasons discussed above in "Changes in Classification in Final Regulations," FDA has decided that it is unnecessary to issue a new proposal concerning this decision. Persons who disagree with this decision may petition for reclassification of this device under Subpart C of Part 860.

17. Section 868.2610; Docket No. 78N–1704; Gas pressure gauge.

FDA published in the **Federal Register** (44 FR 63344) a proposed regulation to classify gas pressure gauges into class II.

Four comments were received on the proposal.

a. One comment disagreed with classifying gas pressure gauges into class II and recommended that the devices be classified into class I instead. The comment stated that general controls are sufficient to control the risks to health presented by the device.

FDA disagrees with the comment. FDA has determined that gas pressure gauges should be classified into class II so that a performance standard may be issued that assures that the device accurately measures the pressure of respiratory gases. General controls will not provide reasonable assurance of the safety and effectiveness of the device.

b. Three comments stated that gas pressure gauges are not medical devices and should not be classified. One comment stated that the identification of the device should be changed to more clearly define the intended use of the device.

FDA partially agrees with the comments. FDA agrees that the identification of the device should be stated more clearly and is making minor changes to the regulation to make it clear that the classification applies to those devices intended for medical purposes, i.e., use in a medical gas delivery system. Accordingly, the proposed regulation is being adopted with these changes.

18. Section 868.2620; Docket No. 78N–1705; Gas pressure calibrator.

FDA published in the **Federal Register** (44 FR 63345) a proposed regulation to classify gas pressure calibrators into class II.

Two comments were received on the proposal. The comments stated that many types of gas pressure calibrators are manufactured and sold for commercial, industrial, or laboratory applications, including use in a hospital laboratory. The comments suggested that the devices are not medical devices because there is no direct contact with the patient and recommended that the proposed classification not apply to such devices.

FDA disagrees with the comments. The regulation classifies only gas pressure calibrators that are intended for medical purposes and that, therefore, are medical devices. Direct patient contact is not a legal prerequisite to the regulation of a product as a medical device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

19. Section 868.2700; Docket No. 78N–1706; Pressure regulator.

FDA published in the **Federal Register** (44 FR 63346) a proposed regulation to classify pressure regulators into class II.

Two comments were received on the proposal. The comments suggested that the device name and identification in the proposed regulation for pressure regulators be changed to make it clear that the regulation does not apply to those regulators intended or promoted for commercial, industrial, and aviation applications.

FDA agrees with the comments and is making minor changes in the identification of the device to make it clear that the rule applies only to those devices intended to be used for medical purposes. Accordingly, the proposed regulation is being adopted with these changes.

20. Section 868.2875; Docket No. 78N–1708; Differential pressure transducer.

FDA published in the **Federal Register** (44 FR 63348) a proposed regulation to classify differential pressure transducers into class II.

Two comments were received on the proposal. The comments stated that many types of differential pressure transducers are manufactured and sold for commercial, industrial, or laboratory applications, including use in a hospital laboratory. The comments suggested that general use transducers are not medical devices when there is no direct contact with the patient and recommended that the proposed classification not apply to these devices.

FDA disagrees with the comments. The regulation classifies only differential pressure transducers intended for medical purposes and that, therefore, are medical devices. Direct patient contact is not a legal prerequisite to the regulation of a product as a medical device. Accordingly, the proposed regulation is being adopted without change.

21. Section 868.2885; Docket No. 78N–1709; Gas flow transducer.

FDA published in the **Federal Register** (44 FR 63349) a proposed regulation to classify gas flow transducers into class II.

Two comments were received on the proposal. The comments stated that many types of gas flow transducers are munufactured and sold for commerical, industrial, or laboratory applications, including use in a hospital laboratory. The comments suggested that these general use transducers are not medical devices when there is no direct contact with the patient and recommended that the proposed classification not apply to these devices.

FDA disagrees with the comments. The regulation classifies only gas flow transducers that are intended for medical purposes and that, therefore, are medical devices. Direct patient contact is not a legal prerequisite to the regulation of a product as a medical device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

22. Section 868.2900; Docket No. 78N–1710; Gas pressure transducer.

FDA published in the **Federal Register** (44 FR 63349) a proposed regulation to classify gas pressure transducers into class II.

Two comments were received on the proposal. The comments stated that many gas pressure transducers are manufactured and sold for commercial, industrial, or laboratory applications, including use in a hospital laboratory. The comments suggested that these general use transducers are not medical devices when there is no direct contact with the patient and recommended that the proposed classification not apply to these devices.

FDA disagrees with the comments. The regulation classifies only gas pressure transducers that are intended for medical purposes and that, therefore,

are medical devices. Direct patient contact is not a legal prerequisite to the regulation of a product as a medical device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

23. Section 868.5100; Docket No. 78N-1715; Nasopharyngeal airway.

FDA published in the Federal Register (44 FR 63351) a proposed regulation to classify nasopharyngeal airways into class II.

Two comments were received on the proposal. The comments objected to the Panel's identification, in its recommendation, of infection as a risk to health presented by the device because of concern that FDA may adopt a standard requirement that all nasopharyngeal airways be labeled and marketed as sterile.

FDA disagrees with the comments. The proposed regulation only classifies the device into class II. It does not contain a requirement that all nasopharyngeal airways be labeled and marketed as sterile. The need for such a requirement will be considered in any proceeding to establish a standard for the device. Accordingly, the proposed regulation is being adopted with only a minor change.

24. Section 868.5160; Docket No. 78N-1721; Gas machine for anesthesia or analgesia.

FDA published in the Federal Register (44 FR 63356) a proposed regulation to classify anesthesia gas machines into class II.

Six comments were received on the proposal. The comments disagreed with the inclusion of analgesia machines used in dentistry with the generic category of anesthesia gas machines. The comments asked that FDA establish a separate generic category for conscious sedation dental equipment and that these devices be reviewed by the Dental Device Classification Panel. The comments also asked that these devices be classified into class I.

On January 21, 1980, FDA held a public meeting of the Anesthesiology Device Section of the Respiratory and Nervous System Devices Panel for discussion of the comments received on the proposal. The Panel recommended that FDA create a separate generic category for gas machines for analgesia, that gas machines for analgesia remain in class II, and that the final regulation for the device be published with the anesthesiology devices. FDA agrees with the Panel recommendation and is publishing a separate final regulation within § 868.5160 that classifies gas machines for analgesia into class II. The proposed regulation for gas machines for anesthesia is being adopted with minor modifications reflecting the separation of the gas machines for analgesia. The agency advises that a premixed nitrous oxide-oxygen product is regarded as a new drug requiring an approved new drug application (21 CFR Part 314—New Drug Applications) prior to marketing.

25. Section 868.5280; Docket No. 78N-1731; Breathing tube support.

FDA published in the Federal Register (44 FR 63363) a proposed regulation to classify breathing tube supports into class I.

One comment was received on the proposal. The comment disagreed with the proposal to classify breathing tube supports into class I. The comment noted that FDA proposed that breathing tubes be classified into class II and suggested that breathing tube supports also be classified into class II because the two devices are connected together.

FDA disagrees with the comment. There is no requirement that two devices be classified into the same regulatory category simply because they are used together. For the reasons given in the proposal, FDA is classifying breathing tube supports into class I. Accordingly, the regulation is being adopted with only a minor clarifying change.

26. Section 868.5300; Docket No. 78N-1732; Carbon dioxide absorbent.

FDA published in the Federal Register (44 FR 63364) a proposed regulation to classify carbon dioxide absorbents into class II.

Two comments were received on the proposal. The comments disagreed with the Panel's recommendation that cross infection of carbon dioxide absorbents is a risk to health and asserted that the device is not designed to be sterilized or disinfected.

FDA believes that the risks of cross infection result from improper maintenance of the equipment. However, the regulation does not require that the absorbent be sterilized or disinfected. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

27. Section 868.5340; Docket No. 78N-1736; Nasal oxygen cannula.

FDA published in the Federal Register (44 FR 63367) a proposed regulation to classify nasal oxygen cannulae into class I.

Three comments were received on the proposal.

a. One comment disagreed with the proposal to classify nasal oxygen cannulae into class I and recommended that the device be classified into class II. The comment stated that performance standards for nasal oxygen cannulae are needed to provide the user with information necessary for specifying accuracy requirements for the metering equipment on some regulators and oxygen concentrators.

FDA disagrees with the comment. FDA believes that the safety and effectiveness of these devices can be adequately controlled by general controls. It is the responsibility of medical personnel to choose compatible equipment when constructing a system for patient therapy. Moreover, FDA has authority under sections 502 and 701(a) of the act (21 U.S.C. 352 and 371(a)) to require special labeling for any device, including a class I device. Thus, classification into class I does not preclude the establishment of special labeling requirements for nasal oxygen cannulae, should FDA decide that these requirements are needed.

b. Two comments objected to the Panel's identification, in its recommendation, of infection as a risk to health presented by the device, because of concern that FDA may adopt a standard requirement that all nasal oxygen cannulae be labeled and marketed as sterile.

FDA disagrees with the comments. The proposed regulation only classifies these devices into class I. It does not contain a requirement that all nasal oxygen cannulae be labeled and marketed as sterile. Accordingly, the proposed regulation is being adopted with only a minor editorial change.

28. Section 868.5350; Docket No. 78N-1737; Nasal oxygen catheter.

FDA published in the Federal Register (44 FR 63368) a proposed regulation to classify nasal oxygen catheters into class I.

One comment was received on the proposal. The comment disagreed with the proposal to classify nasal oxygen catheters into class I and recommended that the device be classified into class II. The comment stated that performance standards for nasal oxygen catheters are needed to provide the user with information necessary for specifying accuracy requirements for the metering equipment on some regulators and oxygen concentrators.

FDA disagrees with the comment. FDA believes that the safety and effectiveness of this device can be adequately controlled by general controls. It is the responsibility of medical personnel to choose compatible equipment when constructing a system for patient therapy. Moreover, FDA has authority under sections 502 and 701(a) of the act (21 U.S.C. 352 and 371(a)) to require special labeling for any device, including a class I device. Thus, classification into class I does not preclude the establishment of special

labeling requirements for nasal oxygen catheters, should FDA decide that these requirements are needed. Accordingly, the proposed regulation is being adopted with only minor editorial changes.

29. Section 868.5430; Docket No. 78N-1744; Gas-scavenging apparatus.

FDA published in the Federal Register (44 FR 63374) a proposed regulation to classify gas-scavenging apparatus into class II.

One comment was received on the proposal. The comment stated that the gas scavenging apparatus is used only to scavenge nitrous oxide that is used by dentists. The comment suggested that FDA refer the issue of the classification of the device to the Dental Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, to obtain its recommendation.

FDA disagrees with the comment. Gas scavenging devices are used to collect many types of anesthetic or analgesic gases used by various medical specialties and are not limited to dental use. It was appropriate for FDA to have obtained a recommendation from the Anesthesiology Device Section of the Respiratory and Nervous System Devices Panel, and it is unnecessary to obtain another recommendation from the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel. Accordingly, the proposed regulation is being adopted with only minor editorial changes.

30. Section 868.5460; Docket No. 78N-1747; Therapeutic humidifier for home use.

FDA published in the Federal Register (44 FR 63376) a proposed regulation to classify therapeutic humidifiers for home use into class II.

Four comments were received on the proposal. The comments expressed concern that the proposed rule might be interpreted to apply to all home humidifiers, including those that are part of home central air conditioning and heating systems. The comments suggested that FDA clearly state in the final rule for therapeutic humidifiers for home use that the classification applies only to those devices for which manufacturers make health or medical claims.

FDA believes that in the proposed regulation the identification of therapeutic humidifiers for home use clearly states that the proposed classification applies solely to those humidifiers that are intended to be used for medical purposes, such as respiratory therapy. FDA does not believe that humidifiers that are designed to be used with central air conditioning or heating systems in a home are medical devices unless they are intended for medical purposes, as discussed earlier in this preamble. FDA is clarifying the name and identification of the device to show the regulation applies only to those devices intended for medical purposes.

31. Section 868.5560; Docket No. 78N-1755; Gas mask head strap.

FDA published in the Federal Register (44 FR 63383) a proposed regulation to classify gas mask head straps into class I.

One comment was received on the proposal. The comment disagreed with the proposal to classify gas mask head straps into class I. The comment noted that FDA proposed that anesthesia gas masks be classified into class II and suggested that gas mask head straps also be classified into class II because the two devices are connected together.

FDA disagrees with the comment. There is no requirement that two devices be classified into the same regulatory category simply because they are used together. For the reasons given in the proposal, FDA is classifying gas mask head straps into class I. Accordingly, the regulation is being adopted with only a minor editorial change.

32. Section 868.5580; Docket No. 78N-1757; Oxygen mask.

FDA published in the Federal Register (44 FR 63384) a proposed regulation to classify oxygen masks into class I.

Three comments were received on the proposal.

a. Two comments objected to the Panel's identification, in its recommendation, of infection as a risk to health presented by the device because of concern that FDA may require all oxygen masks to be labeled and marketed as sterile.

FDA disagrees with the comments. The proposed regulation only classifies the device into class I. It does not contain a requirement that oxygen masks be labeled and marketed as sterile.

b. One comment disagreed with the proposal to classify the device into class I and recommended that it be classified in class II. The comment noted that manufacturers do not always use the same designations for oxygen mask sizes (e.g., small, medium, and large). Thus, a patient may receive a poorly fitting oxygen mask in an emergency situation if the user mistakenly assumes that oxygen mask sizes are uniform from manufacturer to manufacturer. The comment stated that a performance standard that assures uniformity of oxygen mask sizes is necessary to avoid this risk to the patient.

On January 21, 1980, FDA held a public meeting of the Anesthesiology Device Section of the Respiratory and Nervous System Devices Panel to discuss the comment. The Panel recommended that FDA classify oxygen masks into class II because it agreed that lack of uniformity of mask sizes is a hazard that cannot be controlled by general controls. The Panel recommended that the development of a performance standard for oxygen masks be a low priority. FDA has considered the comment and the Panel's revised recommendation, and is classifying oxygen masks into class II rather than class I as proposed. For the reasons discussed above in "Changes in Classification in Final Regulations," FDA does not believe that it is necessary to issue a new proposal concerning this decision. Persons who disagree with classifying oxygen masks in class II may petition for reclassification of the device under Subpart C of Part 860 (21 CFR Part 860).

For clarification purposes, FDA has amended the identification of oxygen masks to indicate that the device may also be placed over a patient's tracheostomy, and that it can be used to administer aerosols. Accordingly, the proposed regulation is being adopted with the changes noted.

33. Section 868.5620; Docket No. 78N-1761; Breathing mouthpiece.

FDA published in the Federal Register (44 FR 63388) a proposed regulation to classify breathing mouthpieces into class II.

One comment was received on the proposal. The comment disagreed with the proposal to classify breathing mouthpieces into class II and suggested that the device be classified into class I. The comment stated that general controls will provide sufficient control over the risks to health presented by this device.

On January 21, 1980, FDA held a public meeting of the Anesthesiology Device Section of the Respiratory and Nervous System Devices Panel to discuss the comment. The Panel recommended that FDA classify breathing mouthpieces into class I because the hazards to health presented by this device can be adequately controlled by general controls. The Panel also recommended that there be no exemptions for manufacturers of this device. FDA has considered the comment and the Panel's revised recommendation, and is classifying breathing mouthpieces into class I with no exemptions, rather than class II as proposed. For the reasons discussed above in "Changes in Classification of Final Regulations," FDA does not believe that it is necessary to issue a new proposal concerning this decision.

Persons who disagree with classifying breathing mouthpieces in class I may petition for reclassification of the device under Subpart C of Part 860 (21 CFR Part 860). Accordingly, the proposed regulation is being adopted with this change in classification and minor editorial changes.

34. Section 868.5690; Docket No. 78N-1768; Incentive spirometer.

FDA published in the **Federal Register** (44 FR 63394) a proposed regulation to classify incentive spirometers into class II.

Two comments were received on the proposal. The comments disagreed with the proposal to classify the device into class II and recommended that it be classified into class I. The comments noted that an incentive spirometer is intended to be used as a breathing exerciser to aid a patient in improving ventilation by indicating the patient's breathing volume or flow. The comments stated that volume and flow readings that are indicated on an incentive spirometer are not intended to be accurate enough for diagnostic or monitoring purposes.

FDA disagrees with the comments. The flow and volume indications obtained from an incentive spirometer may be used to measure a patient's progress in improving ventilation and should be reasonably accurate and reproducible. FDA agrees that an incentive spirometer need not be as accurate as a diagnostic spirometer. However, FDA believes that general controls are not sufficient to control the accuracy of the device and that a performance standard is necessary to provide assurance of the safety and effectiveness of the device. Accordingly, the proposed regulation is being adopted with only minor changes.

35. Section 868.5710; Docket No. 78N-1770; Electrically powered oxygen tent.

FDA published in the **Federal Register** (44 FR 63395) a proposed regulation to classify electrically powered oxygen tents into class II.

One comment was received on the proposal. The comment agreed with the proposal to classify electrically powered oxygen tents into class II but stated that the reasons the Panel gave for recommending the device be classified into class II do not apply to all devices that are being marketed.

FDA agrees with the comment. FDA believes that the reasons given by the Panel for the recommendation to classify the device in class II are valid for electrically powered oxygen tents as a generic group but these reasons may not always apply to every device that is marketed. Accordingly, the proposed regulation is being adopted with only minor editorial changes.

36. Section 868.5730; Docket No. 78N-1772; Tracheal tube.

FDA published in the **Federal Register** (44 FR 63397) a proposed regulation to classify tracheal tubes into class II.

Two comments were received on the proposal. The comments objected to the Panel's identification, in its recommendation, of infection as a risk to health presented by tracheal tubes because of concern that FDA may adopt a standard requirement that all tracheal tubes be labeled and marketed as sterile.

FDA disagrees with the comments. The proposed regulation only classifies the devices into class II. It does not contain a requirement that all tracheal tubes be labeled and marketed as sterile. The need for such a requirement will be considered in any proceeding to establish a standard for the device. Accordingly, the proposed regulation is being adopted without change.

37. Section 868.5740; Docket No. 78N-1773; Tracheal/bronchial differential ventilation tube.

FDA published in the **Federal Register** (44 FR 63398) a proposed regulation to classify tracheal/bronchial differential ventilation tubes into class II.

Two comments were received on the proposal. The comments objected to the Panel's identification, in its recommendation, of infection as a risk to health presented by tracheal/bronchial differential ventilation tubes because of concern that FDA may adopt a standard requirement that all tracheal/bronchial differential ventilation tubes be labeled and marketed as sterile.

FDA disagrees with the comments. The proposed regulation only classifies these devices into class II. It does not contain a requirement that all tracheal/bronchial differential ventilation tubes be labeled and marketed as sterile. The need for such a requirement will be considered in any proceeding to establish a standard for the device. Accordingly, the proposed regulation is being adopted with only a minor change.

38. Section 868.5760; Docket No. 78N-1775; Cuff spreader.

FDA published in the **Federal Register** (44 FR 63400) a proposed regulation to classify cuff spreader into class I.

Two comments were received on the proposal. The comments stated that a cuff spreader is not a medical device because it is used only to facilitate the assembly of a tracheal tube cuff on a tracheal or tracheostomy tube.

FDA disagrees with the comments. Cuff spreaders are clearly medical devices because they are intended for a medical purpose, i.e., to install tracheal tube cuffs on tracheal tubes or tracheostomy tubes for use on a patient. Accordingly, the proposed regulation is being adopted without change.

39. Section 868.5830; Docket No. 78N-1782; Autotransfusion apparatus.

FDA published in the **Federal Register** (44 FR 63405) a proposed regulation to classify Autotransfusion apparatus into class III.

Nine comments were received on the proposal. The comments disagreed with the proposal to classify the autotransfusion apparatus into class III. The comments recommended that the device be classified into class II because the devices in use have been shown to be safe and effective. The comments stated that a draft standard for autotransfusion devices has been written. The comments also pointed out that the proposed identification of autotransfusion apparatus describes only one type of device despite the fact that there are several devices on the market.

On January 21, 1980, FDA held a public meeting of the Anesthesiology Device Section of the Respiratory and Nervous System Devices Panel to consider the comments on the proposal. At the meeting, several users of autotransfusion apparatus described their experiences with some of the autotransfusion devices that are being marketed. All of these users stated that the devices are safe and effective and asked that the Panel recommend that the device be classified into class II rather than class III. It was reported that virtually all problems that have been reported have been associated with one particular type of the device that is not now marketed. Participants in the meeting also discussed the standard for these devices being developed by a committee of The Association for the Advancement of Medical Instrumentation (AAMI). The chairperson of this committee stated that a standard for these devices was nearly completed and that it was expected to be balloted later that year. The Panel recommended that autotransfusion apparatus be classified into class II rather than class III as proposed. The Panel believes that there is now sufficient information available to develop a performance standard that will provide reasonable assurance of the safety and effectiveness of the device. The critical issue is whether a standard can provide reasonable assurance of the safety and effectiveness of autotransfusion devices. FDA has carefully considered the comments, available information, and the Panel's

recommendation and is classifying autotransfusion apparatus into class II, rather than class III as proposed. FDA also is changing the identification of the device in the final rule to clarify that the regulation applies to all autotransfusion devices. The agency encourages the AAMI committee to complete the development of the standard for this device as quickly as possible. FDA will closely monitor the progress of the standard. If the agency believes that the standard being developed does not provide reasonable assurance of the safety and effectiveness of the device, it may at a later date reconsider the classification of the device into class II.

Accordingly, the final regulation is being changed as described above. For the reasons discussed above in "Changes in Classification of Final Regulations," FDA does not believe that it is necessary to issue a new proposal concerning this decision. Persons who disagree with classifying autotransfusion apparatus in class II may petition for reclassification of the device under Subpart C of Part 860 (21 CFR Part 860).

40. Section 868.5870; Docket No. 78N-1785; Nonrebreathing valve.

FDA published in the **Federal Register** (44 FR 63407) a proposed regulation to classify nonrebreathing valves into class II.

One comment was received on the proposal. The comment objected to the proposal to classify nonrebreathing valves into class II and recommended that the device be classified into class I. The comment stated that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device, when the device is not used in a life support situation. The comment also agreed that the proposed classification regulation made no distinction between the risks to health presented by a nonrebreathing valve when it is used in a life supporting system and those present when it is used in a system that is not a life supporting system.

FDA disagrees with the comment. FDA believes that a performance standard is necessary to assure that nonrebreathing valves are safe and effective. FDA agrees that the consequences of a valve failure may be more severe when the valve is used in a life supporting system. However, the types of valve failure cited in the proposed classification regulation are applicable regardless of the type of system in which the valve is used. Accordingly, the proposed regulation is being adopted with only a minor change.

41. Section 868.5880; Docket No. 78N-1786; Anesthetic vaporizer.

FDA published in the **Federal Register** (44 FR 63408) a proposed regulation to classify anesthetic vaporizers into class II.

Three comments were received on the proposal. The comments expressed concern that the proposed rule might lead FDA to adopt a standard requirement that all anesthetic vaporizers be labeled and marketed as sterile or sterilizable. The comments suggested that FDA remove any references to sterilization from the final rule.

FDA disagrees with the comments. The proposed regulation only classifies the devices into class II. The regulation does not contain a requirement that all anesthetic vaporizers be labeled or marketed as sterile. The need for such a requirement will be considered in any proceeding to establish a standard for the device. Accordingly, the proposed regulation is being adopted without change.

42. Section 868.6400; Docket No. 78N-1805; Calibration gas.

FDA published in the **Federal Register** (44 FR 63423) a proposed regulation to classify calibration gases into class II.

Three comments were received on the proposal.

a. A comment disagreed with the proposal to classify calibration gases into class II and stated that the risks to health presented by the device can be controlled by classifying it into class I.

FDA disagrees with the comment. The device is used to calibrate other medical devices and must provide a gas concentration that is precise. FDA believes that general controls will not provide reasonable assurance that the gas concentration provided by the device is accurate and believes that a performance standard is necessary to provide this assurance.

b. One comment agreed with the proposal to classify the device into class II. Another comment did not disagree with the proposal, but suggested that FDA more clearly identify the function of calibration gases so that it is clear that nonmedical products are excluded.

FDA agrees with the comments. The agency is making minor changes in the identification of the device so that it is clear that the regulation applies only to those calibration gases intended to be used for medical purposes. Accordingly, the proposed regulation is being adopted with these changes.

43. Section 868.6885; Docket No. 78N-1808; Medical gas yoke assembly.

FDA published in the **Federal Register** (44 FR 63426) a proposed regulation to classify medical gas yoke assemblies into class II.

Three comments were received on the proposal. The comments noted that the filter used with a medical gas yoke assembly is an optional piece of equipment intended ony to protect the apparatus from particle contamination and is not intended to prevent contamination of the breathing system or patient infection.

The agency agrees with the comments and is making minor changes in the language used in the identification of medical gas yoke assemblies to clarify that the filter is a particulate filter. Accordingly, the proposed regulation is being adopted with these changes.

List of Subjects in 21 CFR Part 868

Anesthesiology devices; Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Chapter I of Title 21 of the Code of Federal Regulations is amended by adding new Part 868, to read as follows:

PART 868—ANESTHESIOLOGY DEVICES

Subpart A—General Provisions

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868.1 Scope.

Subpart B—Diagnostic Devices

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868.1040 Powered algesimeter.
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868.1730 Oxygen uptake computer.
868.1750 Pressure plethysmograph.
868.1760 Volume plethysmograph.
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868.1860 Peak-flow meter for spirometry.
868.1870 Gas volume calibrator.
868.1880 Pulmonary-function data calculator.

Sec.
868.1890 Predictive pulmonary-function value calculator.
868.1900 Diagnostic pulmonary-function interpretation calculator.
868.1910 Esophageal stethoscope.
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Subpart C—Monitoring Devices

868.2025 Ultrasonic air embolism monitor.
868.2300 Bourdon gauge flowmeter.
868.2320 Uncompensated thorpe tube flowmeter.
868.2340 Compensated thorpe tube flowmeter.
868.2350 Gas calibration flowmeter.
868.2375 Breathing frequency monitor.
868.2450 Lung water monitor.
868.2500 Cutaneous oxygen monitor.
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Subparts D-E [Reserved]

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868.5090 Emergency airway needle.
868.5100 Nasopharyngeal airway.
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868.5120 Anesthesia conduction catheter.
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868.5150 Anesthesia conduction needle.
868.5160 Gas machine for anesthesia or analgesia.
868.5170 Laryngotracheal topical anesthesia applicator.
868.5180 Rocking bed.
868.5220 Blow bottle.
868.5240 Anesthesia breathing circuit.
868.5250 Breathing circuit circulator.
868.5260 Breathing circuit bacterial filter.
868.5270 Breathing system heater.
868.5280 Breathing tube support.
868.5300 Carbon dioxide absorbent.
868.5310 Carbon dioxide absorber.
868.5320 Reservoir bag.
868.5330 Breathing gas mixer.
868.5340 Nasal oxygen cannula.
868.5350 Nasal oxygen catheter.
868.5365 Posture chair for cardiac or pulmonary treatment.
868.5375 Heat and moisture condenser (artificial nose).
868.5400 Electroanesthesia apparatus.
868.5420 Ether hook.
868.5430 Gas-scavenging apparatus.
868.5440 Portable oxygen generator.
868.5450 Respiratory gas humidifier.
868.5460 Therapeutic humidifier for home use.
868.5470 Hyperbaric chamber.
868.5530 Flexible laryngoscope.
868.5540 Rigid laryngoscope.
868.5550 Anesthetic gas mask.
868.5560 Gas mask head strap.
868.5570 Nonrebreathing mask.

Sec.
868.5580 Oxygen mask.
868.5590 Scavenging mask.
868.5600 Venturi mask.
868.5610 Membrane lung for long-term pulmonary support.
868.5620 Breathing mouthpiece.
868.5630 Nebulizer.
868.5640 Medicinal nonventilatory nebulizer (atomizer).
868.5650 Esophageal obturator.
868.5655 Portable liquid oxygen unit.
868.5665 Powered percussor.
868.5675 Rebreathing device.
868.5690 Incentive spirometer.
868.5700 Nonpowered oxygen tent.
868.5710 Electrically powered oxygen tent.
868.5720 Bronchial tube.
868.5730 Tracheal tube.
868.5740 Tracheal/bronchial differential ventilation tube.
868.5750 Inflatable tracheal tube cuff.
868.5760 Cuff spreader.
868.5770 Tracheal tube fixation device.
868.5780 Tube introduction forceps.
868.5790 Tracheal tube stylet.
868.5810 Airway connector.
868.5820 Dental protector.
868.5830 Autotransfusion apparatus.
868.5860 Pressure tubing and accessories.
868.5870 Nonrebreathing valve.
868.5880 Anesthetic vaporizer.
868.5895 Continuous ventilator.
868.5905 Noncontinuous ventilator (IPPB).
868.5915 Manual emergency ventilator.
868.5925 Powered emergency ventilator.
868.5935 External negative pressure ventilator.
868.5955 Intermittent mandatory ventilation attachment.
868.5965 Positive end expiratory pressure breathing attachment.
868.5975 Ventilator tubing.
868.5995 Tee drain (water trap).

Subpart G—Miscellaneous

868.6100 Anesthetic cabinet, table, or tray.
868.6175 Cardiopulmonary emergency cart.
868.6225 Nose clip.
868.6250 Portable air compressor.
868.6400 Calibration gas.
868.6700 Anesthesia stool.
868.6810 Tracheobronchial suction catheter.
868.6820 Patient position support.
868.6885 Medical gas yoke assembly.

Authority: Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)).

Subpart A—General Provisions

§ 868.1 Scope.

(a) This part sets forth the classification of anesthesiology devices intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 may not show merely that the device is accurately described by the section title and identification provisions of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, an anesthesiology device that has two or more types of uses (e.g., used both as a diagnostic device and as a therapeutic device) is listed in a subpart representing one use of the device, rather than in two or more subparts.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

Subpart B—Diagnostic Devices

§ 868.1030 Manual algesimeter.

(a) *Identification.* A manual algesimeter is a mechanical device intended to determine a patient's sensitivity to pain after administration of an anesthetic agent, e.g., by pricking with a sharp point.

(b) *Classification.* Class I (general controls). The device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 868.1040 Powered algesimeter.

(a) *Identification.* A powered algesimeter is a device using electrical stimulation intended to determine a patient's sensitivity to pain after administration of an anesthetic agent.

(b) *Classification.* Class II (performance standards).

§ 868.1075 Argon gas analyzer.

(a) *Identification.* An argon gas analyzer is a device intended to measure the concentration of argon in a gas mixture to aid in determining the patient's ventilatory status. The device may use techniques such as mass spectrometry or thermal conductivity.

(b) *Classification.* Class II (performance standards).

§ 868.1100 Arterial blood sampling kit.

(a) *Identification.* An arterial blood sampling kit is a device, in kit form, used to obtain arterial blood samples from a patient for blood gas determinations. The kit may include a syringe, needle, cork, and heparin.

(b) *Classification.* Class II (performance standards).

§ 868.1120 Indwelling blood oxyhemoglobin concentration analyzer.

(a) *Identification.* An indwelling blood oxyhemoglobin concentration analyzer is a photoelectric device used to measure, in vivo, the oxygen-carrying capacity of hemoglobin in blood to aid

in determining the patient's physiological status.

(b) *Classification.* Class III (premarket approval).

§ 868.1150 Indwelling blood carbon dioxide partial pressure (P_{CO2}) analyzer.

(a) *Identification.* An indwelling blood carbon dioxide partial pressure P_{CO2} analyzer is a device that consists of a catheter-tip P_{CO2} transducer (e.g., P_{CO2} electrode) and that is used to measure, in vivo, the partial pressure of carbon dioxide in blood to aid in determining the patient's circulatory, ventilatory, and metabolic status.

(b) *Classification.* Class III (premarket approval).

§ 868.1170 Indwelling blood hydrogen ion concentration (pH) analyzer.

(a) *Identification.* An indwelling blood hydrogen ion concentration (pH) analyzer is a device that consists of a catheter-tip pH electrode and that is used to measure, in vivo, the hydrogen ion concentration (pH) in blood to aid in determining the patient's acid-base balance.

(b) *Classification.* Class III (premarket approval).

§ 868.1200 Indwelling blood oxygen partial pressure P_{O2} analyzer.

(a) *Identification.* An indwelling blood oxygen partial pressure (P_{O2}) analyzer is a device that consists of a catheter-tip P_{O2} transducer (e.g., P_{O2} electrode) and that is used to measure, in vivo, the partial pressure of oxygen in blood to aid in determining the patient's circulatory, ventilatory, and metabolic status.

(b) *Classification.* Class III (premarket approval).

§ 868.1400 Carbon dioxide gas analyzer.

(a) *Identification.* A carbon dioxide gas analyzer is a device intended to measure the concentration of carbon dioxide in a gas mixture to aid in determining the patient's ventilatory, circulatory, and metabolic status. The device may use techniques such as chemical titration, absorption of infrared radiation, gas chromatography, or mass spectrometry.

(b) *Classification.* Class II (performance standards).

§ 868.1430 Carbon monoxide gas analyzer.

(a) *Identification.* A carbon monoxide gas analyzer is a device intended to measure the concentration of carbon monoxide in a gas mixture to aid in determining the patient's ventilatory status. The device may use techniques such as infrared absorption or gas chromatography.

(b) *Classification.* Class II (performance standards).

§ 868.1500 Enflurane gas analyzer.

(a) *Identification.* An enflurane gas analyzer is a device intended to measure the concentration of enflurane anesthetic in a gas mixture.

(b) *Classification.* Class II (performance standards).

§ 868.1575 Gas collection vessel.

(a) *Identification.* A gas collection vessel is a container-like device intended to collect a patient's exhaled gases for subsequent analysis. It does not include a sampling pump.

(b) *Classification.* Class II (performance standards).

§ 868.1620 Halothane gas analyzer.

(a) *Identification.* A halothane gas analyzer is a device intended to measure the concentration of halothane anesthetic in a gas mixture. The device may use techniques such as mass spectrometry or absorption of infrared or ultraviolet radiation.

(b) *Classification.* Class II (performance standards).

§ 868.1640 Helium gas analyzer.

(a) *Identification.* A helium gas analyzer is a device intended to measure the concentration of helium in a gas mixture during pulmonary function testing. The device may use techniques such as thermal conductivity, gas chromatography, or mass spectrometry.

(b) *Classification.* Class II (performance standards).

§ 868.1670 Neon gas analyzer.

(a) *Identification.* A neon gas analyzer is a device intended to measure the concentration of neon in a gas mixture exhaled by a patient. The device may use techniques such as mass spectrometry or thermal conductivity.

(b) *Classification.* Class II (performance standards).

§ 868.1690 Nitrogen gas analyzer.

(a) *Identification.* A nitrogen gas analyzer is a device intended to measure the concentration of nitrogen in respiratory gases to aid in determining a patient's ventilatory status. The device may use techniques such as gas chromatography or mass spectrometry.

(b) *Classification.* Class II (performance standards).

§ 868.1700 Nitrous oxide gas analyzer.

(a) *Identification.* A nitrous oxide gas analyzer is a device intended to measure the concentration of nitrous oxide anesthetic in a gas mixture. The device may use techniques such as infrared absorption or mass spectrometry.

(b) *Classification.* Class II (performance standards).

§ 868.1720 Oxygen gas analyzer.

(a) *Identification.* An oxygen gas analyzer is a device intended to measure the concentration of oxygen in respiratory gases by techniques such as mass spectrometry, polarography, thermal conductivity, or gas chromatography. This generic type of device also includes paramagnetic analyzers.

(b) *Classification.* Class II (performance standards).

§ 868.1730 Oxygen uptake computer.

(a) *Identification.* An oxygen uptake computer is a device intended to compute the amount of oxygen consumed by a patient and may include components for determining expired gas volume and composition.

(b) *Classification.* Class II (performance standards).

§ 868.1750 Pressure plethysmograph.

(a) *Identification.* A pressure plethysmograph is a device used to determine a patient's airway resistance and lung volumes by measuring pressure changes while the patient is in an airtight box.

(b) *Classification.* Class II (performance standards).

§ 868.1760 Volume plethysmograph.

(a) *Identification.* A volume plethysmograph is an airtight box, in which a patient sits, that is used to determine the patient's lung volume changes.

(b) *Classification.* Class II (performance standards).

§ 868.1780 Inspiratory airway pressure meter.

(a) *Identification.* An inspiratory airway pressure meter is a device used to measure the amount of pressure produced in a patient's airway during maximal inspiration.

(b) *Classification.* Class II (performance standards).

§ 868.1800 Rhinoanemometer.

(a) *Identification.* A rhinoanemometer is a device used to quantify the amount of nasal congestion by measuring the airflow through, and differential pressure across, a patient's nasal passages.

(b) *Classification.* Class II (performance standards).

§ 868.1840 Diagnostic spirometer.

(a) *Identification.* A diagnostic spirometer is a device used in pulmonary function testing to measure the volume of gas moving in or out of a patient's lungs.

(b) *Classification.* Class II (performance standards).

§ 868.1850 Monitoring spirometer.

(a) *Identification.* A monitoring spirometer is a device used to measure continuously a patient's tidal volume (volume of gas inhaled by the patient during each respiration cycle) or minute volume (the tidal volume multiplied by the rate of respiration for 1 minute) for the evaluation of the patient's ventilatory status.

(b) *Classification.* Class II (performance standards).

§ 868.1860 Peak-flow meter for spirometry.

(a) *Identification.* A peak-flow meter for spirometry is a device used to measure a patient's maximum ventilatory flow rate.

(b) *Classification.* Class II (performance standards).

§ 868.1870 Gas volume calibrator.

(a) *Identification.* A gas volume calibrator is a device that is intended for medical purposes and that is used to calibrate the output of gas volume measurement instruments by delivering a known gas volume.

(b) *Classification.* Class II (performance standards).

§ 868.1880 Pulmonary-function data calculator.

(a) *Identification.* A pulmonary-function data calculator is a device used to calculate pulmonary-function values based on actual physical data obtained during pulmonary-function testing.

(b) *Classification.* Class II (performance standards).

§ 868.1890 Predictive pulmonary-function value calculator.

(a) *Identification.* A predictive pulmonary-function value calculator is a device used to calculate normal pulmonary-function values based on empirical equations.

(b) *Classification.* Class II (performance standards).

§ 868.1900 Diagnostic pulmonary-function interpretation calculator.

(a) *Identification.* A diagnostic pulmonary-function interpretation calculator is a device that interprets pulmonary study data to determine clinical significance of pulmonary-function values.

(b) *Classification.* Class II (performance standards).

§ 868.1910 Esophageal stethoscope.

(a) *Identification.* An esophageal stethoscope is a nonpowered device that is inserted into a patient's esophagus to enable the user to listen to heart and breath sounds.

(b) *Classification.* Class I (general controls).

§ 868.1920 Esophageal stethoscope with electrical conductors.

(a) *Identification.* An esophageal stethoscope with electrical conductors is a device that is inserted into the esophagus to listen to a patient's heart and breath sounds and to monitor electrophysiological signals. The device may also incorporate a thermistor for temperature measurement.

(b) *Classification.* Class II (performance standards).

§ 868.1930 Stethoscope head.

(a) *Identification.* A stethoscope head is a weighted chest piece used during anesthesia to listen to a patient's heart, breath, and other physiological sounds.

(b) *Classification.* Class I (general controls).

§ 868.1965 Switching valve (ploss).

(a) *Identification.* A switching valve (ploss) is a three-way valve located between a stethoscope placed over the heart, a blood pressure cuff, and an earpiece. The valve allows the user to eliminate one sound channel and listen only to a patient's heart or korotkoff (blood pressure) sounds through the other channel.

(b) *Classification.* Class I (general controls). The device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 868.1975 Water vapor analyzer.

(a) *Identification.* A water vapor analyzer is a device intended to measure the concentration of water vapor in a patient's expired gases by using techniques such as mass spectrometry.

(b) *Classification.* Class II (performance standards).

Subpart C—Monitoring Devices

§ 868.2025 Ultrasonic air embolism monitor.

(a) *Identification.* An ultrasonic air embolism monitor is a device used to detect air bubbles in a patient's blood stream. It may use Doppler or other ultrasonic principles.

(b) *Classification.* Class II (performance standards).

§ 868.2300 Bourdon gauge flowmeter.

(a) *Identification.* A bourdon gauge flowmeter is a device intended for medical purposes that is used in conjunction with respiratory equipment to sense gas pressure. The device is calibrated to indicate gas flow rate when the outflow is open to the atmosphere.

(b) *Classification.* Class II (performance standards).

§ 868.2320 Uncompensated thorpe tube flowmeter.

(a) *Identification.* An uncompensated thorpe tube flowmeter is a device intended for medical purposes that is used to indicate and control gas flow rate accurately. The device includes a vertically mounted tube and is calibrated when the outlet of the flowmeter is open to the atmosphere.

(b) *Classification.* Class II (performance standards).

§ 868.2340 Compensated thorpe tube flowmeter.

(a) *Identification.* A compensated thorpe tube flowmeter is a device intended for medical purposes that is used to control and measure gas flow rate accurately. The device includes a vertically mounted tube, with the outlet of the flowmeter calibrated to a reference pressure.

(b) *Classification.* Class II (performance standards).

§ 868.2350 Gas calibration flowmeter.

(a) *Identification.* A gas calibration flowmeter is a device intended for medical purposes that is used to calibrate flowmeters and accurately measure gas flow.

(b) *Classification.* Class II (performance standards).

§ 868.2375 Breathing frequency monitor.

(a) *Identification.* A breathing (ventilatory) frequency monitor is a device intended to measure or monitor a patient's respiratory rate. The device may provide an audible or visible alarm when the respiratory rate is outside predetermined limits.

(b) *Classification.* Class II (performance standards).

§ 868.2450 Lung water monitor.

(a) *Identification.* A lung water monitor is a device used to monitor the trend of fluid volume changes in a patient's lung by measuring changes in thoracic electrical impedance

(resistance to alternating current) by means of electrodes placed on the patient's chest.

(b) *Classification.* Class III (premarket approval).

§ 868.2500 Cutaneous oxygen monitor.

(a) *Cutaneous oxygen monitor for an infant patient who is not under gas anesthesia*—(1) *Identification.* A cutaneous oxygen monitor for an infant patient who is not under gas anesthesia is a device that uses a noninvasive sensor (e.g., a Clark-type polarographic electrode) placed on the patient's skin and that is intended to monitor relative changes in the cutaneous oxygen tension in an infant patient who is not under gas anesthesia.

(2) *Classification.* Class II (performance standards).

(b) *Cutaneous oxygen monitor for all other uses*—(1) *Identification.* A cutaneous oxygen monitor for all other uses is a device that uses a noninvasive sensor (e.g., a Clark-type polarographic electrode) placed on the patient's skin and that is intended to monitor relative changes in the cutaneous oxygen tension in a noninfant patient or in any patient, including an infant, who is under gas anesthesia.

(2) *Classification.* Class III (premarket approval).

§ 868.2550 Pneumotachometer.

(a) *Identification.* A pneumotachometer is a device intended for medical purposes that is used to determine gas flow by measuring the pressure differential across a known resistance. The device may use a set of capillaries or a metal screen for the resistive element.

(b) *Classification.* Class II (performance standards).

§ 868.2600 Airway pressure monitor.

(a) *Identification.* An airway pressure monitor is a device used to measure the pressure in a patient's upper airway. The device may include a pressure gauge and an alarm.

(b) *Classification.* Class II (performance standards).

§ 868.2610 Gas pressure gauge.

(a) *Identification.* A gas pressure gauge (e.g., bourdon tube pressure gauge) is a device intended for medical purposes that is used to measure gas pressure in a medical gas delivery system.

(b) *Classification.* Class II (performance standards).

§ 868.2620 Gas pressure calibrator.

(a) *Identification.* A gas pressure calibrator is a device intended for medical purposes that is used to calibrate pressure-measuring instruments by generating a known gas pressure.

(b) *Classification.* Class II (performance standards).

§ 868.2700 Pressure regulator.

(a) *Identification.* A pressure regulator is a device, often called a pressure-reducing valve, that is intended for medical purposes and that is used to convert a medical gas pressure from a high variable pressure to a lower, more constant working pressure. This device includes mechanical oxygen regulators.

(b) *Classification.* Class II (performance standards).

§ 868.2775 Electrical peripheral nerve stimulator.

(a) *Identification.* An electrical peripheral nerve stimulator (neuromuscular blockade monitor) is a device used to apply an electrical current to a patient to test the level of pharmacological effect of anesthetic drugs and gases.

(b) *Classification.* Class II (performance standards).

§ 868.2875 Differential pressure transducer.

(a) *Identification.* A differential pressure transducer is a two-chambered device intended for medical purposes that is often used during pulmonary function testing. It generates an electrical signal for subsequent display or processing that is proportional to the difference in gas pressures in the two chambers.

(b) *Classification.* Class II (performance standards).

§ 868.2885 Gas flow transducer.

(a) *Identification.* A gas flow transducer is a device intended for medical purposes that is used to convert gas flow rate into an electrical signal for subsequent display or processing.

(b) *Classification.* Class II (performance standards).

§ 868.2900 Gas pressure transducer.

(a) *Identification.* A gas pressure transducer is a device intended for medical purposes that is used to convert gas pressure into an electrical signal for subsequent display or processing.

(b) *Classification.* Class II (performance standards).

Subparts D–E—[Reserved]

Subpart F—Therapeutic Devices

§ 868.5090 Emergency airway needle.

(a) *Identification.* An emergency airway needle is a device intended to puncture a patient's cricothyroid membrane to provide an emergency airway during upper airway obstruction.

(b) *Classification.* Class II (performance standards).

§ 868.5100 Nasopharyngeal airway.

(a) *Identification.* A nasopharyngeal airway is a device used to aid breathing by means of a tube inserted into a patient's pharynx through the nose to provide a patent airway.

(b) *Classification.* Class II (performance standards).

§ 868.5110 Oropharyngeal airway.

(a) *Identification.* An oropharyngeal airway is a device inserted into a patient's pharynx through the mouth to provide a patent airway.

(b) *Classification.* Class II (performance standards).

§ 868.5120 Anesthesia conduction catheter.

(a) *Identification.* An anesthesia conduction catheter is a flexible tubular device used to inject local anesthetics into a patient and to provide continuous regional anesthesia.

(b) *Classification.* Class II (performance standards).

§ 868.5130 Anesthesia conduction filter.

(a) *Identification.* An anesthesia conduction filter is a microporous filter used while administering to a patient injections of local anesthetics to minimize particulate (foreign material) contamination of the injected fluid.

(b) *Classification.* Class II (performance standards).

§ 868.5140 Anesthesia conduction kit.

(a) *Identification.* An anesthesia conduction kit is a device used to administer to a patient conduction, regional, or local anesthesia. The device may contain syringes, needles, and drugs.

(b) *Classification.* Class II (performance standards).

§ 868.5150 Anesthesia conduction needle.

(a) *Identification.* An anesthesia conduction needle is a device used to inject local anesthetics into a patient to provide regional anesthesia.

(b) *Classification.* Class II (performance standards).

§ 868.5160 Gas machine for anesthesia or analgesia.

(a) *Gas machine for anesthesia*—(1) *Identification.* A gas machine for anesthesia is a device used to administer to a patient, continuously or intermittently, a general inhalation anesthetic and to maintain a patient's ventilation. The device may include a

gas flowmeter, vaporizer, ventilator, breathing circuit with bag, and emergency air supply.

(2) *Classification.* Class II (performance standards).

(b) *Gas machine for analgesia*—(1) *Identification.* A gas machine for analgesia is a device used to administer to a patient an analgesic agent, such as a nitrous oxide-oxygen mixture (maximum concentration of 70 percent nitrous oxide).

(2) *Classification.* Class II (performance standards).

§ 868.5170 Laryngotracheal topical anesthesia applicator.

(a) *Identification.* A laryngotracheal topical anesthesia applicator is a device used to apply topical anesthetics to a patient's laryngotracheal area.

(b) *Classification.* Class II (performance standards).

§ 868.5180 Rocking bed.

(a) *Identification.* A rocking bed is a device intended for temporary use to help patient ventilation (breathing) by repeatedly tilting the patient, thereby using the weight of the abdominal contents to move the diaphragm.

(b) *Classification.* Class II (performance standards).

§ 868.5220 Blow bottle.

(a) *Identification.* A blow bottle is a device that is intended for medical purposes to induce a forced expiration from a patient. The patient blows into the device to move a column of water from one bottle to another.

(b) *Classification.* Class I (general controls). If the device is not labeled or otherwise represented as sterile, it is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 868.5240 Anesthesia breathing circuit.

(a) *Identification.* An anesthesia breathing circuit is a device that is intended to administer medical gases to a patient during anesthesia. It provides both an inhalation and exhalation route and may include a connector, adaptor, and Y-piece.

(b) *Classification.* Class II (performance standards).

§ 868.5250 Breathing circuit circulator.

(a) *Identification.* A breathing circuit circulator is a turbine device that is attached to a closed breathing circuit and that is intended to circulate anesthetic gases continuously by maintaining the unidirectional valves in an open position and reducing mechanical dead space and resistance in the breathing circuit.

(b) *Classification.* Class II (performance standards).

§ 868.5260 Breathing circuit bacterial filter.

(a) *Identification.* A breathing circuit bacterial filter is a device that is intended to remove microbiological and particulate matter from the gases in the breathing circuit.

(b) *Classification.* Class II (performance standards).

§ 868.5270 Breathing system heater.

(a) *Identification.* A breathing system heater is a device that is intended to warm breathing gases before they enter a patient's airway. The device may include a temperature controller.

(b) *Classification.* Class II (performance standards).

§ 868.5280 Breathing tube support.

(a) *Identification.* A breathing tube support is a device that is intended to support and anchor a patient's breathing tube(s).

(b) *Classification.* Class I (general controls).

§ 868.5300 Carbon dioxide absorbent.

(a) *Identification.* A carbon dioxide absorbent is a device intended for medical purposes that consists of an absorbent material (e.g., soda lime) that is intended to remove carbon dioxide from the gases in the breathing circuit.

(b) *Classification.* Class II (performance standards).

§ 868.5310 Carbon dioxide absorber.

(a) *Identification.* A carbon dioxide absorber is a device that is intended for medical purposes and that is used in a breathing circuit as a container for carbon dioxide absorbent. It may include a canister and water drain.

(b) *Classification.* Class II (performance standards).

§ 868.5320 Reservoir bag.

(a) *Identification.* A reservoir bag is a device, usually made of conductive rubber, intended for use in a breathing circuit as a reservoir for breathing gas and to assist, control, or monitor a patient's ventilation.

(b) *Classification.* Class II (performance standards).

§ 868.5330 Breathing gas mixer.

(a) *Identification.* A breathing gas mixer is a device intended for use in conjunction with a respiratory support apparatus to control the mixing of gases that are to be breathed by a patient.

(b) *Classification.* Class II (performance standards).

§ 868.5340 Nasal oxygen cannula.

(a) *Identification.* A nasal oxygen cannula is a two-pronged device used to administer oxygen to a patient through both nostrils.

(b) *Classification.* Class I (general controls).

§ 868.5350 Nasal oxygen catheter.

(a) *Identification.* A nasal oxygen catheter is a device intended to be inserted through a patient's nostril to administer oxygen.

(b) *Classification.* Class I (general controls).

§ 868.5365 Posture chair for cardiac or pulmonary treatment.

(a) *Identification.* A posture chair for cardiac or pulmonary treatment is a device intended to assist in the rehabilitation and mobilization of patients with chronic heart or lung disease.

(b) *Classification.* Class I (general controls).

§ 868.5375 Heat and moisture condenser (artificial nose).

(a) *Identification.* A heat and moisture condenser (artificial nose) is a device intended to be positioned over a tracheotomy (a surgically created opening in the throat) or tracheal tube (a tube inserted into the trachea) to warm and humidify gases breathed in by a patient.

(b) *Classification.* Class II (performance standards).

§ 868.5400 Electroanesthesia apparatus.

(a) *Identification.* An electroanesthesia apparatus is a device used for the induction and maintenance of anesthesia during surgical procedures by means of an alternating or pulsed electric current that is passed through electrodes fixed to a patient's head.

(b) *Classification.* Class III (premarket approval).

§ 868.5420 Ether hook.

(a) *Identification.* An ether hook is a device that fits inside a patient's mouth and that is intended to deliver vaporized ether.

(b) *Classification.* Class I (general controls). If the device is not labeled or otherwise represented as sterile, it is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 868.5430 Gas-scavenging apparatus.

(a) *Identification.* A gas-scavenging apparatus is a device intended to collect

excess anesthetic, analgesic, or trace gases or vapors from a patient's breathing system, ventilator, or extracorporeal pump-oxygenator, and to conduct these gases out of the area by means of an exhaust system.

(b) *Classification.* Class II (performance standards).

§ 868.5440 Portable oxygen generator.

(a) *Identification.* A portable oxygen generator is a device that is intended to release oxygen for respiratory therapy by means of either a chemical reaction or physical means (e.g., a molecular sieve).

(b) *Classification.* Class II (performance standards).

§ 868.5450 Respiratory gas humidifier.

(a) *Identification.* A respiratory gas humidifier is a device that is intended to add moisture to, and sometimes to warm, the breathing gases for administration to a patient. Cascade, gas, heated, and prefilled humidifiers are included in this generic type of device.

(b) *Classification.* Class II (performance standards).

§ 868.5460 Therapeutic humidifier for home use.

(a) *Identification.* A therapeutic humidifier for home use is a device that adds water vapor to breathing gases and that is intended for respiratory therapy or other medical purposes. The vapor produced by the device pervades the area surrounding the patient, who breaths the vapor during normal respiration.

(b) *Classification.* Class II (performance standards).

§ 868.5470 Hyperbaric chamber.

(a) *Identification.* A hyperbaric chamber is a device that is intended to increase the environmental oxygen pressure to promote the movement of oxygen from the environment to a patient's tissue by means of pressurization that is greater than atmospheric pressure. This device does not include topical oxygen chambers for extremities (§ 878.5650).

(b) *Classification.* Class II (performance standards).

§ 868.5570 Nonrebreathing mask.

(a) *Identification.* A nonrebreathing mask is a device fitting over a patient's face to administer oxygen. It utilizes one-way valves to prevent the patient from rebreathing previously exhaled gases.

(b) *Classification.* Class II (performance standards).

§ 868.5580 Oxygen mask.

(a) *Identification.* An oxygen mask is a device placed over a patient's nose, mouth, or tracheostomy to administer oxygen or aerosols.

(b) *Classification.* Class II (performance standards).

§ 868.5590 Scavenging mask.

(a) *Identification.* A scavenging mask is a device positioned over a patient's nose to deliver anesthetic or analgesic gases to the upper airway and to remove excess and exhaled gas. It is usually used during dentistry.

(b) *Classification.* Class II (performance standards).

§ 868.5600 Venturi mask.

(a) *Identification.* A venturi mask is a device containing an air-oxygen mixing mechanism that dilutes 100 percent oxygen to a predetermined concentration and delivers the mixed gases to a patient.

(b) *Classification.* Class II (performance standards).

§ 868.5610 Membrane lung for long-term pulmonary support.

(a) *Identification.* A membrane lung for long-term pulmonary support is a device used to provide to a patient extracorporeal blood oxygenation for longer than 24 hours.

(b) *Classification.* Class III (premarket approval).

§ 868.5620 Breathing mouthpiece.

(a) *Identification.* A breathing mouthpiece is a rigid device that is inserted into a patient's mouth and that connects with diagnostic or therapeutic respiratory devices.

(b) *Classification.* Class I (general controls).

§ 868.5630 Nebulizer.

(a) *Identification.* A nebulizer is a device intended to spray liquids in aerosol form into gases that are delivered directly to the patient for breathing. Heated, ultrasonic, gas, venturi, and refillable nebulizers are included in this generic type of device.

(b) *Classification.* Class II (performance standards).

§ 868.5640 Medicinal nonventilatory nebulizer (atomizer).

(a) *Identification.* A medicinal nonventilatory nebulizer (atomizer) is a device that is intended to spray liquid medication in aerosol form into the air that a patient will breathe.

(b) *Classification.* Class I (general controls).

§ 868.5650 Esophageal obturator.

(a) *Identification.* An esophageal obturator is a device inserted through a patient's mouth to aid ventilation of the patient during emergency resuscitation by occluding (blocking) the esophagus, thereby permitting positive pressure ventilation through the trachea. The device consists of a closed-end semirigid esophageal tube that is attached to a face mask.

(b) *Classification.* Class II (performance standards).

§ 868.5655 Portable liquid oxygen unit.

(a) *Identification.* A portable liquid oxygen unit is a portable, thermally insulated container of liquid oxygen that is intended to supplement gases to be inhaled by a patient, is sometimes accompanied by tubing and an oxygen mask. An empty portable liquid oxygen unit is a device, while the oxygen contained therein is a drug.

(b) *Classification.* Class II (performance standards).

§ 868.5665 Powered percussor.

(a) *Identification.* A powered percussor is a device that is intended to transmit vibration through a patient's chest wall to aid in freeing mucus deposits in the lung in order to improve bronchial drainage and that may be powered by electricity or compressed gas.

(b) *Classification.* Class II (performance standards).

§ 868.5675 Rebreathing device.

(a) *Identification.* A rebreathing device is a device that enables a patient to rebreathe exhaled gases. It may be used in conjunction with pulmonary function testing or for increasing minute ventilation.

(b) *Classification.* Class I (general controls). If the device is not labeled or otherwise represented as sterile, it is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 868.5690 Incentive spirometer.

(a) *Identification.* An incentive spirometer is a device that indicates a patient's breathing volume or flow and that provides an incentive to the patient to improve his or her ventilation.

(b) *Classification.* Class II (performance standards).

§ 868.5700 Nonpowered oxygen tent.

(a) *Identification.* A nonpowered oxygen tent is a device that encloses a patient's head and upper body to

contain oxygen delivered to the patient for breathing. This generic type of device includes infant oxygen hoods.

(b) *Classification.* Class I (general controls).

§ 868.5710 Electrically powered oxygen tent.

(a) *Identification.* An electrically powered oxygen tent is a device that encloses a patient's head and, by means of an electrically powered unit, administers breathing oxygen and controls the temperature and humidity of the breathing gases. This generic type device includes the pediatric aerosol tent.

(b) *Classification.* Class II (performance standards).

§ 868.5720 Bronchial tube.

(a) *Identification.* A bronchial tube is a device used to differentially intubate a patient's bronchus (one of the two main branches of the trachea leading directly to the lung) in order to isolate a portion of lung distal to the tube.

(b) *Classification.* Class II (performance standards).

§ 868.5730 Tracheal tube.

(a) *Identification.* A tracheal tube is a device inserted into a patient's trachea via the nose or mouth and used to maintain an open airway.

(b) *Classification.* Class II (performance standards).

§ 868.5740 Tracheal/bronchial differential ventilation tube.

(a) *Identification.* A tracheal/bronchial differential ventilation tube is a device used to isolate the left or the right lung of a patient for anesthesia or pulmonary function testing.

(b) *Classification.* Class II (performance standards).

§ 868.5750 Inflatable tracheal tube cuff.

(a) *Identification.* An inflatable tracheal tube cuff is a device used to provide an airtight seal between a tracheal tube and a patient's trachea.

(b) *Classification.* Class II (performance standards).

§ 868.5760 Cuff spreader.

(a) *Identification.* A cuff spreader is a device used to install tracheal tube cuffs on tracheal or tracheostomy tubes.

(b) *Classification.* Class I (general controls). If the device is not labeled or otherwise represented as sterile, it is exempt from the good manufacturing practice regulation in Part 820 with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 868.5770 Tracheal tube fixation device.

(a) *Identification.* A tracheal tube fixation device is a device used to hold a tracheal tube in place, usually by means of straps or pinch rings.

(b) *Classification.* Class II (performance standards).

§ 868.5780 Tube introduction forceps.

(a) *Identification.* Tube introduction forceps (e.g., Magill forceps) are a right-angled device used to grasp a tracheal tube and place it in a patient's trachea.

(b) *Classification.* Class II (performance standards).

§ 868.5790 Tracheal tube stylet.

(a) *Identification.* A tracheal tube stylet is a device used temporarily to make rigid a flexible tracheal tube to aid its insertion into a patient.

(b) *Classification.* Class II (performance standards).

§ 868.5810 Airway connector.

(a) *Identification.* An airway connector is a device intended to connect a breathing gas source to a tracheal tube, tracheostomy tube, or mask.

(b) *Classification.* Class II (performance standards).

§ 868.5820 Dental protector.

(a) *Identification.* A dental protector is a device intended to protect a patient's teeth during manipulative procedures within a patient's oral cavity.

(b) *Classification.* Class II (performance standards).

§ 868.5830 Autotransfusion apparatus.

(a) *Identification.* An autotransfusion apparatus is a device used to collect and reinfuse the blood lost by a patient due to surgery or trauma.

(b) *Classification.* Class II (performance standards).

§ 868.5860 Pressure tubing and accessories.

(a) *Identification.* Pressure tubing and accessories are flexible or rigid devices intended to deliver pressurized medical gases.

(b) *Classification.* Class II (performance standards).

§ 868.5870 Nonrebreathing valve.

(a) *Identification.* A nonrebreathing valve is a one-way valve that directs breathing gas flow to the patient and vents exhaled gases into the atmosphere.

(b) *Classification.* Class II (performance standards).

§ 868.5880 Anesthetic vaporizer.

(a) *Identification.* An anesthetic vaporizer is a device used to vaporize liquid anesthetic and deliver a controlled amount of the vapor to the patient.

(b) *Classification.* Class II (performance standards).

§ 868.5895 Continuous ventilator.

(a) *Identification.* A continuous ventilator (respirator) is a device intended to mechanically control or assist patient breathing by delivering a predetermined percentage of oxygen in the breathing gas. Adult, pediatric, and neonatal ventilators are included in this generic type of device.

(b) *Classification.* Class II (performance standards).

§ 868.5905 Noncontinuous ventilator (IPPB).

(a) *Identification.* A noncontinuous ventilator (intermittent positive pressure breathing-IPPB) is a device intended to deliver intermittently an aerosol to a patient's lungs or to assist a patient's breathing.

(b) *Classification.* Class II (performance standards).

§ 868.5915 Manual emergency ventilator.

(a) *Identification.* A manual emergency ventilator is a device, usually incorporating a bag and valve, intended to provide emergency respiratory support by means of a face mask or a tube inserted into a patient's airway.

(b) *Classification.* Class II (performance standards).

§ 868.5925 Powered emergency ventilator.

(a) *Identification.* A powered emergency ventilator is a demand valve or inhalator intended to provide emergency respiratory support by means of a face mask or a tube inserted into a patient's airway.

(b) *Classification.* Class II (performance standards).

§ 868.5935 External negative pressure ventilator.

(a) *Identification.* An external negative pressure ventilator (e.g., iron lung, cuirass) is a device chamber that is intended to support a patient's ventilation by alternately applying and releasing external negative pressure over the diaphragm and upper trunk of the patient.

(b) *Classification.* Class II (performance standards).

§ 868.5955 Intermittent mandatory ventilation attachment.

(a) *Identification.* An intermittent mandatory ventilation (IMV) attachment

is a device attached to a mechanical ventilator that allows spontaneous breathing by a patient while providing mechanical ventilation at a preset rate.

(b) *Classification.* Class II (performance standards).

§ 868.5965 Positive end expiratory pressure breathing attachment.

(a) *Identification.* A positive end expiratory pressure (PEEP) breathing attachment is a device attached to a ventilator that is used to elevate pressure in a patient's lungs above atmospheric pressure at the end of exhalation.

(b) *Classification.* Class II (performance standards).

§ 868.5975 Ventilator tubing.

(a) *Identification.* Ventilator tubing is a device intended for use as a conduit for gases between a ventilator and a patient during ventilation of the patient.

(b) *Classification.* Class II (performance standards).

§ 868.5995 Tee drain (water trap).

(a) *Identification.* A tee drain (water trap) is a device intended to trap and drain water that collects in ventilator tubing during respiratory therapy, thereby preventing an increase in breathing resistance.

(b) *Classification.* Class II (perfomance standards).

Subpart G—Miscellaneous

§ 868.6100 Anesthetic cabinet, table, or tray.

(a) *Identification.* An anesthetic cabinet, table, or tray is a device intended to store anesthetic equipment and drugs. The device is usually constructed to eliminate build-up of static electrical charges.

(b) *Classification.* Class I (general controls).

§ 868.6175 Cardiopulmonary emergency cart.

(a) *Identification.* A cardiopulmonary emergency cart is a device intended to store and transport resuscitation supplies for emergency treatment. The device does not include any equipment used in cardiopulmonary resuscitation.

(b) *Classification.* Class I (general controls). The device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 868.6225 Nose clip.

(a) *Identification.* A nose clip is a device intended to close a patient's external nares (nostrils) during diagnostic or therapeutic procedures.

(b) *Classification.* Class I (general controls). The device is exempt from the good manufacturing practice regulation in Part 820 with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 868.6250 Portable air compressor.

(a) *Identification.* A portable air compressor is a device intended to provide compressed air for medical purposes, e.g., to drive ventilators and other respiratory devices.

(b) *Classification.* Class II (performance standards).

§ 868.6400 Calibration gas.

(a) *Identification.* A calibration gas is a device consisting of a container of gas of known concentration intended to calibrate medical gas concentration measurement devices.

(b) *Classification.* Class II (performance standards).

§ 868.6700 Anesthesia stool.

(a) *Identification.* An anesthesia stool is a device intended for use as a stool for the anesthesiologist in the operating room.

(b) *Classification.* Class I (general controls).

§ 868.6810 Tracheobronchial suction catheter.

(a) *Identification.* A tracheobronchial suction catheter is a device used to aspirate liquids or semisolids from a patient's upper airway.

(b) *Classification.* Class I (general controls).

§ 868.6820 Patient position support.

(a) *Identification.* A patient position support is a device intended to maintain the position of an anesthetized patient during surgery.

(b) *Classification.* Class II (performance standards).

§ 868.6885 Medical gas yoke assembly.

(a) *Identification.* A medical gas yoke assembly is a device intended to connect medical gas cylinders to regulators or needle valves to supply gases for anesthesia or respiratory therapy. The device may include a particulate filter.

(b) *Classification.* Class II (performance standards).

The Food and Drug Administration has carefully analyzed the economic effects of this final rule in accordance with section 3(g)(1) of Executive Order 12291, and it has been determined that the final rule does not constitute a major rule as defined in section 1(b) of the Executive Order. Rules classifying devices into class I generally maintain the status quo: These devices are now subject to only the general controls provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j) and under the final rule, would remain subject only to such controls either in their entirety or with certain exemptions. Devices classified into class II would also remain subject only to the general controls provisions of the act unless and until an applicable performance standard were established. Similarly, devices classified into class III remain subject only to the general controls provisions of the act until an additional regulation is promulgated pursuant to section 515(b) of the act (21 U.S.C. 360e(b)) requiring that such devices have in effect approved applications for premarket approval. In accordance with section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)), devices classified by regulation into class III may remain in commercial distribution without an approved premarket approval application for 30 months following the effective date of classification of the device into class III, or for 90 days following the promulgation of a regulation under section 515(b) of the act (21 U.S.C. 360e(b)), whichever occurs later. In sum, device classification rules are not major rules. The requirement for a regulatory flexibility analysis under the Regulatory Flexibility Act does not apply to this final rule because the proposed rules on which it is based were issued prior to January 1, 1981, and are therefore exempt.

Effective date. This regulation is effective August 16, 1982.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: June 24, 1982.

Mark Novitch,

Acting Commissioner of Food and Drugs.

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Friday
July 16, 1982

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

District of Columbia: DC81-3030	June 5, 1981.
Illinois: Il82-2033	May 14, 1982.
Kentucky:	
KY81-1281KY81-1282	Aug. 28, 1981.
KY81-1283	Sept. 4, 1981.
New York:	
NY81-3003	Jan. 23, 1981.
NY80-3054	Sept. 5, 1980.
Pennsylvania: PA82-3007	Feb. 26, 1981.
Ohio:	
OH82-2035	May 7, 1982.
OH82-2037	May 21, 1982.
Tennessee: TN81-1202	May 1, 1981.

Supersedeas Decision to General Wage Determination Decision

The number of the decision being superseded and its date of publication in the **Federal Register** is listed with the State. Supersedeas decision number is in parentheses following the number of the decision being superseded.

California: CA81-5132 (CA82-5112)	July 10, 1981.

Signed at Washington, D.C., this 9th day of July 1982.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

DECISION NO. DC81-3040 - MOD. #13
(46 FR 30290 - June 5, 1981)
DISTRICT OF COLUMBIA; MARYLAND-MONTGOMERY AND PRINCE GEORGES; D.C. TRAINING SCHOOL; VIRGINIA - INDEPENDENT CITY OF ALEXANDRIA, ARLINGTON AND FAIRFAX

CHANGE:

	Basic Hourly Rates	Fringe Benefits
IRONWORKERS		
Structural, ornamental and chain link fence	15.11	2.835
TRUCK DRIVERS		
Boom Trucks	11.31	1.59
Small dump, water sprinkler, grease and oil	11.02	1.59
Flat, pick-up hauling materials, small euclids, dump over 8 wheels	11.14	1.59
Trailers, low boys, tractor pulls	11.38	1.59
Helpers	10.84	1.59
Carryalls, large Euclids, euclid water sprinklers, tunnel work underground and pay haulers	11.50	1.59
Mechanics	11.20	1.59
Greasers, tiremen, runners	11.02	1.59

DECISION NO. IL82-2033 - MOD. #1
(47 FR 20984 - May 14, 1982)
DuPage, Grundy, Kane, Kendall, Lake, McHenry, & Will Counties, Illinois

Change:

	Basic Hourly Rates	Fringe Benefits
Electricians:		
DuPage Co.	$17.65	$4.06

DECISION #KY81-1281 - Mod. #1
(46 FR 43616 - August 28, 1981)
Various Counties (Locality #2), Kentucky

CHANGE:

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
HIGHWAY CONSTRUCTION -		
CLASS A	$12.87	$ 2.13
CLASS B	10.45	2.13
CLASS C	10.83	2.13
CLASS D	10.19	2.13

DECISION #KY81-1282 - Mod. #1
(46 FR 43618 - August 28, 1981)
Various Counties (Locality #3), Kentucky

CHANGE:

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
HIGHWAY CONSTRUCTION -		
CLASS A	$12.87	$ 2.13
CLASS B	10.45	2.13
CLASS C	10.83	2.13
CLASS D	10.19	2.13

DECISION #KY81-1283 - Mod. #1
(46 FR 44628 - September 4, 1981)
Various Counties (Locality #1), Kentucky

CHANGE:

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
HIGHWAY CONSTRUCTION -		
CLASS A	$12.87	$ 2.13
CLASS B	10.45	2.13
CLASS C	10.83	2.13
CLASS D	10.19	2.13

DECISION NO. NY81-3003 - MOD. #4
(46 FR 7737 - January 23, 1981)
ORANGE COUNTY, NEW YORK

CHANGE:

	Basic Hourly Rates	Fringe Benefits
LABORERS, BUILDING (TOTAL PROJECT PRICE $200,000 AND OVER) Common Laborers, Mason Tenders, Mortar Mixers, Hod Carriers, Scaffold Builders, Concrete Men, Vibrator men, poured gypsun, Roof work, wrecking, walking power buggy men, Landscaper, Chipping Hammer (air or electric 1" and under)	11.80	2.90
Asphalt men, Pipelayers, Air or Electric Jackhammer, Powdermen, Gunnite, Sandblasting, Air Trac, Barmen, Chain Saw, Riding Power Buggy, Vibro, Barco, Joy Tamper or similar, Joy or Jib Drills, Walk Behind Roller, Wagon Drill, All Fork Lifts Grade, Pipe, Concrete Clearing, Black Top, Drill, Paving etc., Blaster, Form Setter, Burner (acetylene torch), Ingersoll-Rand, Heavy Duty Crawler Type HCMZ, Drill Machines or Equivalent, All wrecking work fifty feet or more above	12.05	2.90
(TOTAL PROJECT PRICE UNDER $200,000) Common Laborers, Mason Tenders, Mortar Mixers, Hod Carriers, Scaffold Builders, Concrete men, Vibrator men, poured gypsun, Roof work, wrecking, walking power buggy men, Landscaper, Chipping Hammer (air or electric 1" and under)	12.45	2.90
Asphalt men, Pipelayers, Air or Electric Jackhammer, Powdermen, Gunnite, Sandblasting, Air Trac, Barmen, Chain Saw, Riding Power Buggy, Vibro, Barco, Joy Tamper or similar, Joy or Jib Drills, Walk Behind Roller, Wagon Drill, All Fork Lifts Grade, Pipe, Concrete Clearing, Black Top, Drill, Paving etc., Blaster, Form Setter, Burner (acetylene torch), Ingersoll-Rand, Heavy Duty Crawler Type HCMZ, Drill Machines or Equivalent, All wrecking work fifty feet or more above	10.62	2.90
	10.85	2.90
	11.21	2.90
HEAVY & HIGHWAY CONSTRUCTION		
LABORERS:		
GROUP I	12.35	2.90
GROUP II	12.60	2.90
GROUP III	13.00	2.90

DECISION NO. NY80-3054 - MOD. #3
(45 FR 59104 - Sept. 5, 1980)
JEFFERSON COUNTY, NY

CHANGE:

	Basic Hourly Rates	Fringe Benefits
BUILDING CONSTRUCTION		
BRICKLAYERS, CEMENT MASONS, PLASTERERS & TILE SETTERS	15.54	1.81

DECISION NO. PA82-3007 - MOD. #4 (47 FR 8529 - February 26, 1982) BUCKS, CHESTER, DELAWARE, MONTGOMERY & PHILADELPHIA COUNTIES, PENNSYLVANIA	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS:		
New Residential Under 4 Stories	13.47	2.57
Zone 3	14.11	2.11
ELECTRICIANS		
Zone 1		
Residential up to and including 4 stories	16.00	.67+ 11%
Zone 6		
Commercial	16.00	2.69+ 3%
Zone 7		
Commercial	14.55	1.84+3%
GLAZIERS		
Zone 2	12.79	1.465
IRONWORKERS		
Zone 3		
Structural & Ornamental Reinforcing	16.75	4.30
	15.64	4.75
IRONWORKERS:		
Rigger, Machinery Mover	16.36	3.20
LABORERS:		
Class 1	12.05	2.25
Class 2	12.15	2.25
Class 3	12.20	2.25
Class 4	12.35	2.25
Class 5	12.45	2.25
Class 6	11.99	2.25
MARBLE SETTERS	13.20	2.97
PAINTERS		
ZONE 3		
Brush	12.15	2.25
Steel & Spray	13.20	2.25
Roller	12.15	2.25
PILEDRIVERMEN	13.67	5.31+f
ROOFERS:		
Residential structure of not more than 4 stories re-roofing Zone 1	12.50	1.90
SHEET METAL WORKERS		
Zone 1 (Commercial)	17.81	4.04
SOFT FLOOR LAYERS	12.63	4.71
STEAMFITTERS		
Zone 2	17.86	3.00
STONEMASONS		
Zone 1	13.20	2.97
TERRAZZO WORKERS	12.86	3.10

DECISION NO. OH82-2035 - MOD. #2 (47 FR 19893 - May 7, 1982) Statewide, Ohio	Basic Hourly Rates	Fringe Benefits
Change:		
Ironworkers:		
Ashtabula (NE ¼) Co.	$15.50	$3.62

DECISION NO. OH82-2037 - MOD. #1 (47 FR 22307 - May 21, 1982) Ashtabula, Cuyahoga, Lake, Lorain, Portage, Stark, & Summit Counties, Ohio	Basic Hourly Rates	Fringe Benefits
Change:		
Ironworkers:		
Ashtabula (NE ¼) Co.	15.50	3.62

DECISION NO. TN81-1202 - MOD. #7 (46 FR 24886 - May 1, 1981) SHELBY COUNTY, TENNESSEE	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS	14.90	1.68
CARPENTERS, PILEDRIVERMEN, AND SOFT FLOOR LAYERS	13.63	2.20
ELECTRICIANS	17.48	1.45+ 3.55%
IRONWORKERS	14.40	1.73
LABORERS:		
GROUP 1	9.535	1.00
GROUP 2	9.635	1.00
GROUP 3	9.685	1.00
GROUP 4	9.885	1.00
GROUP 5	10.085	1.00
MARBLE TILE & TERRAZZO FINISHERS	6.40	
PAINTERS:		
Brush	13.075	1.55
Spray	13.325	1.55
SPRINKLER FITTERS	14.57	2.83

STATE: California

COUNTIES: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solnao, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba

DECISION NUMBER: CA82-5112 DATE: Date of Publication

Supersedes Decision No. CA81-5132 dated July 10, 1981, in 46 FR 35860

DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories), Heavy and Highway Projects and Dredging

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$22.36	$2.81
BOILERMAKERS	20.01	3.59
BRICKLAYERS; Stonemasons:		
Area 1	17.79	4.51
Area 2	19.05	2.95
Area 3	17.35	3.05
Area 4	16.28	4.29
Area 5	15.18	3.27
Area 6	16.35	3.50
Area 7	17.47	3.80
Area 8	15.74	3.46
BRICK TENDERS:		
Area 1	14.73	3.05
Area 2	13.12	4.95
Area 3	14.73	3.05
Area 4	14.73	3.05
Area 5	12.39	5.40
Area 6	14.26	3.10
CARPENTERS:		
Area 1:		
Carpenters; Millwrights Hardwood Floorlayers; Shinglers; Power Saw Operator; Steel Scaffold Erector and Steel Shoring; Saw Filers	16.95	6.225
Area 2:		
Carpenters Hardwood Floorlayers; Shinglers; Power Saw Operators; Steel Scaffold Erector and Steel Shoring; Saw Filers	16.05	6.225
	16.20	6.225
CEMENT MASONS:		
Cement Masons Mastic; Magensite; All Composition Masons	15.60	5.48
	15.85	5.48
Men working from Swinging or slip form scaffold	15.85	5.48
COMMUNICATION TECHNICIAN	$12.85	$3.07
DIVERS:		
Divers	33.89	6.225
Stand-by-divers	18.05	6.225
DRYWALL INSTALLERS	17.18	6.195
ELECTRICIANS:		
Area 1:		
Electricians	22.56	5.98
Cable Splicers	21.89	4.94
Area 2:		
Electricians	14.15	4.94
Cable Splicers	15.57	4.99
Area 3:		
Electricians	21.13	3.95
Cable Splicers	23.24	4.02
Area 4:		
Electricians	19.10	4.68
Cable Splicers	17.91	3.60
Area 5:		
Electricians; Technicians	19.81	4.88
Cable Splicers	22.29	4.97
Area 6:		
Electricians	23.01	5.29
Cable Splicers	25.01	5.35
Area 7:		
Electricians	17.08	5.41
Cable Splicers	18.45	5.45
Area 8:		
Electricians	17.90	3.95
Cable Splicers	19.69	4.00
Area 9:		
Electricians	21.85	4.46
Cable Splicers	22.94	4.49
Area 10:		
Electricians	17.57	3.72
Cable Splicers	19.33	3.78
Area 11:		
Electricians	19.66	6.86
Cable Splicers	22.12	6.93

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS: (Cont'd)		
Area 12:		
Electricians	$19.57	$4.68
Cable Splicers	22.02	4.75
Area 13:		
Electricians	21.20	6.19
Cable Splicers	23.85	6.27
Area 14:		
Electricians	22.93	4.94
Cable Splicers	25.80	5.02
Area 15:		
Electricians	21.00	6.05
Cable Splicers	23.63	6.13
ELEVATOR CONSTRUCTORS	24.22	2.47+a
ELEVATOR CONSTRUCTORS' HELPERS	16.95	2.47+a
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	12.11	
GLAZIERS:		
Area 1	19.56	4.40
Area 2	15.88	6.32
Area 3	14.50	3.90
Area 4	12.54	1.95
IRONWORKERS:		
Fence Erectors	14.86	6.83
Reinforcing, Ornamental, and Structural	15.75	6.83
LATHERS:		
Area 1	17.43	3.63
Area 2	12.35	2.17
Area 3	13.70	1.49
Area 4	16.71	3.08
Area 5	15.43	2.95
Area 6	15.93	4.90
Area 7	16.12	4.15
Area 8	16.46	1.86
Area 9	11.85	.01
Area 10	11.92	4.84
LINE CONSTRUCTION:		
Area 1:		
Groundman	16.51	4.50
Line Equipment Operators	19.81	4.59
Linemen	22.01	4.66
Cable Splicers	24.01	4.72
Area 2:		
Groundman	10.32	2.01
Headgroundman (Chipper); Powdermen; Jackhammermen	10.99	2.03
Line Equipment Man	12.57	2.09
Linemen Polesprayer; Heavy Line Equipment Men	14.59	2.66
Tree Trimmer	13.17	2.72
Cable Splicers	16.15	2.81

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION: (Cont'd):		
Area 3:		
Groundmen	$17.08	$3.92
Linemen; Line Equipment Operators	17.90	3.95
Area 4:		
Groundmen	14.86	4.69
Line Equipment Operators	17.83	4.77
Linemen	19.81	4.83
Area 5:		
Linemen	15.47	3.25
Cable Splicers	17.02	3.30
Area 6:		
Groundmen	14.87	5.32
Linemen; Technicians	19.82	6.70
Cable Splicers	22.27	6.78
Area 7:		
Groundman and Truck Driver	14.68	4.53
Linemen	19.57	4.68
Cable Splicers	22.02	4.75
Area 8:		
Groundmen	13.02	3.45
Linemen; Equipment Operators	16.28	3.55
Cable Splicers	17.91	3.60
Area 9:		
Groundmen	13.19	2.63
Linemen	22.56	5.98
Line Equipment Operators	14.84	2.68
Area 10:		
Grounmen	14.88	5.27
Equipment Operators	16.74	5.33
Linemen	18.60	5.40
Cable Splicers	20.46	5.46
Area 11:		
Groundmen	13.21	3.43
Line Equipment Operators	13.99	3.45
Linemen	15.54	3.50
Cable Splicers	17.48	3.55
Area 12:		
Groundmen	13.66	5.31
Linemen	17.08	5.41
Cable Splicers	18.45	5.45
Area 13:		
Groundmen	19.49	4.84
Linemen; Technicians	22.93	4.94
Cable Splicers	25.80	5.02

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION: (Cont'd)		
Area 14:		
Groundmen	$18.02	$6.09
Linemen; Line Equipment Operators	21.20	6.19
Cable Splicers	23.85	6.27
MARBLE SETTERS	15.62	6.32
PAINTERS:		
Area 1:		
Brush	13.39	4.60
Spray	14.14	4.60
Sheetrock; Taper; Swing; Stage; Scaffold; Sandblaster Structural Steel	13.79	4.60
Area 2:		
Brush; Roller	15.22	1.59
Area 3:		
Brush	13.65	4.22
Hazardous coating	14.65	4.22
Spray; Sandblasting; Taping	14.15	4.22
Area 4:		
Brush	20.06	3.83
Tapers	20.86	3.83
Area 5:		
Brush	15.93	1.47
Spray; Paperhanger; Tapers	16.43	1.47
Area 6:		
Brush	18.51	5.03
Spray; Sandblasting; Steam Cleaning	19.01	5.03
Drywall Finisher	9.31	5.03
Brush (exterior stage) 5, 6, and 7 story buildings; Erected steel over 50 feet	19.66	5.03
Area 7:		
Brush; Pot Tenders; Rollers	9.80	1.35
Spray; Sandblaster; Structural Steel; Swing Stage; Tapers	10.30	1.35
Area 8:		
Brush	18.62	5.03
Spray	19.12	5.03
Spray (coating) and Paperhangers	19.37	5.03
Tapers (paint)	19.42	5.03

	Basic Hourly Rates	Fringe Benefits
PAINTERS: (Cont'd)		
Area 9:		
Brush	$10.83	$1.67
Spray; Sandblasters; Structural Steel: Swing Stage; Tapers; Paperhangers	11.08	1.67
Parking Lot Striping Work and/or Highway Markers:		
Area 10:		
Traffic Delineating Device Applicator	12.42	1.55+b
Wheel Stop Installer; Traffic Surface Sandblaster; Striper	11.96	1.55+b
Slurry Seal Operation:		
Mixer Operator	11.96	1.55+b
Squeegee Man	10.60	1.55+b
Applicator Operator	10.60	1.55+b
Shuttleman	10.60	1.55+b
Top Man	8.91	1.55+b
Area 11:		
Traffic Delineating Device Applicator; Wheel stop Installer; Traffic Surface Sandblaster	12.37	1.55+b
Striper	13.57	1.55+b
Slurry Seal Operation:		
Mixer Operator	12.37	1.55+b
Squeegee Man	10.60	1.55+b
Applicator Operator	10.60	1.55+b
Top Man	8.91	1.55+b
PLASTERERS:		
Area 1	15.77	4.43
Area 2	18.14	5.80
Area 3	14.21	5.09
Area 4	15.93	4.39
Area 5	14.97	3.57
Area 6	13.85	5.40
Area 7	15.06	2.61
Area 8	13.95	6.65
PLASTERERS' TENDERS:		
Area 1	13.62	5.05
Area 2	15.16	4.45
Area 3	13.84	5.45
Area 4	13.71	4.45
Area 5	13.27	4.45
Area 6	13.82	4.45
Area 7	17.50	4.05
Area 8	16.15	3.10
Area 9	13.75	4.45
Area 10	14.95	2.70

	Basic Hourly Rates	Fringe Benefits
PLUMBERS:		
Area 1	$22.67	$5.18
Area 2	22.33	5.84
PLUMBERS; Steamfitters:		
Area 1	19.62	4.61
Area 2	20.34	2.43
Area 3	22.34	9.37
Area 4	17.90	5.09
Area 5	22.42	5.51
Area 6	14.32	8.30
Area 7	21.17	6.80
Area 8	21.39	5.72
ROOFERS:		
Area 1:		
Roofers	15.25	5.87
Mastic Workers; Kettlemen (2 kettles w/o pumps)	15.50	5.87
Bitumastic; Enamelers; Pipewrappers; Coal Tar Built up	17.25	5.87
Area 2:		
Roofers (slate, tile composition and built up)	16.85	2.59
Area 3:		
Roofers	14.51	2.42
Area 4:		
Roofers	13.05	2.40
Area 5:		
Roofers	15.00	6.14
Mastic Workers; Kettlemen (2 kettles w/o pumps)	15.25	6.14
Bitumastic; Enamelers; Pipewrappers; Coal Tar Pitch	17.00	6.14
Area 6:		
Roofers	10.32	1.15
Area 7:		
Roofers	16.85	2.90
Area 8:		
Roofers	15.50	5.79
Mastic Workers; Kettlemen (2 kettles w/o pumps)	15.75	5.79
Bitumastic; Enamelers; Pipewrappers; Coal Tar	17.50	5.79
Area 9:		
Roofers (slate, tile and composition)	14.30	5.99
Enameler and Pitch	16.30	5.99
Area 10:		
Roofers; Kettlemen (1 kettle)	16.36	3.99

	Basic Hourly Rates	Fringe Benefits
SHEET METAL WORKERS:		
Area 1	$22.90	$4.12
Area 2	17.93	4.25
Area 3	16.51	5.94
Area 4	18.05	4.02
Area 5	19.26	4.47
Area 6	17.80	3.56
Area 7	19.52	3.90
Area 8	13.74	2.78
Area 9	22.06	4.92
Area 10	22.16	4.70
Area 11	19.36	4.06
Area 12	21.73	4.67
SOFT FLOOR LAYERS:		
Area 1	17.31	2.85
Area 2	13.74	.90
Area 3	19.19	3.64
Area 4	11.96	2.27
Area 5	16.16	4.49
SPRINKLER FITTERS:		
Area 1	22.77	4.99
Area 2	20.03	2.43
STEAMFITTERS:		
Area 1	23.60	4.13
TERRAZZO WORKERS:		
Area 1	15.62	2.90
Area 2	16.28	4.29
Area 3	14.45	2.95
TILE SETTERS:		
Area 1	16.75	5.99
Area 2	18.02	3.05
Area 3	14.60	2.55
Area 4	16.73	3.43
MARBLE & TILE FINISHERS:		
Area 1	14.25	3.88
Area 2	11.90	1.90
LABORERS:		
Group 1	14.53	4.95
Group 1(a)	14.755	4.95
Group 1(b)	15.03	4.95
Group 1(c)	14.58	4.95
Group 1(d)	14.78	4.95
Group 1(e)	15.08	4.95
Group 1(f)	15.115	4.95
Group 1(g)	14.73	4.95
Group 2	14.38	4.95
Group 3	14.28	4.95

	Basic Hourly Rates	Fringe Benefits
LABORERS: (Cont'd)		
Gunnite:		
Group 1	$14.99	$4.95
Group 2	14.38	4.95
Group 3	14.28	4.95
Tunnel and Shaft Work:		
Group 1	16.24	4.95
Group 2	15.84	4.95
Group 3	15.60	4.95
Group 4	15.45	4.95
Wrecking Work:		
Group 1	14.53	4.95
Group 2	14.38	4.95
Group 3	14.28	4.95
Housemoving:		
Group 1	14.53	4.95
POWER EQUIPMENT OPERATORS:		
DREDGING - SCHEDULE I		
CLAMSHELL & DIPPER DREDGING (new Construction)		
Group 1:		
Area 1	14.05	8.56
Area 2	15.22	8.56
Area 3	15.57	8.56
Area 4	15.91	8.56
Group 2:		
Area 1	16.17	8.56
Area 2	17.44	8.56
Area 3	17.79	8.56
Area 4	18.16	8.56
Group 3:		
Area 1	16.75	8.56
Area 2	18.01	8.56
Area 3	18.37	8.56
Area 4	18.73	8.56
Group 4:		
Area 1	17.73	8.56
Area 2	19.00	8.56
Area 3	19.35	8.56
Area 4	19.71	8.56
Group 4-A:		
Area 1	19.23	8.56
Area 2	20.52	8.56
Area 3	20.92	8.56
Area 4	21.28	8.56

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS: (Cont'd): - SCHEDLUE II:		
HYDRAULIC SUCTION DREDGING AND ALL OTHER CLAMSHELL AND DIPPER DREDGING:		
Group A-1:		
Area 1	$14.03	$8.56
Area 2	15.20	8.56
Area 3	15.54	8.56
Area 4	15.89	8.56
Group A-2:		
Area 1	15.30	8.56
Area 2	16.52	8.56
Area 3	16.89	8.56
Area 4	17.24	8.56
Group A-3:		
Area 1	16.14	8.56
Area 2	17.41	8.56
Area 3	17.78	8.56
Area 4	18.14	8.56
Group A-4:		
Area 1	17.30	8.56
Area 2	18.58	8.56
Area 3	18.93	8.56
Area 4	19.29	8.56
TOW BOATS - (Dredging): Work on self-propelled vessels (except skiffs powered by outboard motors) engaged in towing vessels and water borne craft or in the transportation by water or personnel, materials, equipment and supplies:		
Deckhand/Mechanics	10.86	3.37
Operator Mechanic/ Watch Engineer	12.17	3.86
TOW BOATS: Work on self-propelled vessels):		
Boat Operators	12.17	3.86
POWER EQUIPMENT OPERATORS: PILEDRIVING:		
Group 1	14.04	8.75
Group 1A	14.50	8.75
Group 1B	14.77	8.75
Group 2A	14.77	8.75
Group 2B	15.50	8.75
Group 2C	15.78	8.75
Group 2D	15.98	8.75
Group 3	16.18	8.75
Group 3A	16.76	8.75
Group 4	17.49	8.75
Group 5	17.73	8.75
Group 6	19.15	8.75

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS: (Cont'd)-STEEL ERECTION:		
Group 1	$14.67	$8.75
Group 2	15.17	8.75
Group 3	16.55	8.75
Group 4	16.73	8.75
Group 4A	17.15	8.75
Group 5	17.82	8.75
Group 6	18.39	8.75
Group 7	18.80	8.75
Group 8	19.19	8.75
Group 9	20.59	8.75
POWER EQUIPMENT OPERATORS:		
Group 1:		
Area 1	13.98	8.75
Area 2	15.98	8.75
Group 2:		
Area 1	14.44	8.75
Area 2	16.44	8.75
Group 3:		
Area 1	14.72	8.75
Area 2	16.72	8.75
Group 4:		
Area 1	15.44	8.75
Area 2	17.44	8.75
Group 5:		
Area 1	15.72	8.75
Area 2	17.72	8.75
Group 6:		
Area 1	15.92	8.75
Area 2	17.92	8.75
Group 7:		
Area 1	16.12	8.75
Area 2	18.12	8.75
Group 8:		
Area 1	16.70	8.75
Area 2	18.70	8.75
Group 9:		
Area 1	16.99	8.75
Area 2	18.99	8.75
Group 10:		
Area 1	17.28	8.75
Area 2	19.28	8.75
Group 10-A:		
Area 1	17.44	8.75
Area 2	19.44	8.75
Group 11:		
Area 1	17.67	8.75
Area 2	19.67	8.75
Group 11-A:		
Area 1	19.19	8.75
Area 2	21.19	8.75
POWER EQUIPMENT OPERATORS: (Cont'd)		
Group 11-B:		
Area 1	$19.56	$8.75
Area 2	21.56	8.75
Group 11-C:		
Area 1	19.98	8.75
Area 2	21.98	8.75
TRUCK DRIVERS:		
Group 1	14.20	5.39
Group 2	14.37	5.39
Group 3	14.30	5.39
Group 4	14.31	5.39
Group 5	14.32	5.39
Group 6	14.33	5.39
Group 7	14.35	5.39
Group 8	14.37	5.39
Group 9	14.38	5.39
Group 10	14.40	5.39
Group 11	14.41	5.39
Group 12	14.45	5.39
Group 13	14.46	5.39
Group 14	14.47	5.39
Group 15	14.50	5.39
Group 16	14.51	5.39
Group 17	14.52	5.39
Group 18	14.54	5.39
Group 19	14.55	5.39
Group 20	14.56	5.39
Group 21	14.56	5.39
Group 22	14.64	5.39
Group 23	14.56	5.39
Group 24	14.74	5.39
Group 25	14.75	5.39
Group 26	14.75	5.39
Group 27	14.78	5.39
Group 28	14.80	5.39
Group 29	14.84	5.39
Group 30	14.85	5.39
Group 31	14.88	5.39
Group 32	14.94	5.39
Group 33	14.87	5.39
Group 34	15.09	5.39
Group 35	15.19	5.39
Group 36	15.24	5.39
Group 37	15.39	5.39
Group 38	15.54	5.39

AREA DESCRIPTIONS

BRICKLAYERS; Stonemasons:
Area 1: Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Siskiyou, Solano, Sonoma, and Trinity Counties
Area 2: Alameda and Contra Costa Counties
Area 3: Fresno, Kings, Madera, Mariposa, and Merced Counties
Area 4: Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Sutter, Tehama, Yolo, and Yuba Counties
Area 5: Monterey and Santa Cruz Counties
Area 6: San Benito and Santa Clara Counties
Area 7: Alpine, Amador, Calaveras, San Joaquin, Stanislaus, and Tuolumne Counties
Area 8: Tulare County

BRICK TENDERS:
Area 1: Amador, El Dorado, Nevada, Placer, Sacramento, and Yolo Counties
Area 2: San Francisco and San Mateo Counties
Area 3: Fresno, Kings, Madera, and Tulare Counties
Area 4: Remaining Counties
Area 5: Alamida and Contra Costa Counties
Area 6: San Benito, Santa Clara, and Santa Cruz Counties

CARPENTERS:
Area 1: Alameda, Contra Costa, Marin, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solona, and Sonoma
Area 2: Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Merced, Modoc, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba

ELECTRICIANS:
Area 1: Alameda County
Area 2: Amador, Colusa, Sacramento, Sutter, Yolo, and Yuba Counties; Alpine, El Dorado, Nevada, Placer, and Sierra Counties (those portions west of the Sierra Mountain Watershed)
Area 3: Lassen and Plumas Counties; those portions of Alpine, El Dorado, Nevada, Placer and Sierra Counties lying east of the Main Watershed divide
Area 4: Butte, Glenn, Modoc, Shasta, Siskiyou, Tehama, and Trinity Counties
Area 5: Calaveras and San Joaquin Counties
Area 6: Contra Costa County
Area 7: Del Norte and Humboldt Counties
Area 8: Fresno, Kings, Madera, and Tulare Counties
Area 9: Lake, Marin, Mendocino, and Sonoma Counties
Area 10: Mariposa, Merced, Stanislaus, and Tuolumne Counties
Area 11: Monterey County, San Benito and Santa Cruz Counties
Area 12: Napa and Solano Counties
Area 13: Santa Clara County
Area 14: San Francisco County
Area 15: San Mateo County

AREA DESCRIPTIONS (Cont'd)

GLAZIERS:
Area 1: Alameda and Contra Costa Counties; Mendocino County (southern half from north of Ft. Bragg); Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, and Santa Cruz Counties; Solano County (S.W. from east of Fairfield); and Sonoma County
Area 2: Alpine, Amador, Butte, Calaveras, El Dorado, and Mariposa Counties; Merced County (north of the City of Livingston); Modoc, Nevada, Placer, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Tuolumne, Yolo, and Yuba Counties
Area 3: Fresno, Madera, Merced, Kings, and Tulare Counties
Area 4: Del Norte and Humboldt Counties

LATHERS:
Area 1: Alameda and Contra Costa Counties
Area 2: Butte, Colusa, Glenn, and Humboldt Counties; Lake County (that portion from Lakeport up to the Lake County Line); Nevada, Placer, Plumas, Shasta, Sierra, Tehama, and Trinity Counties
Area 3: Calaveras and San Joaquin Counties
Area 4: Lake County (from City of Lakeport down to the Lake County Line); Marin, Mendocino, and Sonoma Counties
Area 5: Monterey, and Santa Cruz Counties
Area 6: San Francisco and San Mateo Counties
Area 7: Santa Clara County
Area 8: Fresno, Kings, Madera, and Tulare Counties
Area 9: Mariposa, Merced, Stanislaus, and Tuolumne Counties
Area 10: Amador, El Dorado, Sacramento, and Yolo Counties

LINE CONSTRUCTION:
Area 1: Contra Costa County
Area 2: Del Norte, Modoc, and Siskiyou Counties
Area 3: Fresno, Kings, Madera, and Tulare Counties
Area 4: Calaveras and San Joaquin Counties
Area 5: Mariposa, Merced, Stanislaus, and Tuolumne Counties
Area 6: Monterey, San Benito, and Santa Cruz Counties
Area 7: Napa and Solano Counties
Area 8: Butte, Glenn, Lassen, Plumas, Shasta, Tehama, and Trinity Counties
Area 9: Alameda County
Area 10: Amador, Colusa, Sacramento, Sutter, Yolo, and Yuba Counties; Alpine, El Dorado, Nevada, Placer, and Sierra Counties (those portions west of the Main Sierra Mountain Watershed)
Area 11: San Mateo County
Area 12: Humboldt County
Area 13: San Francisco county
Area 14: San Clara County

AREA DESCRIPTIONS (Cont'd)

PAINTERS:
Area 1: Alpine, Amador, Calaveras, and San Joaquin Counties
Area 2: Fresno, Kings, Madera, and Tulare Counties
Area 3: Mariposa, Merced, Stanislaus, and Tuolumne Counties
Area 4: Monterey, San Benito, San Mateo, Santa Clara, and Santa Cruz Counties (excluding portions of Counties in the Lake Tahoe Area)
Area 5: Lassen County (that portion that lies eastward of Highway #395, northward to and including Honey Lake); Lake Tahoe Area
Area 6: Lake, Marin, Mendocino, San Francisco, and Sonoma Counties
Area 7: Butte, Colusa, and Glenn Counties; Lassen County (excluding the extreme SE corner); Modoc, Plumas, Shasta, Siskiyou, Sutter, Tehama, Trinity, and Yuba Counties
Area 8: Alameda, Contra Costa, El Dorado, Napa, Nevada, Solano, Sacramento, Sierra, Placer, and Yolo Counties (excluding portions of Counties in the Lake Tahoe Area)
Area 9: Del Norte and Humboldt Counties
Area 10: Fresno, Kings, and Tulare Counties
Area 12: Remaining Counties

PLASTERERS:
Area 1: Alameda and Contra Costa Counties
Area 2: San Francisco and San Mateo Counties
Area 3: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yolo, and Yuba Counties
Area 4: Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, Solano, and Sonoma Counties
Area 5: San Benito, Santa Clara, and Santa Cruz Counties
Area 6: Fresno, Kings, Madera, and Tulare Counties
Area 7: Monterey County
Area 8: Mariposa, Merced, Stanislaus, and Tuolumne Counties

PLASTERERS' TENDERS:
Area 1: Alameda and Contra Costa Counties
Area 2: Fresno, Kings, Madera, and Tulare Counties
Area 3: San Francisco and San Mateo Counties
Area 4: Alpine, Amador, El Dorado, Nevada, Placer, Sacramento, Sierra and Yolo Counties
Area 5: Calaveras and San Joaquin Counties
Area 6: Marin County
Area 7: Monterey County
Area 8: San Benito, Santa Clara and Santa Cruz Counties
Area 9: Solano County
Area 10: Napa County

PLUMBERS:
Area 1: Alameda County
Area 2: Contra Costa County

AREA DESCRIPTIONS (Cont'd)

PLUMBERS; Steamfitters:
Area 1: Amador County (northern half); Sacramento, Yolo, El Dorado, Nevada, Placer, and Sierra counties (excluding Lake Tahoe Area)
Area 2: Lake Tahoe Area
Area 3: Marin, Mendocino, San Francisco, and Sonoma Counties
Area 4: Alpine County; Amador County (southern portion); Butte, Calaveras, Colusa, Fresno, Glenn, Kings, Lassen, Madera, Mariposa, Merced, Modoc, Monterey, Plumas, San Joaquin, Santa Cruz, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, and Yuba Counties
Area 5: Lake, Napa, and Solano Counties
Area 6: Del Norte and Humboldt Counties
Area 7: San Benito and Santa Clara Counties
Area 8: San Mateo County

ROOFERS:
Area 1: Alameda and Contra Costa Counties
Area 2: Alpine, Calaveras, Mariposa, Merced, San Joaquin, Stanislaus, and Tuolumne Counties
Area 3: Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Placer, Plumas, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, and Yuba Counties
Area 4: Fresno, Kings, Madera, and Tulare Counties
Area 5: Lake, Marin, Mendocino, Napa, Solano, and Sonoma Counties
Area 6: Del Norte and Humboldt Counties
Area 7: Monterey and Santa Cruz Counties
Area 8: San Francisco and San Mateo Counties
Area 9: Amador, Sacramento, and Yolo Counties
Area 10: San Benito and Santa Clara Counties

SHEET METAL WORKERS:
Area 1: Alameda, Contra Costa, Napa, and Solano Counties
Area 2: Alpine, Calaveras, and San Joaquin Counties
Area 3: Amador, Butte, Colusa, El Dorado, Glenn, Modoc, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sutter, Tehama, Yolo, and Yuba Counties
Area 4: Mariposa, Merced, Stanislaus, and Tuolumne Counties
Area 5: Monterey and San Benito Counties
Area 6: Del Norte, Humboldt, and Trinity Counties
Area 7: San Mateo County
Area 8: Fresno, Kings, Madera, and Tulare Counties
Area 9: San Francisco County
Area 10: Marin, Mendocino, Sonoma, and Lake Counties
Area 11: Santa Cruz County
Area 12: Santa Clara County

SOFT FLOOR LAYERS:
Area 1: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, and Lassen Counties (excluding Honey Lake Area); Merced County (east of San Joaquin River); Plumas, San Joaquin, Shasta, Sacramento, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba Counties; El Dorado, Nevada, Placer, and Sierra Counties (those portions excluding Lake Tahoe Area)

AREA DESCRIPTIONS (Cont'd)

SOFT FLOOR LAYERS: (Cont'd)
Area 2: Honey Lake Area and Lake Tahoe Area
Area 3: Lake, Marin, Mendocino, Merced, Monterey, San Francisco, San Benito, San Mateo, Santa Clara, Santa Cruz, and Sonoma Counties
Area 4: Del Norte and Humboldt Counties
Area 5: Alameda, Contra Costa, Napa, and Solano Counties

SPRINKLER FITTERS:
Area 1: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma Counties
Area 2: Remaining Counties

STEAMFITTERS:
Area 1: Alameda and Contra Costa Counties

TERRAZZO WORKERS:
Area 1: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Siskiyou, Solano, Sonoma, and Trinity Counties
Area 2: Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Sutter, Tehama, Yolo, and Yuba Counties
Area 3: San Benito and Santa Clara Counties

TILE SETTERS:
Area 1: Alameda, Butte, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Mateo, Santa Clara, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba Counties
Area 2: Alpine, Amador, Calaveras, San Joaquin, Stanislaus, and Tuolumne Counties
Area 3: Fresno, Kings, Madera, Mariposa, Merced, and Tulare Counties
Area 4: Monterey and Santa Cruz Counties

MARBLE and TILE FINISHERS:
Area 1: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Siskiyou, Sonoma, Solano, and Trinity Counties
Area 2: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Stanislaus, Sutter, Tehama, Yolo, and Yuba Counties

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:
a. Employer contributes 8% of basic hourly rate for over 5 years' service, and 6% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Six Paid Holidays: A through F
b. Employer contributes $.32 per hour to Holiday Fund plus $.22 per hour to Vacation Fund for the first year of employment; 1 year but less than 5 years $.42 per hour to Vacation Fund; 5 years but less than 10 years $.60 per hour to Vacation Fund; over 10 years $.80 per hour to Vacation Fund

LABORERS

Group 1: Asphalt Ironers and Rakers; Asphalt Spreader Boxes (all types); Barko, Wacker and similar type Tampers; Buggymobile; Chainsaw, Faller, Logloader and Bucker; Compactors or all types; Concrete and Magnesite Mixer, 1/2 yd. and under; Concrete Pan Work; Concrete Saw; Concrete Sander; Cribber and/or Shoring; Cut Granite Curb Setter; Form Raisers; Slip Forms; Green Cutters, Headerboardmen, Hubsetters, Aligners; Jackhammer Operators; Jacking of pipe over 12 inches; Jackson and similar type Compactors; Kettlemen, Potmen and Men applying asphalt, lay-kold, creosote, lime, caustic and similar type materials; Lagging, Sheeting, Whaling, Bracing, Trenchjacking, hand-guided Lagging Hammer; Magnesite, Epoxyresin, Fiberglass, Mastic Workers (wet or dry); Perma Curbs; Precast-manhole Setters; Cast-in-place Manhole Form Setters; Pressure Pipe Tester; Pavement Breakers and Spaders, including Tool Grinder; Pipelayers, Caulkers, Banders, Pipewrappers, Conduit Layers, Plastic Pipelayers; Post Hole Diggers, air, gas, and electric; Power Broom Sweepers; Power Tampers of all types (except as shown in Group 2); Ram Set Gun and Stud Gun; Riprap-stonepaver and Rock-slinger, including placing of sacked concrete and/or sand (wet or dry); Rotary Scarifier, multiple Head Concrete Chipper; Davis Trencher, 300 or similar type (and all small Trenchers); Roto and Ditch Witch; Roto-tiller; Sandblasters, Potman, Gunman, Nozzleman; Signalling and Rigging; Tank Cleaners; Tree Climbers; Vibra-screed, Bull Float in connection with Laborers' work; Vibrators; Dri-pak-it Machine; High Pressure Blow Pipe (1½" or over, 100 lbs. pressure and over); Hydro Seeder and similar type; Laser Beam in connection with Laborers' work

Group 1(a): Joy Drill Model TWM-2A; Gardener-Denver Model DH143 and similar type drills; Track Drillers; Jack Leg Drillers; Diamond Drillers; Wagon Drillers; Mechanical Drillers, all types regardless of type or method of power; Multiple Unit Drills; Blasters and Powdermen; all work of loading, placing and blasting of all power and explosives of whatever type regardless of method used for such loading and placing; High Scalers (including drilling of same); Tree Topper; Bit Grinder

LABORERS (Cont'd)

Group 1(b); Sewer Cleaners receive an additional $4.00 per day, $5.00 per day on recently active large diameter sewers or sewer manholes

Group 1(c): Burning and Welding in connection with Laborers' work

Group 1(d): Repair Trackmen and Road Beds (cut and cover work of subway after the temporary cover has been placed)

Group 1(e): Laborers on general construction work on or in Bell Hole Footings and Shaft

Group 1(f): Wire Winding Machine in Connection with Guniting or Shotcrete - Aligner

Group 1(g); Contra Costa County Only: Pipelayers, Caulkers, Banders, Pipewrappers, Conduit Layers and Plastic Pipelayers; Pressure Pipe Tester, no joint pipe and stripping of same, including repair of Voids, Precast Manhole Setters, Cast-in-place Manhole Form Setters

Group 2: Asphalt Shovelers; Cement Dumpers and handling dry cement or gypsum; Choke-setter and Digger (clearing work); Concrete Bucket Dumper and Chuteman; Concrete Chipping and Grinding; Concrete Laborers (wet or dry); Chuck Tender; High Pressure Nozzleman, Adductors; Groutcrew; Hydraulic Monitor (over 100 lbs. pressure); Loading and unloading, carrying and hauling of all rods and materials for use in reinforcing concrete construction; Pittsburgh Chipper and similar type Brush Shredders; Sloper; Singlefoot, hand held, Pneumatic Tamper; All pneumatic, air, gas and electric tools not listed in Groups 1 through 1(f); Jacking of Pipe under 12 inches

Group 3: All Cleanup work of debris, grounds and buildings including but not limited to street cleaners; Cleaning and washing windows; Construction Laborers including bridge and general Laborers; Dumpman; Load Spotter; Fire Watcher; Street Cleaners; Gardeners, Horticultural and Landscape Laborers; Jetting; Limbers; Brush Loaders; Pilers, Maintenance Landscape Laborers on new construction; Maintenance, Repair Trackmen and Road beds; Streetcar and Railroad Construction Track Laborers; Temporary air and water lines, Victaulic or similar; Tool Room Attendent; Fence Erectors; Guardrail Erectors; Pavement Markers (button setters)

LABORERS (Cont'd)
GUNNITE

Group 1: Nozzleman (including Gunman, Potman); Rodmen; Groundman

Group 2: Reboundman

Group 3: General Laborers

(TUNNEL and SHAFT WORK)

Group 1: Diamond Driller; Groundman; Gunite and Shotcrete Nozzlemen; Rodmen; Shaft Work and raise (below actual or excavated ground level)

Group 2: Bit Grinder; Blaster; Drillers, Powderman-heading; Cherry Pickermen - where car is lifted; Concrete Finisher in Tunnel; Concrete Screed Man; Grout Pumpman and Potman; Gunite and Shotcrete Gunmen and Potmen; Headermen; High Pressure Nozzleman; Miners - Tunnel, including Top and Bottom Man on Shaft and Raise work; Nipper Nozzleman on slick line; Sandblaster-potman (work assignment interchangeable) Steel Form Raisers and Setters; Timberman, Retimberman - wood or steel or substitute materials therefore; Tugger

Group 3: Cabletender; Chucktender; Powderman - Primer House; Vibratormen, Pavement Breakers

Group 4: Bull Gang - Muckers, Trackmen; Concrete Crew - includes rodding and spreading; Dumpmen (any method); Grout Grew Reboundmen; Swamper

(WRECKING WORK)

Group 1: Skilled Wrecker (removing and salvaging of sash, windows, doors, plumbing and electric fixtures)

Group 2: Semi-skilled Wrecker (salvaging or other building materials)

Group 3: General Laborer (includes all cleanup work, loading, lumber, loading and burning of debris)

(HOUSEMOVING)

Group 1: Skilled Housemover

POWER EQUIPMENT OPERATORS
DREDGING

AREA DEFINITIONS FOR SCHEDULES I and II

Four centers designated: City Halls of Oakland, San Francisco, Sacramento and Stockton, California
Area 1: Up to 20 road miles from said Centers
Area 2: More than 20 road miles to and incldluing 30 road miles from said Centers
Area 3: Outside of 30 road miles from said Centers
Area 4: An area extending 25 road miles from shoreline of Lake Tahoe

SCHEDULE I
CLAMSHELL and DIPPER DERDGING (New Construction)

Group 1: Bargeman; Deckhand; Fireman; Oiler

Group 2: Deck Engineers; Deck Mate

Group 3: Welder; Mechanic Welder; Watch Engineer

Group 4: Clamshell Operator (up to and including 7 cu. yds. M.R.C.)(Long Boom Pay)

Group 4-A: Clamshell Operator (over 7 cu. yds. M.R.C.)(Long Boom Pay)

SCHEDULE II
HYDRAULIC SUCTION DREDGING and all Other CLAMSHELL and DIPPER DREDGING

Group A-1: Bargeman; Deckhand; Leveehand; Fireman; Oiler

Group A-2: Winchman (stern winch on Dredge); Deck Engineer

Group A-3: Watch Engineer; Welder; Welder Mechanic; Deckmate; Booster Pump Operator (Mud Cat)

Group A-4: Leverman; Clamshell Operator

PILEDRIVING

Group 1: Assistant to Engineer (Fireman, Oiler, Deckhand)

Group 1A: Compressor Operator

Group 1B: Assistant to Engineer (Truck Crane Oiler)

Group 2A: Tugger Hoist Operator (hoisting material only)

Group 2B: Forklift Operator

POWER EQUIPMENT OPERATORS (Cont'd)
PILEDRIVING (Cont'd)

Group 2C: Compressor Operator (over 2); Generators; Pumps (over 4); Welding Machines (pwwered by other than electricity)

Group 2D: A-Frames

Group 3: Deck Engineer (Deck Engineer Operator required when deck engine is used); Self-propelled Boom-type lifting device (center mount) (10 ton capacity or less M.R.C.)

Group 3A: Heavy Duty Repairman and/or Welder

Group 4: Operating Engineer in lieu of Assistant to Engineer tending boiler or compressor attached to Crane Piledriver; Operator of Piledriving Rigs, Skid or Floating and Derrick Barges (Assistant to Engineer required); Operator of diesel or gasoline power Crane Piledriver (without boiler) up to and including 1 cu. yd. rating (Assistant to Engineer required); Self-propelled Boom-type lifting device (center mount) (over 10 tons up to and including 25 tons); Truck Crane Operator (up to and including 25 tons) (hoisting material only) (Assistant to Engineer required)

Group 5: Operator of diesel or gasoline powered Crane Piledriver (without boiler) over 1 cu. yd. rating (Assistant to Engineer required); Operator of Crane (with steam, flash boiler, pump or compressor attached) (Group (4) Engineer required); Operator of steam powered Crawler or Universal type Driver (Raymond or similar) (Assistant to Engineer required) Truck Crane Operator (over 25 tons) (hoisting material or performing Piledriving work) (Assistant to Engineer required); Self-propelled Boom-type lifting device (center mount) (over 25 tons) (Assistant to Engineer required)

Group 6: Cranes (over 125 tons) (Assistant to Engineer required)

STEEL ERECTION

Group 1: Assistant to Engineer (Oiler)

Group 2: Compressor Operator, Generator, gasoline or diesel driven (100 K.W. or over) (structural steel or tank construction only)

Group 3: Compressors, Generators and/or Welding Machines or combination (2 to 6) (over 6 additional Engineers required) (structural steel or tank erection only)

Group 4: Heavy Duty Repairman, Tractor Operator

Group 4A: Combination Heavy Duty Repairman and/or Welder

POWER EQUIPMENT OPERATORS (Cont'd)
STEEL ERECTION (Cont'd)

Group 5: Boom Truck or Dual Purpose A-Frame Truck; Boom Cat; Chicago Boom; Crawler Cranes and Truck Cranes (15 tons M.R.C. or less) (Assistant to Engineer required); Self-propelled Boom type lifting device (center mount) (10 ton capacity or less M.R.C.); Single drum Hoist; Tugger Hoist

Group 6: Cary Lift, Campbell or similar; Crawler Cranes and Truck Cranes (over 15 tons M.R.C.) (Assistant to Engineer required); Derricks (2 operators when swing engine remote from hoist); Gantry Rider (or similar equipment); Highline Cableway (Signalman required); Self-propelled Boom-type lifting device (center mount) (over 10 tons up to and including 25 tons); Tower Cranes Mobile including rail mounted (Assistant to Engineer required); Tower Cranes, Universal Liebher and similar types (in the erection, dismantling and moving of equipment there shall be an additional Operating Engineer)

Group 7: Self-propelled Boom-type lifting device (center mount) (over 25 tons) (Assistant to Engineer required)

Group 8: Cranes (over 125 tons) (Assistant to Engineer required)

Group 9: Helicopter Operator

AREAS I and II

Group 1: Assistants to Engineers (Brakeman; Fireman; Heavy Duty Repairman Tender; Oiler; Deckhand; Signalman; Switchman; Tar Pot Fireman); Partsman (heavy duty repair shop parts room)

Group 2: Compressor Operator; Concrete Mixer (up to and including 1 yard); Conveyor Belt Operator (tunnel); Fireman Hot Plant; Hydraulic; Monitor; Mechanical Conveyor (handling building materials); Mixer Box Operator (concrete plant); Pump Operator; Spreader Boxman (with screeds); Tar Pot Fireman (power agitated)

Group 3: Box Operator (bunker); Helicopter Radioman (Signalman); Motorman; Locomotive (30 tons or under); Oiler; Ross Carrier (construction job site); Rotomist Operator; Screedman (except asphaltic concrete paving); Self-propelled, automatically applied concrete curing machine (on streets, highways, airports and canals); Trenching Machine (maximum digging capacity 5 ft. depth); Tugger Hoist, single drum; Truck Crane Oiler; Boiler Tender

Group 4: Ballast Jack Tamper; Ballast Regulation; Ballast Tamper Multi-purpose; Boxman (asphalt plant); Elevator Operator (inside); Fork Lift or Lumber Stacker (construction job site); Line Master; Material Hoist (1 drum); Shuttlecar; Tie Spacer; Towermobile

POWER EQUIPMENT OPERATORS (Cont'd)
AREAS I and II (Cont'd)

Group 5: Compressor Operator (over 2); Concrete Mixers (over 1 yard); Concrete Pumps of Pumpcrete Guns; Generators; Grouting Machine; Pressweld (air operated); Pumps (over 1); Welding Machines (powered other than by electricity)

Group 6: BLH Lima Road Pactor or similar; Boom Truck or Dual Purpose A-Frame Truck; Concrete Batch Plants (wet or dry); Concrete Saws (self-propelled unit) on streets, highways, airports and canals; Drilling and Boring Machinery, vertical and horizontal (not to apply to Waterliners, Wagon Drills or Jackhammers); Gradesetter, Grade Checker (mechanical or other-wise); Highline Cableway Signalman; Locomotives (steam of over 30 tons); Maginnis Internal Full Slab Vibrator (on airports, highways, canals and warehouses); Mechanical Finishers (concrete) (Clary, Johnson, Bidwell Bridge Deck or similar types); Mechanical Burm, Curb and/or Curb and Gutter Machine, concrete or asphalt; Portable Crusher; Post Driver (M-1500 and similar); Power Jumbo Operator (setting slip forms, etc. in tunnels); Roller (except Asphalt); Screedman (Barber-Greene and similar)(asphaltic concrete paving); Self-propelled Compactor (single engine); Self-propelled Pipeline Wrapping Machine, Perault, CRC, or similar types); Slip Forms Pumps (lifting device for concrete forms); Small Rubber Tired Tractor; Surface Heater; Self-propelled Power Sweeper; Self-propelled Tape Machine; Auger-type drilling equipment, up to and including 30 ft. depth digging capacity M.R.C.

Group 7: Concrete Conveyor or Concrete Pump, Truck or equipment mounted (boom length to apply); Concrete Conveyor, building site; Deck Engineers; Dual Drum Mixer; Fuller Kenyon Pump and similar types; Gantry Rider (or similar); Hydra-hammer (or similar); Material Hoist (2 or more drums); Mechanical Finishers or Spreader Machine (asphalt, Barber-Greene and similar); Mine or Shaft Hoist; Mixermobile; Pavement Breaker with or without Compressor Combination; Pipe Bending Machine (pipelines only); Pipe Cleaning Machine (tractor propelled and supported); Pipe Wrapping Machine (tractor propelled and supported); Refrigeration Plant; Roller Operator (finish asphalt); Self-propelled boom type lifting device (center mount) (10 tons or less M.R.C.); Self-propelled Elevating Grader Plane; Slusher Operator; Small Tractor (with boom) Soil Tester; Truck type Loader; Welding Machines (Gasoline or diesel)

Group 8: Armor-Coater (or similar); Asphalt Plant Engineer; Cast-in-place Pipe Laying Machine; Combination Slusher and Motor Operator; Concrete Batch Plant (multiple units); Dozer; Heading Shield Operator; Heavy Duty Repairman and/or Welder; Ken Seal Machine (or similar); Kolman Loader; Loader (up to 2 yards); Mechanical Trench Shield; Portable Crushing and Screening Plants; Puch Cat; Rubber Tired Earth-moving Equipment (up to and including 45 cu. yards "struck" M.R.C.) Euclids, T-Pulls, DW-10, 20, 21, and similar; Rubber Tired Dozer; Self-propelled Compactor with Dozer; Sheepfoot; Timber Skidder (rubber tired or similar equipment); Tractor drawn Scraper; Tractor (Trenching Machine; Tri-batch Paver; Tunnel Mole Boring Machine; Welder; Woods-mixer (and other similar Pugmill equipment)

POWER EQUIPMENT OPERATORS (Cont'd)
AREAS I and II (Cont'd)

Group 9: Canal Finger Drain Digger; Chicago Boom; Combination Mixer and Compressor (Gunite); Combination Slurry Mixer and/or Cleaner; Highline Cableway (5 tons and under); Lull Hi-lift or similar (20 ft. or over); Mucking Machine (rubber tired, rail or track type); Tracror (with boom) (D-6 or larger and similar)

Group 10: Boom-type Backfilling Machine; Bridge Crane; Cary-lift (or similar); Chemical Grouting Machine, truck mounted); Combination Backhoe and Loader (up to and including 1/2 cu. yd. M.R.C.); Derrick (2 operators required when swing engine remote from Hoist); Derrick Barges (except excavation work); Do-mor Loader; Adams Ele-grader; Elevating Grader; Heavy Duty Rotary Drill Rig (including Caisson Foundation work and Euclid Loader and similar type; Robbins type drills); Koehring Skooper (or similar); Lift Slab Machine; (Vagtborg and similar types); Loader (2 yds. up to and including 4 yds.); Locomotive, 100 tons (single or multiple units); Multiple Engine Earthmoving Machine (Euclids, Dozers, etc.)(no tandem scraper); Pre-stress Wire Wrapping Machine; Reservoir-debris Tug (self-propelled floating); Rubber-tired Scraper, self-loading (paddle wheels, etc.); Shuttle Cat (reclaim station); Single engine Scraper over 45 yds.; Soil Stabilizer (P & H or equal); Sub-grader (Gurrier or other automatic type); Tractor, Compressor Drill Combination; Track Laying type Earth Moving Machine (single engine with tandem scrapers); Train loading station; Trenching Machine, multi-engine with sliping attachment, Jeffco or similar; Vacuum Cooling Plant; Whirley Crane (up to and including 25 tons)

Group 10-A: Backhoe (hydraulic)(up to and including 1 cu. yd. M.R.C.); Backhoe (cable)(up to and including 1 cu. yd. M.R.C.); Combination Backhoe and Loader (over 3/4 cu. yd. M.R.C.); Continuous Flight Tie Back Auger (crane attached/separate controls); Cranes not over 25 tons, Hammerhead and Gantry; Gradalls (up to and including 1 cu. yd.); Power Blade Operator (single engine); Power Shovels, Clamshells, Draglines (up to and including 1 cu. yd. M.R.C)(Long Boom pay); Rubber-tired Scraper, self-loading (Paddle Wheel, twin engine); Self-propelled Boom-type lifting device (center mount) (over 10 tons up to and including 25 tons); CMI Dual Lane Auto Grader SP-30 or similar

POWER EQUIPMENT OPERATORS (Cont'd)
AREAS I and II (Cont'd)

Group 11: Automatic Concrete Slip-form Paver (Gradesetter, Screedman); Automatic Railroad Car Dumper; Canal Trimmer with ditching attachments; Cary Lift, Campbell or similar, Continuous Flight Tie Back Auger (Crane attached, single controls); Cranes (over 25 tons up to and including 125 tons); Drott Travelift 650-A-1 or similar (45 ton or over); Euclid Loader when controlled from the Pullcat; Highline Cableway (over 5 tons); Loader (over 4 cu. yds., up to and including 12 cu. yds.); Miller Formless M-900 Slope Paver or similar (grade Setter required); Multiple Engine Scraper (when used as Push Pull); Power Blade Operator (multi-engine); Power Shovels, Clamshells, Draglines, Backhoes, Gradalls (over 1 cu. yd. and up to and including 7 cu. yds. M.R.C., Long Boom Pay); Rubber-tired Earth-moving Machines (multiple propulsion power units and two or more Scrapers) (up to and including 75 cu. yds. struck M.R.C.); Self-propelled Compactor (with multiple propulsion power unit); Blob or similar; Self-propelled Boom-type lifting device (center mount) (over 25 tons M.R.C.); Single engine Rubber-tired Earthmoving Machines (with Tandem Scrapers); Slip-form Paver (concrete or asphalt) (Screedman required); Tandem Cats; Tower Cranes Mobile (including rail mounted); Trencher (pulling attached shield); Tower Cranes, Universal Liebher and similar types (in the erection, dismantling and moving of equipment); Wheel Excavator (up to and including 750 cu. yds. per hour); Whirley Crane (over 25 tons); Multi-earthmoving Equipment (up to and including seventy-five (75) cu. yds. "struck" M.R.C.); Truck mounted Hydraulic Crane when remote control equipped (over 10 tons up to and including 25 tons)

Group 11A: Band Wagons (in conjunction with wheel excavator); Cranes (over 125 tons); Loader (over 12 cu. yds., up to and including 18 cu. yds.); Power Shovels, Clamshells, Backhoes, Gradalls, and Draglines (over 7 cu. yds. M.R.C.); Rubber-tired Multi-purpose Earth Moving Machines (2 units over 75 cu. yds. "struck" M.R.C.); Wheel Excavator (over 750 cu. yds. per hour)

Group 11B: Loader (over 18 yds.)

Group 11C: Operator of Helicopter (when used in erection work); Remote controlled earthmoving equipment

TRUCK DRIVERS

Group 1: Bulk Cement Spreader (w/wo Auger, under 4 yards water level); Bus or Manhaul Driver; Concrete Pump Machine; Concrete Pump Truck (when Flat Rack Truck is used appropriate Flat Rack rate shall apply); Dump (under 4 yds. water level); Dumpcrete Truck (under 4 yds. water level); Dumpster (under 4 yds. water level); Escort or Pilot Car Driver; Nipper Truck (when Flat Rack Truck is used appropriate Flat Rack rate shall apply); Pickups; Skids (Debris Box, under 4 yds. water level); Team Drivers; Trucks (Dry Pre-batch Concrete Mix, under 4 yds. water level); Warehousemen

Group 2: Teamster Oiler and/or Greaser and/or Service Man

TRUCK DRIVERS (Cont'd)

Group 3: Bulk Cement Spreader (w/wo auger, 4 yd. and under 6 yds. water level); Dump (4 yds. and under 6 yds. water level); Dumpcrete (4 yds. and under 6 yds. water level); Dumpster (4 yds. and under 6 yds. water level); Skids (Debris Box, 4 yds. and under 6 yds. water level); Single Unit Flat Rack (2 axle unit); Industrial Lift Truck (mechanical Tailgate); Trucks (Dry Pre-batch Concrete Mix, 4 yds. and under 6 yds. water level)

Group 4: Jetting Truck and Water Truck (under 2,500 gallons)

Group 5: Road Oil Trucks or Boot Man

Group 6: Lift Jitneys, Fork Lift

Group 7: Transit Mix, Agitator (under 6 yards)

Group 8: Fuel and/or Grease Truck Driver or Fuelman

Group 9: Vacuum Truck, under 3,500 gallons

Group 10: Scissor Truck; single unit Flat Rack (2 axle unit); Industrial Lift Truck (mechanical tailgate); Small rubber tired tractor (when used within Teamsters' jurisdiction)

Group 11: Jetting Truck and Water Trucks, 2,500 gallons, under 4,000 gallons

Group 12: Combination Winch Truck with Hoist; Transit Mix Agitator (6 yards and under 8 yards)

Group 13: Vacuum Truck, 3,500 gallons and under 5,500 gallons

Group 14: Rubber-tired Muck Car (not self-loaded)

Group 15: Bulk Cement Spreader (w/wo auger, 6 yds. and under 8 yds. water level); Dump (6 yds. and under 8 yds. water level); Dumpcrete (6 yds. and under 8 yds. water level); Dumpster (6 yds. and under 8 yds. water level); Skids (Debris Box, 6 yds. and under 8 yds. water level); Trucks (Dry Pre-batch Concrete Mix, 6 yds. and under 8 yds. water level)

Group 16: A-Frame, Winch Truck; Buggymobile; Jetting and Water Truck (4,000 gallons and under 5,000 gallons); Rubber tired Jumbo

Group 17: Heavy Duty Rransport (high bed)

Group 18: Ross Hyster and similar straddle Carrier

Group 19: Transit Mix Agitator (8 yds. through 10 yds.)

Group 20: Vacuum Truck (5,500 gallons and 7,500 gallons)

Group 21: Jetting Truck and Water Truck (5,000 gallons and under 7,000 gallons)

Group 22: Combination Bootman and Road Oiler

TRUCK DRIVERS (Cont'd)

Group 23: Transit Mix Agitator (over 10 yds. through 12 yds.)

Group 24: Bulk Cement Spreader (w/wo auger, 8 yds. and including 12 yds. water level); Dump (8 yds. and including 12 yds. water level); Dumpcrete (8 yds. and including 12 yds. water level); Self-propelled Street Sweeper with self-contained refuse bin; Skids (Debris Box, 8 yds. and including 12 yds. water level); Snow Go and/or Snow Plow; Truck (Dry Pre-batch Concrete Mix, 8 yds. and including 12 yds. water level and including 12 yds. water level)

Group 25: Heavy Duty Transport (Gooseneck Lowbed)

Group 26: Transit Mix Agitator (over 12 yds. through 17 yds.)

Group 27: Ammonia Nitrate Distributor Driver and Mixer; Bulk Cement Spreader (w/wo auger, over 12 yds. and including 18 yds. water level); Dump (over 12 yds. and including 18 yds. water level); Dumpcrete (over 12 yds. and including 18 yds. water level); Dumpster (over 12 yds. and including 18 yds. water level); Truck (Dry Pre-batch Concrete Mix, over 12 yds. and including 18 yds. water level)

Group 28: Double Gooseneck (7 or more axles); Heavy Duty Transport Tiller Man

Group 29: P. B. or similar type self-loading truck

Group 30: Transit Mix Agitator (over 14 yds. through 16 yds.)

Group 31: Bulk Cement Spreader (w/wo auger, over 18 yds. and including 24 yds. water level); Combination Dump and Dump Trailer; Dump (over 18 yds. and including 24 yds. water level); Dumpcrete (over 18 yds. and including 24 yds. water level); Dumpster (over 18 yds. and including 24 yds. water level); Skid (Debris Box, over 18 yds. and including 24 yds. water level); Transit Mix Agitator over 12 yds. through 16 yds.); Trucks (Dry Pre-batch Concrete Mix, over 17 yds. and including 24 yds. water level)

Group 32: Bulk Cement Spreader (w/wo auger, over 24 yds. and including 35 yds. water level); Dump (over 24 yds. and including 35 yds. water level); Dumpcrete (over 24 yds. and including 35 yds. water level); Dumpster (over 24 yds. and including 35 yds. water level); DW 10's, 20's, 21's and other similar Cat type, Terra Cobra, LeTournapulls, Tournarocker, Euclid and similar type equipment when pulling Fuel and/or Grease Tank Trailers or other misc. trailers; Skids (Debris Box, over 24 yds. and including 35 yds. water level); Trucks (Dry Pre-batch Concrete Mix, over 24 yds. and including 35 yds. water level)

Group 33: Truck Repairman

TRUCK DRIVERS (Cont'd)

Group 34: Bulk Cement Spreader (w/wo auger, over 35 yds. and including 50 yds. water level); Dump (over 35 yds. and including 40 yds. water level); Dumpcrete (over 35 yds. and including 50 yds. water level); Dumpster (over 35 yds. and including 50 yds. water level); Skids (Debris Box, over 35 yds. and including 50 yds. water level); Trucks (Dry Pre-batch Concrete Mix, over 35 yds. and including 50 yds. water level)

Group 35: DW 10's. 20's, 21's and other similar Cat type, Terra Cobra, LeTournapulls, Tournarocker, Euclid and similar type equipment while pulling Aqua/Pak or water tank trailers

Group 36: Bulk Cement Spreader (w/wo auger, over 50 yds. and under 65 yds. water level); Dump (over 50 yds. and under 65 yds. water level); Dumpcrete (over 50 yds. and under 65 yds. water level); Dumpster (over 50 yds. and under 65 yds. water level); Helicopter Pilot (when transporting men or materials); Skids (Debris Box, over 50 yds. and under 65 yds. water level); Trucks (Dry Pre-batch Concrete Mix, over 50 yds. and under 65 yds. water level)

Group 37: Bulk Cement Spreader (w/wo auger, over 65 yds. and including 80 yds. water level); Dump (65 yds. and including 80 yds. water level); Dumpcrete (over 65 yds. and including 80 yds. water level); Dumpster (over 65 yds. and including 80 yds. water level); Skids (Debris Box, 65 yds. and including 80 yds. water level); Trucks (Dry Pre-batch Concrete Mix, 65 yds. and including 80 yds. water level)

Group 38: Bulk Cement Spreader (w/wo auger, over 80 yds. and including 95 yds. water level); Dump (over 80 yds. and including 95 yds. water level); Dumpcrete (over 80 yds. and including 95 yds. water level); Dumpster (over 80 yds. and including 95 yds. water level); Skids (Debris Box, over 80 yds. and including 95 yds. water level); Trucks (Dry Pre-batch Concrete Mix, over 80 yds. and including 95 yds. water level)

AREA DESCRIPTIONS
FOR
POWER EQUIPMENT OPERATORS
AREAS I and II

**AREA I: All areas included in the description defined below which is based upon Township and Range Lines of Areas I and II.

Commencing in the Pacific Ocean on the extension of the Southerly line of Township 19S.
Thence Easterly along the Southerly line of Township 19S, crossing the Mt. Diablo Meridian to the S.W. corner of township 19S, range 6E, Mt. Diablo Base Line and Meridian,
Thence Southerly to the S.W. corner of township 20S, range 6E,
Thence Easterly to the S.W. corner of township 20S, range 13E,
Thence Southerly to the S.W. corner of township 21S, range 13E,
Thence Easterly to the S.W. corner of township 21S, range 17E,
Thence Southerly to the S.W. corner of township 22S, range 17E,
Thence Easterly to the S.E. corner of township 22S, range 17E,
Thence Southerly to the S.W. corner of township 23S, range 18E,
Thence Easterly to the S.E. corner of township 23S, range 18E,
Thence Southerly to the S.W. corner of township 24S, range 19E, falling on the Southerly Line of Kings County, thence Easterly along the Southerly Boundary of Kings County and the Southerly Boundary of Tulare County, to the S.E. corner of township 24S, range 29E,
Thence Northerly to the N.E. corner of township 21S, range 29E,
Thence Westerly to the N.W. corner of township 21S, range 29E,
Thence Northerly to the N.E. corner of township 13S, range 28E,
Thence Westerly to the N.W. corner of township 13S, range 28E,
Thence Northerly to the N.E. corner of township 11S, range 27E,
Thence Westerly to the N.W. corner of township 11S, range 27E,
Thence Northerly to the N.E. corner of township 10S, range 26E,
Thence Westerly to the N.W. corner of township 10S, range 26E,
Thence Northerly to the N.E. corner of township 9S, range 25E,
Thence Westerly to the N.W. corner of township 9S, range 25E,
Thence Northerly to the N.E. corner of township 8S, range 24E,
Thence Westerly to the N.W. corner of township 8S, range 24E,
Thence Northerly to the N.E. corner of township 6S, range 23E,
Thence Westerly to the S.E. corner of township 5S, range 19E,
Thence Northerly to the S.E. corner of township 5S, range 19E,
Thence Westerly to the N.W. corner of township 5S, range 19E,
Thence Northerly to the N.E. corner of township 3S, range 18E,
Thence Westerly to the N.W. corner of township 3S, range 18E,
Thence Northerly to the N.E. corner of township 2S, range 17E,
Thence Westerly to the N.W. corner of township 2S, range 17E,

AREA DESCRIPTIONS (Cont'd)
For
POWER EQUIPMENT OPERATORS
AREAS I and II

AREA I: (Cont'd)

Thence Northerly crossing the Mt. Diablo Baseline to the N.E. corner of township 2N, range 16E,
Thence Westerly to the N.W. corner of township 2N, range 16E,
Thence Northerly to the N.E. corner of township 3N, range 15E,
Thence Westerly to the N.E. corner of township 3N, range 15E,
Thence Northerly to the N.E. corner of township 4N, range 14E,
Thence Westerly to the N.W. corner of township 4N, range 14E,
Thence Northerly to the N.E. corner of township 5N, range 13E,
Thence Westerly to the N.E. corner of township 5N, range 13E,
Thence Northerly to the N.E. corner of township 10N, range 12E,
Thence Easterly to the S.E. corner of township 11N, range 14E,
Thence Northerly to the N.E. corner of township 11N, range 14E,
Thence Westerly to the N.E. corner of township 11N, range 10E,
Thence Northerly to the N.E. corner of township 15N, range 10E,
Thence Easterly to the S.E. corner of township 16N, range 11E,
Thence Northerly to the N.E. corner of township 16N, range 11E,
Thence Easterly to the S.E. corner of township 17N, range 14E,
Thence Southerly to the S.W. corner of township 14N, range 14E,
Thence Easterly to the S.E. corner of township 14N, range 15E,
Thence Southerly to the S.W. corner of township 13N, range 16E,
Thence Easterly to the S.E. corner of township 13N, range 16E,
Thence Southerly to the S.W. corner of township 12N, range 17E,
Thence Easterly along the Southern Line to township 12N to the Eastern Boundary of the State of California, to the State of California to the N.E. corner of township 17N, range 18E,
Thence Westerly to the N.W. corner of township 17N, range 11E,
Thence Northerly to the N.E. corner of township 20N, range 10E,
Thence Westerly to the N.W. corner of township 20N, range 20E,
Thence Northerly to the N.E. corner of township 21N, range 9E,
Thence Westerly to the N.W. corner of township 21N, range 9E,
Thence Northerly to the N.E. corner of township 22N, range 8E,
Thence Westerly to the N.W. corner of township 27N, range 8E,
Thence Northerly to the S.W. corner of township 27N, range 8E,
Thence Easterly to the S.E. corner of township 27N, range 8E,
Thence Northerly to the N.E. corner of township 28N, range 8E,
Thence Westerly to the N.W. corner of township 28N, range 7E,
Thence Northerly to the N.E. corner of township 30N, range 6E,
Thence Westerly to the N.W. corner of township 30N, range 1E,
Thence Northerly along the Mt. Diablo Meridian to the N.E. corner of township 34N, range 1W,
Thence Westerly to the N.W. corner of township 34N, range 6W,
Thence Southerly to the N.E. corner of township 32N, range 7W,
Thenece Westerly to the N.W. corner of township 32N, range 7W,
Thence Southerly to the S.W. corner of township 30N, range 7W,
Thence Easterly to the S.E. corner of township 30N, range 7W,

AREA DESCRIPTIONS (Cont'd)
For
POWER EQUIPMENT OPERATORS
AREAS I and II

AREA 1: (Cont'd)

Thence Southerly to the S.W. corner of township 16N, range 6W,
Thence Easterly to the S.E. corner of township 16N, range 6W,
Thence Southerly to the S.W. corner of township 14N, range 5W,
Thence Westerly to the S.E. corner of township 14N, range 7W,
Thence Northerly to the N.E. corner of township 14N, range 7W,
Thence Westerly to the N.W. corner of township 14N, range 7W,
Thence Northerly to the N.E. corner of township 15N, range 8W,
Thence Westerly to the S.E. corner of township 16N, range 12W,
Thence Northerly to the N.E. corner of township 16N, range 12W,
Thence Westerly to the N.W. corner of township 16N, range 12W,
Thence Northerly to the N.E. corner of township 18N, range 12W,
Thence Westerly to the N.W. corner of township 18N, range 14W,
Thence Southerly to the S.W. corner of township 18N, range 14W,
Thence Easterly to the S.E. corner of township 18N, range 14W,
Thence Southerly to the S.W. corner of township 16N, range 13W,
Thence Westerly to the N.W. corner of township 15N, range 14W,
Thence Southerly to the S.W. corner of township 14N, range 14W,
Thence Easterly to the S.E. corner of township 14N, range 14W,
Thence Southerly to the S.W. corner of township 13N, range 13W,
Thence Easterly to the S.E. corner of township 13N, range 13W,
Thence Southerly to the S.W. corner of township 11N, range 12W,
Thence Easterly to the S.E. corner of township 11N, range 12W,
Thence Southerly along the Eastern line to range 12W, to the Pacific Ocean excluding that portion of Northern California within Santa Clara County included within the folloiwng line:
Commencing at the N.W. corner of township 6S, range 3E, Mt. Diablo Baseline and Meridian:
Thence in a Southerly direction to the S.W. corner of township 7S, range 3E,
Thence in a Easterly direction to the S.E. corner of township 7S, range 4E,
Thence in a Northerly direction to the N.E. corner of township 6S, range 4E,
Thence in a Westerly direction to the N.W. corner of township 6S, range 3E, to the point of beginning which portion is a part of Area 2.

AREA 1: also includes that portion of Northern California within the following lines:
Commencing in the Pacific Ocean on an extension of the Southerly line to township 2N; Humboldt Baseline and Meridian:
Thence Easterly along the Southerly line of township 2N, to the S.W. corner of township 2N, range 1W,
Thence Southerly to the S.W. corner of township 1N, range 1W,

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BILLING CODE 4510-27-C

AREA DESCRIPTIONS
For
POWER EQUIPMENT OPERATORS
AREAS I and II

AREA 1: (Cont'd)

Thence Easterly along the Humboldt Baseline to the S.W. corner of township 1N, range 2E,
Thence Southerly to the S.W. corner of township 2S, range 2E,
Thence Easterly to the S.E. corner of township 2S, range 2E,
Thence Southerly to the S.W. corner of township 4S, range 3E,
Thence Easterly to the S.E. corner of township 4S, range 3E,
Thence Northerly to the N.E. corner of township 2S, range 3E,
Tehnce Westerly to the N.W. corner of township 2S, range 3E,
Thence Northerly crossing the Humboldt Baseline to the S.W. corner of township 1N, range 3E,
Thence Easterly along the Humboldt Baseline to the S.E. corner of township 1N, range 3E,
Thence Northerly to the N.E. corner of township 9N, range 3E,
Thence Westerly to the N.W. corner of township 9N, range 2E,
Thence Northerly to the N.E. corner of township 10N, range 1E,
Thence Westerly along the Northerly line to township 10N, into the Pacific Ocean.

AREA I; Also includes that portion of Northern California included within the following lines:
Commencing at the Northerly boundary of the State of California at the N.W. corner of township 48N, range 7W, Mt. Diablo Baseline and Meridian:
Thence Southerly to the S.W. corner of township 44N, range 7W,
Thence Easterly to the S.E. corner of township 44N, range 7W,
Thence Southerly to the S.W. corner of township 43N, range 6W,
Thence Easterly to the S.E. corner of township 43N, range 5W,
Thence Northerly to the N.E. corner of township 48N, range 5W, on the Northerly boundary of the State of California,
Thence Westerly along the Northerly boundary of the State of California to the point of beginning.

AREA II: All areas not included within AREA I as defined.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

federal register

Friday
July 16, 1982

Part IV

Federal Communications Commission

Frequency Allocation for Aural Broadcast STL and Intercity Relay Stations

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 74 and 94

[Gen. Docket 82-335; RM-2697; RM-3246; Docket Nos. 19130 and 19494]

Frequency Allocation for Aural Broadcast STL and Intercity Relay Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission proposes to allocate the 2130–2150 MHz and 2180–2200 bands to Aural Broadcast STL and Intercity Relay Stations to be shared on a primary basis with Private Operational-fixed stations. Because of an accelerated growth of radio services in the past ten years, the currently allocated band, 947–952 MHz, has become saturated in most metropolitan areas. The allocation proposed would provide necessary spectrum to alleviate this problem.

DATES: Comments must be submitted on or before August 23, 1982. Reply comments must be submitted on or before September 7, 1982.

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

FOR FURTHER INFORMATION CONTACT: Melvin Murray, Office of Science and Technology, Spectrum Management Division, Spectrum Utilization Branch, Washington, D.C. 20554; (202) 653–8168; Room 7312.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR

Part 2

Frequency allocation.

Part 74

Aural broadcast STL and Intercity relay stations.

Part 94

Private operational-fixed microwave stations.

In the Matters of amendment of Parts 2, 21, 74, and 94 of the Commission's Rules and Regulations to Expand the Frequencies Available for use by Aural Broadcast STL and Intercity Relay stations, Gen. Docket No. 82–335; amendment of Parts 2, 21, 74, and 90 of the Commission's Rules and Regulations to Make Available to Aural Broadcast STL and Intercity Relay Stations the 942–947 MHz Band on a Primary Basis, RM–2697; amendment of Parts 2 and 74 of the Commission's Rules to permit broadcast aural studio-transmitter links to operate on a secondary, non-interfering basis in unassigned UHF television channels, RM–3246; amendment of Parts 2 and 74 of the Commission's Rules to permit Aural Broadcast STL operations in the band 2150–2160 MHz and to accommodate STL, Intercity Relay Stations and certain low power broadcast auxiliary stations within the frequency band 947–952 MHz, Docket No. 19130; and amendment of Parts 2 and 74 of the Commission's Rules to permit Aural Broadcast STL operations in the band 2110–2113 MHz, Docket No. 19494.

Adopted: June 23, 1982.

Released: July 2, 1982.

Introduction

1. In 1970 the Commission adopted *a First Report and Order and Second Notice of Inquiry* in Docket No. 18262 which, among other things, ordered a reduction in the band available for use by studio-to-transmitter links (STL), inter-city relay, and certain low-power broadcast auxiliary stations from 942–952 MHZ to 947–952 MHz and reallocated the lower 5 MHz to the land mobile services [1] (Aural Broadcast STL and Intercity Relay Stations are authorized under Subpart E of Part 74 of the Commission's Rules and Regulations). In taking the aforementioned action the Commission recognized that while the band was lightly used at that time, some congestion had developed in the Los Angeles area. It therefore stated its inteition to initiate a rulemaking with respect to additional spectrum space for aural broadcast STL's in the 2150–2160 MHz band. To this end, the Commission adopted a combined Notice of Proposed Rulemaking (NRPM) and Notice of Inquiry (NOI) in Docket 19130 in 1971.[2] In the interim, Aural broadcast STL and Intercity Relay Stations (hereinafter referred to as ABSTL/ICR) holding a valid license in the 942–947 MHZ band as of July 10, 1970, were permitted continued renewal of their licenses on a secondary basis to land mobile under the provisions of Footnote NG64.[3] In essence, with that action the band allocated for ABSTL/ICR stations became 947–952 MHz.

2. Because of interest to preserve the 2150–2160 MHz band for omnidirectional common carrier usage (i.e., the Multipoint Distribution Service (MDS)), the proposal to share the band, 2150–2160 MHz, with ABSTL/ICR stations was withdrawn in a subsequent *Further Notice.*[4] This *Further Notice* proposed the use of frequencies between 2110 and 2113 MHz solely for STL's serving AM or FM broadcast stations in ten of the larger cities where frequency requirements for such stations appeared greatest. At the time of this proposal the band 2110–2113 MHz was allocated to: (1) Stations in the Point-to-Point Microwave Radio Service (Subpart I of Part 21), (2) control and repeater stations in the Domestic Public Land Mobile Radio Service (Subpart G of Part 22) and, (3) stations in the International Fixed Public Radio Communication Services located south of 25° 30′ north latitude in the State of Florida and U.S. possessions in the Caribbean area. However, in 1972 there were no assignments to stations in the latter two categories in the 2110–2113 MHz band segment. Moreoveŕ, stations in the Point-to-Point Microwave Radio Service, which were generally few in number and operating primarily in rural areas, were to be required to shift frequencies where such operations would serve to preclude shared STL usage.

3. In response to this *Further Notice,* comments were received from broadcast interests, broadcast equipment manufacturers, and common carriers. Although pleased with the Commission's initiation of action to provide spectrum relief in certain metropolitan areas, "broadcast interests" urged the Commission to take cognizance of future needs for additional spectrum in markets other than those proposed and permit Intercity Relay operations in the 2110–2113 MHz band. Broadcast equipment manufacturers had similar views and suggested that the frequency tolerance specification be tightened. In opposing statements, common carrier interests stated that any sharing with ABSTL/ICR would unduly limit their future capability to furnish telecommunications to the public in the major metropolitan areas.

[1] The 942–947 MHz band is part of a land mobile reserve band that the Commission created under Docket No. 18262 *See Second Report and Order,* 46 FCC 2d 752 (1974) and the *Memorandum Opinion and Order,* released on 51 FCC 2d 945, (1975) (both in Docket 18262) to allow new land mobile services or unexpected growth in existing services to be accommodated.

[2] *Notice of Proposed Rule Making and Notice of Inquiry* in Docket No. 19130, 36 FR 1425 (January 29, 1971).

[3] NG 64 states that Broadcast Auxiliary stations licensed as of July 10, 1970, may continue to so operate in the frequency band 942–947 MHz pending a decision as to their disposition through a future rule making proceeding.

[4] *Further Notice of Proposed Rule Making* in Docket No. 19130 and Docket No. 19494, 37 FR 8555 (April 28, 1972).

Current Status of the 2110–2113 MHz Band

4. The 2110–2113 MHz band is a segment of the 2110–2130 MHz band. The 2110–2130 MHz band is paired with the 2160–2180 MHz band for duplex operation and both these bands are allocated to the Fixed services. Common carrier stations in the Point-to-Point Microwave Radio Service operating in these bands are located principally in the rural areas of the far western states and Alaska. These stations are used to relay telephone messages along so-called "skinny" or "light-haul" routes. In the major urban areas there is a heavy concentration of control and repeater stations operating in conjunction with land mobile base stations. Because there is a significantly large number of stations now operating in the 2110–2113 MHz band in both rural and urban areas, we feel the complexities involved in any contemplated sharing arrangement would outweigh any derived benefits. Accordingly, we feel the proposal set forth in Docket No. 19130 and 19494 is no longer viable and propose that it be terminated.

Petition for Rulemaking (RM–2697) National Association of Broadcasters (NAB)

5. In April 1976, the National Association of Broadcasters (NAB) submitted a petition for rule making requesting the reallocation of the 942–947 MHz band from land mobile services to ABSTL/ICR. It claimed that a rapid increase in the number of ABSTL/ICR's since 1973 had caused a saturation of the 947–952 MHz band in major urban areas. NAB further claimed there would be an increase in demand for frequencies if and when the Commission authorizes standards to implement AM stereo. It also felt that there is no immediate need for the use of the 942–947 MHz band (which is paired with 897–902 MHz band) by land mobile services.

Comments in Support

6. Comments received supporting the petition represent broadcast interests that cite the congestion and impossibility of relocating ABSTL/ICR stations from 942–947 MHz to 947–952 MHz. NBC documented its efforts in New York City, Chicago, and San Francisco; it has not been able to relocate such stations due to interference from ABSTL/ICR stations operating on every available channel in the 947–952 MHz band. Southern Broadcasting Company indicated that all channels are assigned in the Houston and Dallas/Ft. Worth metropolitan areas. It pointed out that on several channels there are two and three licensees operating. To alleviate interference problems, attempts are made to change frequencies of existing stations and/or to try alternate paths from a studio-to-transmitter location. Minnesota Public Radio, Inc. (MPR) indicated that Minneapolis/St. Paul is another market where every available channel is in use. Many broadcasters in need of channels are making proposals to existing licensees to operate co-channel.

Comments in Opposition

7. Opposing statements, representing land mobile interests, indicated that although the spectrum under question (i.e. 942–947 MHz) had been placed in a reserve status, it did not necessarily follow that there was a lack of need by the land mobile community. Reference to support this claim was made to the Private Land Mobile Advisory Committee Report for the 1979 World Administrative Radio Conference (WARC). It reported that since 1950 there had been a 43-fold increase in private land mobile systems despite severe frequently availability restraints during most of this time. The committee forecasted at least a 5.5 growth factor by the year 2000, part of which could be accommodated within the 806–947 MHz allocation. An additional allocation would be required probably by 1990, when according to the committee, the existing allocations become fully utilized in the major urban areas. AT&T, in comments submitted in 1976, stated that "the actions in Docket No. 18262 were designed as a comprehensive overall plan for developing new and improved land mobile services, and, more importantly, insuring that there would be adequate spectrum in the future."

Petition for Rule Making (RM–3246) Moseley Associates, Inc.

8. In November 1978, Moseley Associates, Inc. of Goleta, California submitted a Petition for Rulemaking (RM–3246) to permit ABSTL/ICR operation on unassigned UHF–TV channels on a secondary, non-interfering basis. Moseley suggested that assignments for this secondary service could be limited to UHF channels 50–59 (i.e., 686–746 MHz). In general, the majority of comments received from broadcast interests representing various AM and FM radio stations were in favor of this Petition. Those opposed represented UHF–TV interests.

Comments in Support

9. Comments in support of Moseley's Petition pointed to problems of frequency congestion in the allocated 947–952 MHz band. (It is further noted that there are approximately 400 licensees operating in the 942–947 MHz band pursuant to conditions set out in Footnote NG64). A number of the parties responding indicated their inability to install desired facilities due to complete saturation of the band in their locality. KUSC–FM, licensed to the University of Southern California, operates an STL under special temporary authorization in the 942–947 MHz band in the Los Angeles area. It indicated that there is extreme frequency congestion throughout the Los Angeles basin making it impossible for any broadcast station to obtain frequencies for STL usage. The National Broadcasting Company, Inc. (NBC) pointed out its difficulty in trying to obtain STL's for its stations in Los Angeles, San Francisco, Chicago, and New York City due to similar frequency congestion problems. Golden West Broadcast, Inc. also cited extreme difficulty in obtaining aural broadcast studio-transmitter links in Los Angeles, San Francisco, Seattle, and Detroit.

10. A number of other broadcasters expressed their intentions to begin stereophonic operations over their AM broadcast facilities once the Commission approves a system. However, due to the shortage of frequencies for STL's, they support the Moseley Petition which would make available the UHF–TV spectrum for STL usage and urge other alternatives for STL service be explored in a rule making proceeding.

11. The National Public Radio network (NPR) indicated that it was designing a multiple channel, multiple uplink satellite interconnection system. It claims that this system will significantly increase public radio's need for additional aural broadcast intercity relay and STL facilities. In a number of cases, the satellite receiving equipment is to be located several miles from the radio broadcast station to be served to avoid interference with other radio services. Because there are few, if any, available frequencies for inter-city links, NPR plans to install cable to link these facilities. It claims the costs for installation and maintenance of such links are far greater than the costs for a comparable STL system. NPR member station, KUSC-FM, licensed by the University of Southern California, which is to be interconnected with the NPR satellite system, supports the allocation

proposed by Moseley. NPR concurred and recommended the reallocation of 942–947 MHz to ABSTL/ICR and that the Commission study the feasibility of sharing bands with other users, in particular, above 2 GHz.

Comments in Opposition

12. Comments filed in opposition to Moseley's Petition include the Association of Maximum Service Telecasters, Inc. (MST) and the Public Broadcasting Service (PBS). PBS stated that "the Moseley proposal should not be adopted because: (a) there is no surplus of spectrum in the UHF–TV band and the demand for new television frequencies is on the increase; (b) television stations and STL's are not suitable candidates for assignment in the same band, because the demand for both rises steeply as the size of a market increases, thereby making it unlikely that the needs of both services can be met; and (c) the concept of secondary service on a non-interfering basis is unrealistic where the service involved is a vital link whose termination involves cutting off broadcast service to the public."

13. MST calls the proposal unfeasible and claims Moseley failed to take into account certain UHF–TV "taboos" necessary for interference protection. In particular, it contends that if UHF–TV channels 50–59 were used on a secondary basis for ABSTL/ICR, image interference to television stations operating on channels 35–45 would occur. It further suggests that phase-compensated land lines or common carriers should be more fully used as an alternative by broadcasters. In addition, MST claims Moseley did not support its assertion that demand for spectrum for ABSTL/ICR would increase if rules are adopted to permit AM stereo.

Moseley's Reply Comments

14. In its reply statement Moseley Associates, Inc. (Moseley) addressed the comments filed in opposition to its Petition. In response to the assertion that it failed to take into account the UHF "taboos," Moseley stated that the taboos listed in Table IV, Section 73.698, are not applicable when comparing UHF and aural STL services. Aural STL service employs low effective radiated power while significantly higher levels of power are used by UHF–TV stations. Also, ABSTL/ICR operation is a fixed point-to-point service.

15. Moseley suggested downgrading the mileage separations, if the Commission were to decide to maintain the taboo concept in such a sharing between television stations and ABSTL/ICR. It recommended a scaling factor of 1/32 since the typical power difference between ABSTL/ICR and TV transmitters can be estimated at about 30 dB. With regard to co-channel and adjacent channel restrictions, Moseley recommended the requirements established in formerly designated Sections 89.123, 91.114, and 93.114 be applied to ABSTL/ICR stations when the azimuth of the major lobe of the ABSTL/ICR signal is directed toward the co-channel or adjacent channel television station.

16. With respect to proposing that ABSTL/ICR be secondary, Moseley stated that ABSTL/ICR equipment is designed in such a manner that its frequency can be moved typically 40–50 MHz in the field in case interference is experienced on any particular channel due to new stations that might be allowed if there were a change in the Allocation Table, Section 73.606(b). Consequently, Moseley did not agree that the termination of operation of a specific channel by reason of its secondary status would interrupt programming or place a financial burden on the broadcast station. Moseley contended that high-quality land line circuits are extremely difficult to obtain and are not a viable alternative to an allocation.

Discussion of Petitions

17. Although the NAB petition has basis for consideration, we believe the 942–947 MHz band should remain as it is, presently allocated to the land mobile services. This band was placed into a reserve status, as part of the 928–947 MHz band, in Docket No. 18262 to provide for the future needs of the growing land mobile services through the year 2000. As these needs are still evolving, we do not believe it would be meritorious nor in the greater public interest to reconsider this decision. Accordingly, we believe this petition (RM–2697) should be denied and so propose. We do not propose to grant NAB's request regarding the 942–947 MHz band, but we do propose to satisfy its request for additional spectrum.

18. With respect to Moseley's Petition, we note that the initiation of the Low Power Television service has added an additional element to the question of sharing unassigned UHF–TV channels.[5] Both the technical and regulatory aspects of such sharing require more information before we can reach a conclusion. The proposal we are making today is expected to meet the perceived needs for Aural STL and ICR circuits. Accordingly, we are deferring a decision on Moseley's Petition until we have completed the present proceeding.

Current Status of ABSTL/ICR

19. Based on a study made of the Broadcast Bureau's records there are about 2500 ABSTL/ICR stations operating in the 942–952 MHz band. Of that number, about 400 stations operate on a secondary basis under Footnote NG 64 in the 942–947 MHz segment. Since 1972, growth in the number of authoriztions has escalated. It appears to have paralleled the growth in number of FM stations. As a consequence of such growth, at the present time frequency saturation problems prevail in the following metropolitan areas: Los Angeles, San Francisco, Chicago, New York, Philadelphia, Miami, New Orleans, Pittsburgh, St. Louis, Milwaukee, Phoenix, Dallas-Ft. Worth, Cleveland, Boise, Las Vegas, Houston, Albuquerque, Boston, Denver, and San Juan. In these cities all available ten channels are fully occupied. Some frequency reuse is taking place, but generally it is not possible since most ABSTL/ICR transmission paths converge at a singular site of high altitude. As an example, in Los Angeles, most FM broadcast stations have as their common transmitting site Mt. Wilson. Consequently, in Los Angeles all channels in the ABSTL/ICR 947–952 MHz band, as well as the 942–947 MHz segment, are used by FM stations to relay programming to this site, thereby precluding any frequency reuse.

20. In light of the evidence of current usage and projected future growth of this service, we believe an additional allocation is warranted to alleviate the saturation problem existing in the metropolitan areas mentioned, as well as to provide for future growth. Moreover, we are concerned that those stations operating in the 942–947 MHz band under the provisions of Footnote NG 64 be relocated in an expedient manner.

Proposed Allocation

21. In a separate rule making proceeding, we have proposed a dedicated band in the 18 GHz range for ABSTL/ICR stations and similar users.[6] Realistically, it would be several years before this band could be used if the allocation is adopted as proposed.[7]

[5] The Commission recently adopted rules establishing the Low Power Television Service (LPTV). See *Report and Order* in BC Docket No. 78–253, 47 FR 21468 (May 18, 1982).

[6] See Further Notice of Proposed Rule Making in Gen. Docket No. 79–188 adopted August 4, 1981. 46 FR 45635 (September 14, 1981).

[7] Due to the higher frequency band and corresponding lack of technical development therein, it is estimated that several years would

Accordingly, it has become essential that we look at other bands lower in the frequency spectrum to meet the immediate need. Ideally, we would again like to propose an allocation that would be exclusively dedicated to ABSTL/ICR. However, such an allocation could necessitate the relocation of a significant number of stations to other frequency bands. This is not usually possible or practical in the lower frequency ranges as the spectrum allocated there is used extensively and any change could cause economic hardship for many.

22. Alternatively then, consideration is given to sharing with an existing service. Taking into account a study of several factors including technical suitability, available technology, costs, propagational performance, etc., we have come to conclude that the paired bands 2130–2150 MHz and 2180–2200 MHz would afford ABSTL/ICR stations with an optimal allocation. At the present time these bands are allocated to stations in the Private Operational-Fixed Microwave Service under Part 94 of the Commission's Rules. Each band currently supports approximately 1,500 licensed frequency assignments. The assignments are clustered in the following regions: Middle-Atlantic states, Texas, Louisiana, Gulf of Mexico off-shore oil rigs and California. Even though there is heavy usage in these areas, our analyses show that these bands can accommodate many additional users. This is possible because the fixed point-to-point transmission paths required by ABSTL/ICR stations generally do not coincide with those utilized by private operational-fixed stations. Accordingly, as set forth in the Appendix, we are proposing that the 2130–2150 MHz and 2180–2200 MHz bands be made available also for use by ABSTL/ICR stations.

23. We anticipate that this proposed allocation will provide sufficient spectrum for relocating those stations presently operating under the provisions of Footnote NG64. Accordingly, we further propose that Footnote NG 64 be revised to indicate that ABSTL/ICR stations will be permitted continued operation only until a date to be fixed as five years from the adoption of the rules herein proposed.

Technical Considerations

24. Since the proposed bands for allocation are established for use by operational-fixed stations under Part 94 we believe it appropriate to propose an extension of the technical standards under Subpart C of Part 94 to also cover the technical operation of ABSTL/ICR stations in the 2130–2150 MHz and 2180-2200 MHz bands. These proposed standards appear in the attached Appendix. As these bands have been designated for duplex operation and because AB/ST is generally a one-way transmission service, we propose assigning channels for ABSTL/ICR usage alternatively and in sequence between the lower and upper frequency bands beginning with the lowest frequency in each band. As example, the first channel to be assigned would be 2130.8 MHz designated 1–A; the second to be assigned would be 2180.8 MHz, designated 1–B; the third to be assigned would be 2131.6 MHz, designated 2–A; etc.

25. Although the maximum channel bandwidth for the 2130–2150 MHz and 2180–2200 MHz bands is 800 kHz, we propose that ABSTL/ICR stations be limited to 500 kHz as is presently allowed under § 74.535. Since the path lengths of ABSTL/ICR stations are generally not greater than 30 kilometers we believe that proposing a power limit of 12 watts would be adequate for this range. This is set forth in proposed Section 74.534. The antenna limitations as set out under § 94.75 would be extended to ABSTL/ICR under this proposal and accordingly appear in revised § 74.536. As the FCC cannot undertake frequency coordination, the procedures delineated in Part 94 (viz. §§ 94.15 and 94.63) are further being proposed to include ABSTL/ICR stations. These rules are set forth under § 74.504 and 74.505 and Part 94.

26. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceedings. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written summary of that presentation, on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's Rules.

27. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq*, the Commission issues the following initial regulatory flexibility analysis:

I. *Reason for action*—The proposed allocation will accommodate the relocation of ABSTL/ICR stations operating under the provision of Footnote NG 64 in the 942–947 MHz band. Footnote NG 64 permits ABSTL/ICR stations licensed as of July 10, 1970, to continue through a future rule making proceeding. At the present time the 942–947 MHz band is allocated to land mobile reserve.

II. *The objective*—The Commission desires to relocate approximately 400 ABSTL/ICR stations operating in the 942–947 MHz band under the provision of Footnote NG 64 to allow that band to be allocated from land mobile reserve to land mobile.

III. *Legal basis*—The legal basis for the FCC to allocate spectrum is contained in 47 U.S.C. 303(c).

IV. *Entities affected; nature of economic impact; significant alternatives*—As mentioned, approximately 400 licensees of ABSTL/ICR stations would be required to vacate the 942–947 MHz band and relocate to the 2130–2150 MHz/2180–2200 MHz bands, or the 947–952 MHz band if channels are available there, within 5 years of the actual costs of rules in this docket. It is not certain what the actual costs of engineering and equipment might be for each affected licensee. However, it is certain that costs could be significantly greater to relocate to the 2130–2150 MHz/2180–2200 MHz bands compared to relocating to the 947–952 MHz band. Moreover, the requirement that private operational-fixed and ABSTL/ICR stations in the 2130–2150 MHz/2180–2200 MHz bands must coordinate their operations could also impose further costs. Affected parties are invited to submit comments on the economic impact of such relocation.

elapse before operational equipment would be ready for this service in the 18 GHz range.

At this time, we cannot perceive any significant alternative scheme that would enable the affected licensees to avoid their proposed relocation. However, we invite the affected parties to comment on this point.

V. *Recording recordkeeping and other compliance requirements*—As mentioned in the text, license holders of ABSTL/ICR stations operating in the 942–947 MHz band, upon adoption of these proposed rules, will not be granted renewal of their licenses beyond a date of 5 years from the adoption of the rules. After such time, only channels in the bands allocated for use by ABSTL/ICR stations would be available for assignment.

28. Authority for issuance of this Notice is contained in Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Pursuant to procedures set out in § 1.415 of the Rules and Regulations, 47 CFR 1.415, interested persons may file comments on or before August 23, 1982, and reply comments on or before September 7, 1982. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into account information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

29. In accordance with the provisions of § 1.419 of the rules and regulations, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting 1 copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

30. As required by section 603 of the Regulatory Flexibility Act, the FCC has prepared an initial regulatory flexibility analysis (IFRA) of the expected impact of these proposed policies and rules on small entities. The IRFA is set forth in paragraph 27. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of this Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, Stat. 1164, U.S.C. et. seq.).

31. For further information concerning this document contact Mel Murray at (202) 653–8168.

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

Federal Communications Commission.

William Tricarico,

Secretary.

Appendix

It is proposed to amend Parts 2, 74, and 94 of Chapter I of Title 47 of the Code of Federal Regulations to read as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

A. Part 2 is amended as follows:

§ 2.106 [Amended]

1. In § 2.106, the Table of Frequency Allocations is revised for the bands 2130–2150 MHz and 2180–2200 MHz by adding Aural broadcast STL and intercity relay under column 9, class of station.

Band (MHz)	Service	Class of station	Frequency (MHz)	Nature of services of stations
(7)	(8)	(9)	(10)	(11)
*	*	* * *	*	*
2130–2150	Fixed	Operational fixed		
(NG10)		International Control		
(NG23)		Aural broadcast STL and intercity relay		
*	*	* * *	*	*
2180–2200	Fixed	Operational fixed		
(NG10)		International Control		
(NG23)		Aural broadcast STL and intercity relay		

2. Footnote NG64 is revised to read as follows:

Broadcast auxiliary stations licensed as of July 10, 1970, to operate in the frequency band 942–947 MHz may continue to operate only until (date to be inserted is five years after the adoption of these rules).

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

B. Part 74 is amended as follows:

1. Section 74.502, paragraphs (b) and (c) are revised and paragraphs (d) and (e) are added to read as follows:

§ 74.502 Frequency assignment.

(a) * * *

(b) The frequency bands 2130–2150 MHz and 2180–2200 MHz are available for assignment to aural broadcast STL and intercity relay stations and are shared on a co-primary basis with stations in the private operational-fixed microwave service under Part 94 of the Commission's Rules. For assignment to Aural broadcast STL and intercity relay stations, each of the following frequencies is the center frequency of a channel with its corresponding channel designation.

2130–2150 MHz band		2180–2200 MHz band	
Center frequency (MHz)	Designated channel	Center frequency (MHz)	Designated channel
2130.8	1–A	2180.8	1–B
2131.6	2–A	2181.6	2–B
2132.4	3–A	2182.4	3–B
2133.2	4–A	2183.2	4–B
2134.0	5–A	2184.0	5–B
2134.8	6–A	2184.8	6–B
2135.6	7–A	2185.6	7–B
2136.4	8–A	2186.4	8–B
2137.2	9–A	2187.2	9–B
2138.0	10–A	2188.0	10–B
2138.8	11–A	2188.8	11–B
2139.6	12–A	2189.6	12–B
2140.4	13–A	2190.4	13–B
2141.2	14–A	2191.2	14–B
2142.0	15–A	2192.0	15–B
2142.8	16–A	2192.8	16–B
2143.6	17–A	2193.6	17–B
2144.4	18–A	2194.4	18–B
2145.2	19–A	2195.2	19–B
2146.0	20–A	2196.0	20–B
2146.8	21–A	2196.8	21–B
2147.6	22–A	2197.6	22–B
2148.4	23–A	2198.4	23–B
2149.2	24–A	2199.2	24–B

(c) A single broadcast station licensee will normally be limited to the assignment of one 500 kHz channel between the same point of origin and destination. If the circuit carries only one aural program channel, the center frequency of the channel will be assigned. If a single licensee requires more than one aural program channel between the same point of origin and destination, more than one transmitter may be authorized to operate within a single 500 kHz channel, employing

carrier frequencies above and below the center frequency listed in this paragraph. Where such assignments are made the operating frequencies selected shall be such that the unmodulated carrier frequency plus or minus the sum of M+D does not extend beyond the upper or lower channel edge. M is the maximum modulating frequency and D is the maximum excursion of the carrier from the unmodulated carrier frequency due to modulation. Under these circumstances, the operating frequencies of the unmodulated carriers shall be maintained within .001 percent of the assigned frequencies.

(d) The use of the frequencies listed in paragraphs (a) and (b) of this section by aural broadcast intercity relay stations is subject to the condition that no harmful interference is caused to other classes of stations operating in accordance with the Table of Frequency Allocations contained in § 2.106 of this chapter.

(e) Any aural broadcast STL or intercity relay station for which there was outstanding a valid construction permit or license on April 16, 1958, specifying operation on any frequency between 890 MHz and 942 MHz, may continue to be operated on such frequencies for the remainder of the term specified in such authorization and may, upon appropriate application therefor, be granted a renewal of such license, subject to the condition that no harmful interference shall be caused to the radiolocation service operating in the band 890–942 MHz and subject to the further condition that the licensee must accept any interference which may be caused by the operation of radiolocation stations in the band 890–942 MHz and industrial, scientific, and medical (ISM) equipment in the band 890–940 MHz.

2. A new § 74.504 is added to read as follows:

§ 74.504 Policy governing the assignment of frequencies in the 2130–2150 MHz and 2180–2200 MHz band.

(a) All applicants for new or modified stations shall make an engineering analysis of the potential interference between the proposed facilities and previously authorized facilities and pending applications. The applicant shall include as supplemental information with the application: (1) A certification that, based upon frequency engineering analysis, the potential interference shall not exceed that prescribed by the interference criteria in § 74.505 or Part 94; or (2) if the potential interference is to exceed that prescribed by § 74.505 or Part 94, a statement to the effect that all parties affected have agreed to accept the higher level of interference. In either case, the applicant shall furnish the names of the licensees and the call signs of the stations which were considered in conducting the engineering analysis. Further, applicants and licensees will be expected to cooperate promptly and fully in the exchange of technical information necessary to performing frequency engineering analysis and, in the event of technical differences, cooperate in resolving these differences.

(b) As these two bands are designated for duplex operation in the Private Operational-Fixed Service, assignment of channels for Aural broadcast STL and intercity relay stations are made alternately and in sequence between the lower and upper frequency bands beginning with the lowest frequency in each band. As example, the first channel to be assigned would be 2130.8 MHz, designated 1–A; the second to be assigned would be 2180.8 MHz, designated 1–B; the third to be assigned would be 2131.6 MHz, designated 2–A; etc.

3. A new § 74.505 is added to read as follows:

§ 74.505 Interference protection criteria for stations operating in the 2130–2150 MHz and 2180–2200 MHz bands.

(a) Before filing an application for new or modified facilities under this part the applicant must perform a frequency engineering analysis to assure that the proposed facilities will not cause interference to existing or previously applied-for stations in the Private Operational-Fixed Microwave Service of a magnitude greater than that specified in the criteria set forth in paragraph (b) of this section unless otherwise agreed to in accordance with § 74.504 or similar provisions under Part 94.

(b) The interference protection criteria for aural broadcast STL and intercity relay stations are as follows:

(1) In analog systems employing frequency modulated radio that is modulated by a standard monaural or stereo multiplex signal, the allowable interference level per exposure shall not exceed the levels which would apply to long-haul or short-haul FM–FDM systems having a 600–1200 voice channel capacity as follows:

(i) To long-haul analog systems, employing frequency modulated radio and frequency division multiplexing to provide multiple voice channels, the allowable interference level per exposure:

(A) Due to co-channel sideband-to-sideband interference shall not exceed 5 pwp0;[1]

(B) Due to co-channel carrier-beat interference shall not exceed 50 pwp0.

(ii) To short-haul analog systems employing frequency modulated radio and frequency division multiplexing to provide multiple voice channels, the allowable interference level per exposure:

(A) Due to co-channel sideband-to-sideband interference shall not exceed 25 pwp0.

(B) Due to co-channel carrier-beat interference shall not exceed 50 pwp0.

(c) In addition to the requirements of paragraph (b) of this Section the adjacent channel interference protection criteria to be afforded, regardless of system length, or type of modulation, multiplexing, or frequency band, shall be such that the interfering signal shall not produce more than 1.0 dB degradation of the practical threshold of the protected receiver.

(d) Applying the Criteria: (1) The criteria specified in paragraphs (b) and (c) of this section shall be applied by calculating the ratio in dB between the desired (carrier) signal and the undesired (interfering) signal (C/I ratio) appearing at the input to the receiver under investigation (victim receiver).

(2) The development of the C/I ratios from the criteria and the methods employed to perform path calculations shall follow generally acceptable good engineering practices. Procedures as may be developed by the Electronics Industries Association (EIA), the Institute of Electrical and Electronics Engineers (IEEE), the American National Standards Institute (ANSI) or any other recognized authority will be acceptable to the Commission.

(3) Except where the applicant does not wish to develop the carrier to interference ratio, the applicant shall, in the absence of criteria or a developed C/I ratio, employ the following C/I protection ratios:

(i) Co-channel interference: Both sideband and carrier-beat, applicable to all bands; the existing or previously authorized system shall be afforded a carrier to interfering signal protection ratio of at least 90 dB.

(ii) Adjacent channel interference: Applicable to all bands; the existing or previously authorized system shall be afforded a carrier to interfering signal protection ratio of at least 56 dB.

[1] Picowatts (pwp0) of absolute noise power, psophometrically weighted, appearing in an equivalent voice band channel of 300–3400 Hz.

4. Section 74.534 is revised to read as follows:

§ 74.534 Power limitations.

(a) For operation in the 947–952 MHz band:

Aural broadcast STL and intercity relay stations will be licensed with a power output not in excess of that necessary to render satisfactory service. The license for these stations will specify the maximum authorized power. The operating power shall not be greater than necessary to carry on the service and in no event more than 5 percent above the maximum power specified. Engineering standards have not been established for these stations. The efficiency factor for the last radio stage of transmitters employed will be subject to individual determination but shall be in general agreement with values normally employed for similar equipment operated within the frequency range authorized.

(b) For operation in the 2130–2150 MHz and 2180–2200 MHz bands:

On any authorized frequency, the average power delivered to an antenna shall be the minimum amount of power necessary to carry out the communications desired. Application of this principle shall include, but not limited to requiring a licensee who replaces one or more of his antennas with larger antennas to reduce his antenna input power by an amount appropriate to compensate for the increased primary lobe gain of the replacement antenna(s). In no event shall the average effective radiated power (ERP) as referenced to an isotropic radiator, exceed the value specified below. Further, the output power of a transmitter on any authorized frequency shall not exceed 12 watts.

5. Section 74.536 is revised to read as follows:

§ 74.536 Directional antenna required.

(a) For operation in the 947–952 MHz band:

Each aural broadcast STL and intercity relay station is required to employ a directional antenna. Considering one kilowatt of radiated power as a standard for comparative purposes, such antenna shall provide a free space field strength at one mile of not less than 435 mv/m in the main lobe of radiation toward the receiver and not more than 20 percent of the maximum value in any azimuth 30 degrees or more off the line to the receiver. Where more than one antenna is authorized for use with a single station, the radiation pattern of each shall be in accordance with the foregoing requirement.

(b) For operation in the 2130–2150 MHz and 2180–2200 MHz bands:

In these bands the directional antenna shall meet the performance standards indicated in the following table:

Category	Maximum beamwidth to 3dB points (included angle in degrees)	Antenna standards: mimimum radiation suppression at angle in degrees from centerline of main beam in decibels—						
		5 to 10	10 to 15	15 to 20	20 to 30	30 to 100	100 to 140	140 to 180
A	5.0	12	18	22	25	29	33	39
B	8.0	5	18	20	20	25	28	36

NOTE.—Stations in this service must employ an antenna that meets the performance standards for category A, except that, in areas not subject to frequency congestion antennas meeting standards for category B may be employed. Note, however, that the Commission may require the use of a high performance antenna where interference problems can be resolved by the use of such antennas.

(c) Applicants shall request, and authorization for stations in this service will specify, the polarization of each transmitted signal. Periscope antenna systems or passive repeaters are not permitted. The polarization should be expressed as either horizontal, vertical, or as an angle from vertical. Antenna polarizations of horizontal and vertical should be denoted by the abbreviations (H) and (V), respectively. For antennas using linear polarizations other than horizontal or vertical, the polarization should be stated in degrees measured from the vertical, with angles between 0° and +90° denoting the on-coming electric field vector displacement in a counterclockwise direction, and angles between 0° and −90° denoting the oncoming electric field vector displacement in a clockwise direction. In the event polarization diversity is authorized, the two polarizations must be separated by 90°. Antennas employing other than linearly polarized feed systems will not be authorized.

6. A new § 74.550 is added to appear under the existing heading entitled *Equipment* to read as follows:

§ 74.550 Type acceptance.

Type acceptance is required by the Commission for all Aural broadcast STL and intercity relay station transmitters employed in the 2130–2150 and 2180–2200 MHz bands. Requirements for obtaining type acceptance are contained in Subpart J of Part 2 of this Chapter.

7. Section 74.561 is revised to read as follows:

§ 74.561 Frequency tolerance.

The licensee of each aural broadcast STL and intercity relay station shall maintain the operating frequency of the station within plus or minus 0.001 percent of the assigned frequency.

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

C. Part 94 is amended as follows:

1. In § 94.61(b) a new footnote to be numbered 22 is added to the table entitled *Frequency Band (MHz)* at frequencies, 2130–2150 and 2180–2200 to read as follows:

§ 94.61 Applicability.

* * * * *

(b) Frequencies in the following bands are available for assignment to stations in the Private Operational-Fixed Microwave Service:

FREQUENCY BAND (MHz)

* * * * *

2130–2150 ..... (²), (²²)

* * * * *

2180–2200 ..... (²), (²²)

* * * * *

²²Frequencies in this band are shared with Aural Broadcast STL and Intercity Relay Stations. (Part 74)

2. Section 94.63, paragraph (a) is revised to read as follows:

§ 94.63 Interference protection criteria for operational-fixed stations.

(a) Before filing an application for new or modified facilities under this part the applicant must perform a frequency engineering analysis to assure that the proposed facilities will not cause interference to existing or previously applied-for stations in this service of a magnitude greater than that specified in the criteria set forth in paragraph (b) of this section, unless otherwise agreed to in accordance with § 94.15(b). In addition, when the proposed facilities are to be operated in the bands 18,630–19,040 MHz, 21,200–21,800 MHz, 22,400–23,000 MHz, 31,000–31,200 MHz, or 38,600–40,000 MHz, applicants shall follow the prior coordination procedure specified in § 21.100(d) of this chapter as regards stations in the Domestic Public Radio Services and when the proposed facilities are to be operated in the bands 2655–2690 MHz or 12,500–12,700 MHz, applications shall also follow the procedures in ¶ 21.706(c) and (d) and the technical standards and requirements of Part 25 of this chapter as regards licensees in the Communication-Satellite Service. (See also § 94.77) Also, when the proposed facilities are to be operated in the bands 2130–2150 MHz and 2180–2200 MHz applicants must perform a frequency engineering analysis to assure the proposed facilities will not cause interference to existing or previously applied for Aural Broadcast

STL and Intercity Relay Stations (Subpart E of Part 74).

* * * * *

3. In § 94.65, paragraph (c) is revised to read as follows:

§ 94.65 Frequencies.

* * * * *

(c) 2130–2150 MHz; 2180–2200 MHz. These bands are shared with Aural Broadcast STL and Intercity Relay Stations on a co-primary basis (Subpart E of Part 94). Such stations are regularly authorized for one-way transmission between fixed points.

800 KHz MAXIMUM BANDWIDTH, UNLESS NOTED

[Paired frequencies]

2130–2150 MHz transmit (or receive)	2180–2200 MHz receive (or transmit)
2130.8	2180.8
2131.6	[1] 2181.6
2132.4	2182.4
2133.2	[1] 2183.2
2134.0	2184.0
2134.8	[1] 2184.8
2135.6	2185.6
2136.4	[1] 2186.4
2137.2	2187.2
2138.0	[1] 2188.0
2138.8	2188.8
2139.6	[1] 2189.6
2140.4	2190.4
2141.2	[1] 2191.2
2142.0	2192.0
2142.8	[1] 2192.8
2143.6	2193.6
2144.4	[1] 2194.4
2145.2	2195.2
2146.0	[1] 2196.0
2146.8	2196.8
2147.6	[1] 2197.6
2148.4	2198.4
2149.2	2199.2

[1] Consideration will be given on a case-by-case basis to assigning these frequency pairs to systems employing 1600 kHz bandwidth transmissions.

[FR Doc. 82-19101 Filed 7-15-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 2, 74, and 94

[Gen. Docket 82-335; RM-2697; RM-3246; Docket Nos. 19130 and 19494]

Frequency Allocation for Aural Broadcast STL and Intercity Relay Stations; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: The Commission's Notice of Proposed Rule Making (published elsewhere in this issue) is corrected to clarify that the frequency 947.0 MHz would not be available for assignment nor would stations be allowed continued operation on 947.0 MHz after 5 years from the adoption of the proposed rules. The Notice proposed that Aural broadcast STL and Intercity Relay (ABSTL/ICR) stations operating in the 942–947 MHz band be permitted to continue operation only until a date of 5 years from the adoption of the proposed rules. If these rules are adopted, then the stations affected by this action would have to relocate to either the 947–952 MHz band or the proposed bands 2130–2150 MHz and 2180–2200 MHz.

FOR FURTHER INFORMATION CONTACT: Mel Murray, Office of Science and Technology, Spectrum Management Division, Spectrum Utilization Branch, Washington, D.C. 20554, (202) 653–8168.

In the matters of amendment of Parts 2, 21, 74, and 94 of the Commission's Rules and Regulations to Expand the Frequencies Available for Use by Aural Broadcast STL and Intercity Relay Stations, Gen. Docket No. 82–335; amendment of Parts 2, 21, 74, and 90 of the Commission's Rules and Regulations to Make Available to Aural Broadcast STL and Intercity Relay Stations the 942–947 MHz Band on a Primary Basis, RM–2697; amendment of Parts 2 and 74 of the Commission's Rules to permit broadcast aural studio-transmitter links to operate on a secondary, non-interfering basis in unassigned UHF television channels, RM–3246; amendment of Parts 2 and 74 of the Commission's Rules to permit Aural Broadcast STL operations in the band 2150–2160 MHz and to accommodate STL, Intercity Relay Stations and certain low power broadcast auxiliary stations within the frequency band 947–952 MHz, Docket No. 19130; and amendment of Parts 2 and 74 of the Commission's Rules to permit Aural Broadcast STL operations in the band 2110–2113 MHz, Docket No. 19494.

Erratum

Released: July 2, 1982.

The Commission's notice of proposed rule making, FCC 82–287, released July 2, 1982, is corrected as follows:

1. The reference Notice proposes an allocation in the 2130–2150 MHz and 2180–2200 MHz bands for use by Aural broadcast STL and Intercity Relay (ABSTL/ICR) stations. Concomitant with this proposal, ABSTL/ICR stations currently operating on frequencies in the 942–947 MHz band under the provision of Footnote NG 64 would not be permitted continued operation after a date of five years from the adoption of the proposed rules.

2. Because § 74.502(a) currently provides for the assignment of ABSTL/ICR stations on the frequency of 947.0 MHz with a 500 kHz bandwidth, the Notice should have clarified that this frequency accordingly must be proposed for deletion.

3. For clarification then, a note is proposed for addition to § 74.502(a) to read as follows:

* * * * *

§ 74.502 Frequency assignment.

(a) The frequency band 947–952 MHz is divided into ten 500 kHz channels for assignment to aural broadcast STL and intercity relay stations. Each of the following frequencies is the center frequency of a channel.

(MHz)	*(MHz)*
947.0	949.5
947.5	950.0
948.0	950.5
948.5	951.0
949.0	951.5

Note.—This frequency will not be available for assignment after [date to be inserted is 5 years from the adoption of rules in this docket). Stations on this frequency may continue operation only until [date to be inserted is 5 years from the adoption of rules in this docket).

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82–19276 Filed 7–15–82; 8:45 am]

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federal register

Friday
July 16, 1982

Part V

Environmental Protection Agency

National Oil and Hazardous Substances Contingency Plan

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[SWH-FRL 2163-4]

National Oil and Hazardous Substances Contingency Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and Executive Order 12316, the Environmental Protection Agency is promulgating revisions to the National Contingency Plan (NCP) for oil and hazardous substances. The revised NCP effectuates the new responsibilities and powers created by CERCLA. CERCLA provides that actions taken in response to releases of hazardous substances shall, to the greatest extent possible, be in accordance with the revised NCP. Section 311 of the Clean Water Act provides that actions taken to remove oil discharges shall, to the greatest extent possible, be in accordance with the NCP. The revised NCP, promulgated today, shall be applicable to response actions taken pursuant to CERCLA and section 311 of the Clean Water Act.

DATES: The promulgation date for the revised National Contingency Plan shall be July 16, 1982. Under section 305 of CERCLA, this revised Plan cannot take effect until Congress has had at least sixty "calendar days of continuous session" from the date of promulgation in which to review the Plan. Since the actual length of this review period may be affected by Congressional action, it is not possible at this time to specify a date on which this revised Plan will become effective. Therefore, EPA will publish a notice in the **Federal Register** at the end of the review period announcing the effective date of this revised Plan.

ADDRESSES: The public docket for the revised National Contingency Plan is located in Room S-398, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Sylvia Lowrance, Office of Emergency and Remedial Response (WH-548), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Phone (202) 382-2203.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510 ("CERCLA" or "the Act") and Executive Order 12316, the Environmental Protection Agency ("EPA" or "the Agency"), on March 12, 1982, proposed revisions to the National Contingency Plan (NCP) (47 FR 10972). The supplementary information section of the March 12 proposal discussed in detail the statutory basis of the NCP and the nature and purpose of the proposed revisions. (See 47 FR 10972 through 10978.) The Agency allowed the public forty-five days to submit comments on the proposed revisions. The Agency received 146 comments totalling over 1,000 pages in length on the proposed revisions.

Today, the Agency is promulgating revisions to the NCP. In preparing the revisions to the Plan, the Agency has carefully considered all of the public comments submitted on the proposed revisions. The Agency has made many modifications to the proposed revisions in response to the public comments.

In developing the proposed revisions to the Plan, the Agency's primary concerns were to ensure that the revised Plan met the statutory requirements of CERCLA and section 311 of the Clean Water Act (CWA), and that it established an effective response program. The Agency reviewed the public comments and incorporated suggested changes where appropriate.

All significant comments and the Agency's response to those comments are discussed below. EPA believes that the revised Plan includes all of the expanded CERCLA response authorities and adequately meets each of the statutory requirements of CERCLA and section 311 of the CWA. In meeting these requirements, EPA has also sought to ensure that the Plan does not contain unnecessarily rigid or cumbersome provisions, or provisions that are beyond the statutory mandate. EPA did not believe it was necessary to expand upon the national response organization and procedures established by Subparts A through D, nor upon the procedures for responding to oil discharges in the existing Plan. Experience has shown the national response organization and the oil discharge procedures to be efficient and effective methods for responding to environmental emergencies. It would be counter-productive to abandon established and workable procedures. Therefore, EPA has left the response structure of the existing Plan generally intact so that the proven national and regional response structure may be used for the expanded hazardous substance response authorities of CERCLA.

Section II of this preamble explains how the revised NCP meets the statutory requirements of section 105 of CERCLA and related provisions of section 311 of the CWA. The preamble to the proposed revisions discussed the revisions in relation to each of the subparts of the Plan and not with respect to how each statutory requirement was satisfied (47 FR 10972 through 10978). To ensure that it is clear how the revised Plan addresses each of the statutory requirements, Section II discusses in detail those provisions of the Plan that implement each of the statutory requirements.

Sections III, IV, V, and VI of this preamble address the major issues raised in the public comments. The sections summarize the significant comments submitted on each of these issues and the Agency's response to these comments. Section VII addresses additional comments that related to specific provisions in Subparts A through H of the Plan. Section VIII addresses any remaining general comments.

II. Statutory Requirements for the NCP

The following is a section-by-section analysis of each component required by section 105 of the CERCLA and related provisions of section 311 of the CWA, and a description of how the Plan meets each requirement.

1. *Section 105(1)—Methods for discovering and investigating facilities at which hazardous substances have been disposed of or otherwise come to be located.*

(a) *Discovery.* Section 300.63 of the Plan lists five methods by which a release or facility can be discovered. The major tools for discovery are those provided by Congress in CERCLA. Section 103(a) of CERCLA requires persons in charge of facilities or vessels to notify the National Response Center (NRC) as soon as they have knowledge of releases into the environment of hazardous substances in amounts equal to or greater than reportable quantities determined pursuant to section 102 of CERCLA. Section 103(c) of CERCLA requires persons to notify EPA of the existence of certain hazardous waste treatment, storage, and disposal facilities. EPA published guidance with respect to this requirement on April 15, 1981 (46 FR 22144). In addition, section 104(e) of CERCLA provides investigatory authority which may lead to discovery of a release by an investigating official. Section 300.63

further provides for discovery of releases through inventory efforts (e.g. section 3012 of the Resource Conservation and Recovery Act (RCRA)) and reports required by Federal or State permits. The Plan lists existing requirements for reporting releases and authorities for discovering releases, and complements these methods by referencing other sources of discovery, including random inventories and incidental observations.

EPA believes that the methods discussed above are adequate to discover most releases. The Agency's experience has shown these methods to be effective. When implementing the section 103(c) notification requirements, EPA received 11,000 reports of facilities where hazardous wastes are or had been potentially treated, stored or disposed. Moreover, since enactment of CERCLA, persons have been required to immediately report to the National Response Center (NRC) hazardous substance releases that exceed reportable quantities. The reports which are required by these sections cover most releases for which EPA and the United States Coast Guard (USCG) are delegated response authority under section 104 of CERCLA.

(b) *Investigation.* For investigating releases, the Plan sets forth a three-step process: (1) Initial investigation to determine the nature of the release (§ 300.64); (2) screening to determine whether the release warrants immediate response or further investigation (§ 300.64(a) and (c) and 300.65); and (3) further investigation for non-emergency releases which may warrant Federal action (§§ 300.66, 300.67(d) and (e), and 300.68(e) through (i)).

Section 300.64 of the Plan details the initial steps to be undertaken in investigating a reported release through a preliminary assessment. The assessment can be adapted to address the specific nature of a particular release. For example, a release that could cause immediate and significant harm to human health, welfare or the environment should be assessed much more rapidly than a release in which the risk of harm is less acute and immediate. Flexibility in the initial investigation process is provided for in § 300.64(a)(1) through (4) which sets forth a methodology for an initial evaluation of the release based on readily available data. In the case of hazardous waste management facilities, § 300.64(b) provides for the gathering of additional data when more time is available. The distinctions between §300.64(a) and (b) recognize that, in responding to most CERCLA releases, additional information may be necessary beyond that required to respond in classic spill situations under section 311 of the CWA. Thus, in order to implement CERCLA effectively, EPA has added the additional components of § 300.64(b). EPA considered and decided against adding greater detail to the requirements in this section because the scope of the assessment is most appropriately determined by the conditions of the release.

After the preliminary assessment, the Plan provides for either terminating investigation activities under the conditions detailed in § 300.64(c), taking an immediate removal pursuant to § 300.65 or continuing investigatory activities of non-emergency releases as discussed in § 300.66. The Plan allows for the three methods by which investigatory activities may be continued: through use of investigatory authorities provided in section 104(b) of CERCLA; through use of entry and investigatory authorities allowed under section 104(e) of CERCLA (see § 300.66(c)(1)); and through inspection of the release as detailed in § 300.66(c)(2).

The investigatory methodology described above and included in the Plan provides EPA with sufficient discretion to undertake the necessary investigatory activities as determined by the nature of the release in a manner consistent with the statute. In developing the investigatory methodology, the Agency relied upon experience gained under the section 311 program for investigating releases, which has proven to be very effective. The authorities are designed to provide response personnel with a detailed framework for investigation of releases, while still providing them with enough flexibility to tailor assessments to particular release conditions.

2. *Section 105(2)—Methods for evaluating, including analyses of relative costs, and remedying any releases from facilities which pose substantial danger to the public health or the environment.*

(a) *Evaluation.* The investigation activities explained above are the first step contained in the Plan for evaluating a release. Once investigatory activities are completed, the Plan establishes an evaluation scheme based on the type of release under consideration. The basic premise supporting the evaluation scheme is that the less imminent the threat, the greater the time available for the evaluation process.

For releases requiring immediate removal (i.e., emergency response), § 300.65 of the Plan provides for the initiation of response action without delay based upon the determination during the preliminary assessment that an emergency situation requires immediate response action (see §§ 300.64(a) and 300.65(a)). For releases that may require planned removal (i.e., short-term but not emergency response), § 300.67 provides for evaluation of the release by the State requesting the removal. The evaluation must include the information required by §300.67(b) of the Plan. The evaluation of candidates for planned removal continues as EPA applies the factors in § 300.67 to determine whether the release should, in fact, be funded as a planned removal.

The most extensive evaluations are those required for releases which potentially require remedial action (i.e., long-term response) and thus are candidates for inclusion on the National Priorities List. After the inspection has been completed (see § 300.66(b) and (c)), releases may be ranked pursuant to the Hazard Ranking System. This ranking system provides for a more detailed evaluation of the particular threats presented by the release and determines placement on the National Priorities List. (The Hazard Ranking System is contained in Appendix A and is explained in section V(A) below). Evaluation activities continue even after the release is included on the National Priorities List. Because of the complexity of releases that may require long-term remedial response, and the need to assure that remedies will adequately mitigate the threat from individual releases, § 300.68(f) through (i) provides for both investigation and study prior to undertaking a remedial response. Both of these steps include a final evaluation of the release and potential remedies based on factors enumerated in § 300.68(g) through (j).

EPA believes that the methods for evaluating releases discussed above and included in the Plan provide the most effective evaluation approach for dealing with widely varying threats posed by releases. Where the threat is immediate, evaluation actions are limited in order that rapid response can be taken. As the threats become less immediate, the Plan allows more extensive evaluation.

(b) *Methods for evaluating relative costs.* In the area of cost evaluation, EPA again bases the level of evaluation on the immediacy of the threat. First, for immediate removals, cost evaluation is limited to the statutory threshold of six months or $1 million unless an emergency continues (see § 300.65(d)). Thus, once the Agency determines that an immediate removal is necessary, the Plan vests in the lead agency the

authority to take whatever action the lead agency deems necessary to abate the emergency. In an emergency, it is not possible to require detailed cost evaluation because of the critical need to act as rapidly as possible.

In the case of a planned removal, the Plan provides for additional cost evaluation requirements. Section 300.67(a)(1) includes cost-savings as one of the criteria for taking a planned removal. Moreover, the nature of the response itself provides for cost-savings by allowing preventative actions. Finally, like immediate removal, § 300.67(e) imposes the statutory limits of six months of $1 million on the action. Thus, the Plan maintains stringent limitations on the costs of planned removal actions which must be included in the planning of the project.

The remedial response category provides for extensive cost evaluation. From the time the proposed extent of a remedial action is determined pursuant to §300.68(e), the costs of the remedial alternatives are considered. First, after alternatives are initially developed as provided in § 300.68(g), the Plan requires analysis of the cost of each alternative relative to the other alternatives under consideration (see §300.68(h)). On the basis of this analysis of comparative costs and other factors, the Plan calls for an assessment of the various alternatives in order to eliminate those that are more expensive but that do not provide significantly greater health or environmental protection. For the remaining alternatives, the Plan then requires (§300.68(i)) that costs be examined in detail for each individual alternative. This entails extensive evaluation of the costs of each remedial alternative to facilitate comparison of feasible alternatives. This analysis is used to make the final judgment on the appropriate remedial alternative based on costs and the other factors required by § 300.68(j).

(c) *Methods for remedying releases.* Section 300.70 contains a lengthy, although not exhaustive, list of methods for remedying releases. This list provides information on those methods of remedying releases which are considered appropriate and demonstrated methods. In addition, EPA has developed a technical handbook which can be utilized along with this section of the NCP to provide more technical information on the circumstances and types of releases in which these methods may be successfully employed. The manual is entitled "Handbook for Remedial Action at Waste Disposal Sites" and is available from Environmental Protection Agency, Office of Research and Development, Municipal Environmental Research Laboratory, Solid and Hazardous Waste Research Division, Cincinnati, Ohio 45268.

3. *Section 105(3)—Methods and criteria for determining the appropriate extent of removal, remedy, and other measures authorized by CERCLA.*

Sections 300.65(c) and 300.67(d) establish the procedures by which the appropriate extent of removal is determined. For this limited response category, EPA has determined that the appropriate extent of action is the abatement of the threat that required the initiation of a removal action. Therefore, in the case of immediate removal, EPA has limited the extent of removal to abatement of the immediate and significant risk (see § 300.65 (a) and (c)). Likewise in the case of planned removals, the Plan limits the extent of the action to abatement of the problem posed by the presence of factors listed in § 300.67(c).

EPA believes that this type of *a priori* procedure for limiting removal actions is necessary because removal response is statutorily a more limited action than remedial response. Removal actions are intended to eliminate the threat which precipitated the action. These responses may not fully abate the threat caused by a release. However, without such limitations, an inordinate share of the Fund might be spent on completing removal actions at releases which pose a less significant threat than other releases which have been placed on the National Priorities List. Moreover, if removal actions were not limited in scope, projects might continue until reaching the statutory limitation of six months or $1 million, without having achieved any tangible or specified clean-up objectives.

Section 300.68 of the Plan establishes methods and criteria for determining the appropriate extent of remedy. Remedial response involves long-term actions to mitigate threats primarily from hazardous waste management facilities. This section of Subpart F is one of the most extensive sections of the Plan. The Agency has far less experience with remedial actions than with removal actions. Under the removal program in section 311 of the CWA, EPA gained a great deal of experience in undertaking short-term clean-up actions, primarily in response to spills of oil. However, CERCLA created remedial action as a new type of response. In order to assure that response personnel have adequate guidance to follow when investigating, planning, and implementing remedial response, EPA has provided a detailed systematic procedure for determining the appropriate extent of remedy in Subpart F. The procedure is structured in a step-by-step format which requires a series of analyses and judgments based upon criteria enumerated in the Plan. The methodology set forth in § 300.68 includes:

(1) An initial scoping of the project based on criteria in § 300.68(e) to determine the type or types of remedial action that may be necessary. (Remedial response is categorized as initial, source control, or off-site remedial action.)

(2) A remedial investigation to determine the precise nature and extent of the problem and to assure that the remedial evaluation was accurate (see § 300.68(f)).

(3) Development of alternatives based on the type or types of remedial action necessary (see § 300.68(g)).

(4) An initial screening of the alternatives based on economic, engineering and environmental criteria specifically enumerated in § 300.68(h)(1), (2), and (3). This step requires a decision, based on the criteria, to eliminate certain alternatives because: (a) The alternative requires an expenditure of money far in excess of other alternatives (without providing substantially greater public health or environmental benefit) (§ 300.68(h)(1)); (b) the alternative has significant adverse environmental impacts or fails to effectively contribute to the protection of public health, welfare or the environment (§ 300.68(h)(2)); and (c) the alternative is not feasible from an engineering perspective (§ 300.68(h)(3)).

(5) Detailed analysis of remaining alternatives based on components specifically referenced in § 300.68(i)(2).

(6) The lead agency's determination of the appropriate extent of remedy, based upon its selection of the alternative which meets the standard of § 300.67(j) (i.e., "the lowest cost alternative which effectively mitigates and minimizes damage to and provides adequate protection of public health, welfare and the environment").

EPA believes that this process provides a sound basis for determining the appropriate extent of remedy, particularly given the limited experience in remedying hazardous substance releases. This process allows for the selection of the appropriate remedies developed through careful study and inquiry without requiring a rigid selection process which would preclude the flexibility needed to incorporate our expanding knowledge and experience in developing remedies. Significant issues concerning the Agency's selection of the

appropriate extent of response are discussed in Section III of this preamble.

4. *Section 105(4)—Appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and non-governmental entities in effectuating the Plan.*

EPA has developed an entire subpart and numerous other provisions of the Plan to assure efficient and effective coordination of all participants in response to oil discharges and hazardous substance releases. These provisions of the Plan are largely based on extensive experience gained under the section 311 response program.

The following sections of the Plan address Federal agency involvement:

(1) Section 300.21—specifies responsibilities delegated to each Federal agency under Executive Orders 11735 and 12316.

(2) Section 300.22—encourages all Federal agencies to coordinate activities through the National Response Team (NRT) and Regional Response Team (RRT) structure and with affected private and public entities and to make facilities and resources available for response actions.

(3) Section 300.23—identifies those Federal agencies which are members of the NRT and which may be called upon by response personnel for assistance; encourages use of regional contingency plans to specify roles relevant to the subject area; requests that Federal agencies appoint members to participate in the national response structure; and specifically enumerates the new responsibilities for hazardous substance response among EPA, USCG, the Department of Health and Human Services (HHS), the Department of Defense (DOD), and the Federal Emergency Management Agency (FEMA).

State and local roles and responsibilities are specified in § 300.24, which requests that each State participate in RRTs; gives States authority to fully participate (and vote) on the RRT; encourages local governments to participate in RRT activities; encourages States to use enforcement authorities; and encourages States to take the lead on CERCLA responses by entering into agreements with the Federal government. In addition, a new § 300.62 has been added which addresses the State role in taking remedial response and the States' responsibilities when doing so. A more thorough discussion of the State role is contained in Section IV of this preamble.

Roles of private entities are specified in § 300.25, which encourages and stresses the critical importance of private commitments for assisting in response, and requests that private entities assume specific responsibilities in the appropriate regional or local contingency plans. This section also contains information on the safe and effective use of volunteers in response actions.

Subpart C further specifies the roles that each of these groups can play in the national response structure—Federal agencies through their participation in the NRT (§ 300.32(a)); and Federal agencies, States, and localities through their participation in the RRT (§ 300.32(b)). Within this national framework, Subpart C further discusses the role of the on-scene coordinator (OSC) in coordinating with States, the private sector and other Federal entities. For example, § 300.33(b) requires the OSC to notify States and Federal agencies when they are affected or when their expertise is requested in a response action. While the Plan contains the critical framework for national roles and responsibilities, regional and local plans are designed to specify how these roles and responsibilities will be carried out in light of particular regional and local capabilities and needs.

5. *Section 105(5)—Provision for identification, procurement, maintenance, and storage of response equipment and supplies.*

The requirements of CERCLA section 105(5) are satisfied in several sections of the Plan, briefly summarized here. The NRT evaluates equipment readiness and coordination, and makes recommendations as to the appropriate equipping and protection of response teams (§ 300.32(a)). The NRT also coordinates the supply of equipment and personnel to the affected region in the event of a response action (§ 300.34(h)). The RRTs consider equipment readiness and similar issues in their continuing reviews of regional and local responses (§ 300.32(b)(6)). The role of the RRTs in requesting and coordinating assistance and provision of resources from Federal, State, and local government agencies and from private parties in the event of a release (§ 300.34(f)) bears directly on the requirements of CERCLA section 105(5). Section 300.34 of the Plan also provides for the use of the National Strike Force and Strike Teams which make available specialized containment and removal equipment, emergency task forces managed by USCG OSCs who have the capability to deploy equipment, and the Emergency Response Team (ERT) of the EPA which can provide access to specialized decontamination equipment. The Plan also devotes a separate section, § 300.37—Response Equipment, to the Spill Clean-up Inventory system which is available for obtaining rapid information on the location of response and support equipment.

In addition to these provisions in the Plan which insure access to response equipment and supplies, Subpart D emphasizes the importance of the development of Federal regional plans for each standard Federal region, and of Federal local plans wherever practicable. Included in these plans should be information on all useful facilities and resources available from all sources that can be employed in the event of a release (§§ 300.42(a) and 300.43(a)). The Plan does not discuss in great detail the precise division of responsibility assigned to all levels of government because the amount and type of resources available will vary among regions, as will the need for particular types of resources. In addition, it is possible that different levels of government will take more active roles in planning and carrying out response activities. Accordingly, the Plan provides that responsibilities in the identification, procurement, maintenance, or storage of equipment and supplies shall be assigned at this level through the development of Federal regional and Federal local plans.

6. *Section 105(6)—A method for and assignment of responsibility for reporting the existence of such facilities which may be located on federally owned or controlled properties and any releases of hazardous substances from such facilities.*

Section 300.23(d) sets forth responsibilities of all Federal agencies for reporting the releases of hazardous substances and discharges of oil from facilities or vessels which are under their jurisdiction or control. The reporting procedures in § 300.23(d) are in accordance with CERCLA section 103 and Subparts E and F of the Plan. Specifically, in Subpart E, § 300.51(b), reports of discharges are directed to the NRC or the nearest USCG or EPA office. If not previously reported to the responsible OSC, all reports are required to be relayed promptly to the NRC. Subpart F, § 300.63(b), reiterates the statutory requirement of CERCLA section 103(a) for immediate notification of the NRC by the person in charge of a vessel or facility as soon as he has knowledge of a release from the vessel or facility of a hazardous substance in an amount equal to or greater than the reportable quantity, established pursuant to section 102 of CERCLA. Any releases that have not been previously reported should also be promptly

reported to the NRC. Thus, the Plan both assigns responsibility to the Federal agencies involved and provides the method by which such reporting is to be accomplished.

7. Section 105(7)—Means of assuring that the remedial action measures are cost-effective over the period of potential exposure to hazardous substances of contaminated materials.

EPA has devoted a great deal of attention to developing a process that will insure the cost-effectiveness of remedial action measures. There are several aspects of this process which should be noted. First, the Plan limits the extent of evaluation and investigation activities if the release does not present complex technical problems or requires rapid response. Section 300.68(d) and (e) focuses investigation activities and development of alternatives on the problems presenting the greatest need. Second, the Plan emphasizes the systematic development of remedial alternatives (including, where appropriate, the alternative of taking no action) which forms the basis for examining cost-effectiveness. Third, the initial screening of remedial action alternatives to eliminate those with extremely high costs that do not offer significantly greater protection further safeguards the process against unnecessary expenditures. Fourth, the remaining viable alternatives must be evaluated in terms of their costs, the level of protection that they provide, their reliability in providing that level of protection, and the ability to implement the remedy after considering technical, environmental, legal, and administrative constraints (§ 300.68(i)).

EPA notes that, in both the initial screening and the detailed analysis of alternatives, the costs of alternatives must be compared over time and must include operation and maintenance costs (§ 300.68(h)(1) and (i)(2)(ii)). This ensures that the statutory requirement for consideration of the duration of costs is satisfied. Finally, EPA has included in § 300.68(j) an explicit statement that the extent of remedy to be selected for each site will be the cost-effective remedial alternative. Thus, EPA has both established the procedures for arriving at a cost-effective remedial action and provided a decision rule for selection of cost-effective remedies in order to fulfill the statutory requirement.

8. Section 105(8)—Criteria for determining priorities among releases or threatened releases and, based upon this criteria, a list of national priorities.

EPA has included as Appendix A to the Plan a Hazard Ranking System (HRS) which, together with the administrative system established in § 300.66, constitutes the criteria and methods EPA is using to establish national priorities for remedial action. The Agency presented a detailed discussion of the development and components of the HRS in the preamble to the proposed revisions (see 47 FR 10975 through 10976). Additionally, a discussion of the significant public comments on the HRS and the National Priorities List and EPA's response to those comments is presented in Section V of this preamble. EPA is deferring publication of the National Priorities List at this time. It will be included as Appendix B to this Plan. Accordingly, this Appendix is reserved.

9. Section 105(9)—Specified roles for private organizations and entities in preparation for response and in responding to releases of hazardous substances, including identification of appropriate qualifications and capacity thereof.

Section 300.25 specifies the roles of volunteers, industry groups, and academic organizations in response actions. This section stresses the important role of these groups in providing scientific and technical information needed in devising clean-up strategies as well as the assistance role of volunteers in response. As discussed in subsection 4 above, coordination of these entities is achieved through the national and regional response structure. It is critical that private entities be coordinated closely with governmental entities to assure efficient response actions. Therefore, the Plan calls for specific commitments of resources by private entities in § 300.25, and for detailing these specific commitments in regional and local plans. EPA believes these plans are the appropriate mechanisms to list those private resources that are nearby, applicable to local conditions, and readily available.

10. Section 105 also requires that the Plan specify procedures, techniques, materials, equipment, and methods to be employed in identifying, removing, or remedying releases of hazardous substances comparable to those required under section 311(c)(2) (F) and (G) and (j)(1) of CWA.

Section 311(c)(2)(G) of the CWA requires that the Plan include a schedule specifying dispersants or other chemicals, if any, that may be used in removing oil or hazardous substances from water. Subpart H of the Plan establishes procedures for authorizing the use of dispersants and other chemicals for removing oil discharges or releases of hazardous substances. Subpart H vests authority in the OSC to authorize use of any dispersant or other chemical to move an oil discharge if such dispersant or chemical is on EPA's Acceptance List developed under Annex X of the existing Plan. Use of dispersants and chemicals not on EPA's list may be authorized by the Administrator or her designee. Section VII(H) of this preamble contains a further discussion of this issue.

The remaining provisions of sections 311(c)(2)(F) and (j)(1) of the CWA require development of procedures that have comparable provisions in section 105 of CERCLA and have been discussed above. With regard to comparable provisions for the removing and remedying of hazardous substance releases, § 300.70—Methods of Remedying Releases, details the types of techniques that may be considered in remedial actions. Furthermore, both § 300.65—Immediate Removal, and § 300.67—Planned Removal, contain information on the types of techniques and measures which may be used for removal action for hazardous substance releases.

III. Comments on Determining the Appropriate Extent of Response

The Agency received many comments on the Plan's provisions in Subpart F relating to the determination of the appropriate extent of response. Most of the comments focused on the provisions for determining the appropriate extent of remedy. While some commenters supported the process established in § 300.68 for selecting a remedy, many commenters criticized the Plan for not explicitly requiring consideration of State and Federal health and environmental standards in development of remedies. Similar comments stated that the Plan should include specific levels of clean-up that must be attained with any remedy.

EPA developed the methodology for determining the appropriate extent of remedy based on the recognition that experience in developing remedies for hazardous waste sites is limited. Moreover, each hazardous waste site has unique characteristics which merit individual attention. Often the unique characteristics of sites will represent factors that have never been dealt with before. These considerations led EPA to develop a methodology which would provide structured and reasoned decision-making while still allowing the flexibility to deal with unique and unforeseen characteristics. EPA believes the system included in § 300.68 of the NCP accomplishes these goals.

A. Environmental Standards

The system does not explicitly require that environmental standards be used in determining the appropriate extent of remedy. However, § 300.68 does specify "environmental effects and welfare concerns" as one of the criteria to be considered in determining the appropriate extent of remedy. In some cases, this would allow EPA to consider applicable standards in selecting the appropriate remedy. It must be noted, however, that circumstances will frequently arise in which there are no clearly applicable standards. For instance, acceptable levels of hazardous substances in soil are not established, and there are no generally accepted levels for many other hazardous substances in other media. Even where there are standards for a particular substance, they may not be applicable to the conditions surrounding the release. Therefore, if the Plan included a rigid requirement that standards be met, it would obscure the real issue in many cases of how to adequately protect public health.

EPA cannot develop new standards for the hundreds of substances it will be confronted with in response actions. Not only is the requisite legal authority lacking in CERCLA, but such a task would also be enormous, costly and time-consuming, and would unduly hamper the clean-up of releases, which is CERCLA's primary mandate. Therefore, EPA has developed a system for decision-making which has as its primary feature a reasoned process that contains a series of checks throughout to ensure that the decision-making process produces an effective remedy. The methodology emphasizes cost-effective, environmentally sound remedies which are feasible and reliable from an engineering standpoint.

B. Cost Effectiveness

Several commenters argued that the process for selecting a remedy placed too much emphasis on cost.

Although cost does play an important role in selection of remedies, it does not take precedence over protection of public health, welfare and the environment. First, the initial scoping of a project provided for in § 300.68(e) does not involve any consideration of cost other than requesting Fund financing for the work. The primary consideration at this stage is defining the nature of the problem requiring remedy. As alternatives for remedying the release are developed under § 300.68(g), again the primary emphasis is on the techniques available to clean up, not on cost.

Cost considerations are first addressed when alternatives are initially screened in § 300.68(h). This cost analysis is required by section 105(2) of CERCLA. EPA has modified § 300.68(h)(1) to clarify that alternatives cannot be rejected on the basis of cost alone, since any clean-up alternative would be more costly in simple dollar terms than a no action alternative. Alternatives may be rejected for cost reasons at this stage, but only if they do not provide substantially greater public health or environmental benefit. This section requires that in order for alternatives to be given further consideration they must be technically and environmentally sound and must effectively contribute to protection of public health, welfare and the environment. For the alternatives that remain after the initial screening, a detailed analysis is required of their cost, engineering feasibility, and environmental, welfare and public health effectiveness.

Some of the commenters' concern as to the extent of the Plan's emphasis on environmental and public health protection could be the result of an inadvertent omission in the **Federal Register** of one of the factors requiring analysis in § 300.68(i). Section 300.68(i)(2)(iv) requires comparative assessment of alternatives in terms of their effectiveness in minimizing and mitigating the health or environmental problem. This assessment is essential, along with consideration of cost and engineering reliability, in making the decision required by § 300.68(j). The final decision on the appropriate alternative is based on cost-effectiveness; it selects the lowest cost alternative which effectively mitigates and minimizes damage to and provides adequate protection of public health, welfare and the environment (§ 300.68(j)). EPA notes that this series of analyses and check points explicitly requires remedies that provide the requisite protection of public health while still meeting statutory requirements for analysis of costs and cost-effectiveness. Cost alone may not control these decisions.

IV. Comments on the Role of States in Implementing the Plan.

Several commenters stated that the Plan generally failed to adequately identify the roles of State and local governments. Other more specific comments on the role of States included: (1) That States should be allowed to designate OSCs and participate fully in the national response structure; (2) that the Plan should allow greater State participation in decision-making regarding the need for and extent of CERCLA-funded response; (3) that the Plan should specify procedures for entering into contracts or cooperative agreements; and (4) disagreement with the requirement that States share in response costs other than those costs specified in section 104(c)(4) of CERCLA.

EPA agrees with commenters that the States should play a large role in the Superfund program. Subpart B of the Plan provides extensive detail as to States' participation in response actions (see discussion in Section II(4) above). To the extent States are willing and capable, the Plan allows States to participate fully in the national response structure. In addition to the specific provisions cited in section II(4) of this preamble, the Plan also encourages State involvement and delineates State roles in the following provisions.

(1) Section 300.25(b)—encourages use of technical and scientific information generated by States.

(2) Section 300.25(c)—encourages State officials to coordinate volunteers pursuant to local plans.

(3) Section 300.32(a)(7)(iv)—allows NRT to develop procedures to improve coordination with States.

(4) Section 300.32(b)—includes States on RRTs.

(5) Section 300.32(b)(2)—allows State membership in RRT and allows additional State representatives as observers.

(6) Section 300.32(b)(5)—encourages States to participate actively in RRT activities and designate individuals to assist in development of Federal regional and Federal local plans, and to serve as the contact point for coordinating response with local governments.

(7) Section 300.32(b)(6)(vii)—requires RRT to include in reports to NRT efforts taken to improve State and local coordination.

(8) Section 300.33(b)(3)—requires the OSC to coordinate response efforts with appropriate State agencies.

(9) Section 300.33(b)(5)—requires OSC to notify States of possible discharges or releases.

(10) Section 300.34(d)(3)—requires the SSC to assist OSC in responding to State requests for assistance.

(11) Section 300.34(f)(6)—gives the States participating in the RRT the same status as any Federal member of the RRT.

(12) Section 300.36(c)—requires the NRC to advise States of notices of discharges or releases.

(13) Section 300.42(a)—requires RRTs to work with States in developing regional plans.

(14) Section 300.43—specifies that local plans should provide for coordination with the State.

(15) Section 300.55(a)(5)—provides for OSC to determine whether State has capability and an agreement in place to undertake oil discharge response, in lieu of Federal lead response being taken.

(16) Section 300.57(b)—requires the State representative to the RRT and DOI to arrange for use of volunteers for waterfowl affected by oil discharges.

(17) Section 300.58(f)(4)—allows States to be reimbursed for oil removal pursuant to 33 CFR Part 153.

(18) Section 300.61(c)—encourages State participation in response actions.

(19) Section 300.63(b)—requires the NRC to notify the State when notices of releases are received pursuant to section 103(a) of CERCLA.

(20) Section 300.66(c)(1)—requires State officials responsible for providing Fund-financed response to coordinate with those responsible for enforcement activities.

(21) Section 300.66(d)—establishes a system by which States can submit candidates for the Nation Priorites List.

(22) Section 300.81(b)—requires OSC to consult with affected States before authorizing use of dispersants of other chemicals.

In addition to these numerous provisions, to respond to commenter's concerns, EPA has added a new § 300.62 which specifically outlines the manner in which States may enter into contracts and cooperative agreements for response actions pursuant to CERCLA. EPA believes that State participation and cooperation are crucial to undertaking response actions. Therefore, under this section, States are encouraged to undertake response actions. The extent of activities that a State will be authorized to undertake will be specified in the cooperative agreement or contract. EPA cannot specify in the Plan all authorities which a State will exercise because the specific content of each agreement or contract will be determined by the nature of the response action to be taken, the extent of State capabilities, and the extent to which the State wishes to have responsibility for the response. Section 300.62(d) sets forth commitments which the State must provide prior to remedial design activity. Section 300.62 also authorizes contracts or cooperative agreements for undertaking removal action.

EPA agrees with commenters that States should be able to designate OSCs and act as full partners in the response structure. Providing that statutory and administrative requirements are met by States, the Plan permits and, in fact, encourage States to take the lead on response actions pursuant to a contract or cooperative agreement. In order to clarify that an OSC may be a State official whose scope of authority is specified in the cooperative agreement, EPA has modified the definition of "On-Scene Coordinator" in § 300.6. Moreover, to clarify that a "lead agency" may be a State acting pursuant to the terms of a contract or cooperative agreement, EPA has modified the definition of lead agency in § 300.6 as well. These modifications are discussed at greater length in section VII(A) of this preamble.

Finally, many of the comments questioned provisions included in the Guidance for Entering into Cooperative Agreements. EPA notes that this guidance was published the day before the NCP was proposed. The guidance is not a part of this Plan, and thus a discussion of the provisions in that guidance is not appropriate to a discussion of the provisions of this Plan. However, one issue which was raised in this context also affects the Plan. The issue is whether the statute allows EPA to require cost-sharing by States when it is not explicitly set forth in the statute. In the Plan, this issue is relevant to section § 300.67(b)(4) which requires States to share costs of planned removals.

CERCLA section 104(c) requires that no remedial actions be provided pursuant to section 104 of CERCLA unless the State in which the release occurs first enters into a contract or cooperative agreement providing assurances that (1) The State will assure all future maintenance of the removal and remedial action; (2) the State will assure availability of an acceptable hazardous waste disposal facility, if necessary; and (3) that the State will pay either 10 per cent of the cost of the remedial action (including all future maintenance) or, in the case of a facility that was owned at the time of disposal of hazardous substances therein by the State or political subdivision thereof, at least 50 per cent of any sums expended in response to a release at such a facility. The statute is silent with respect to State cost-sharing for removal actions at privately-owned sites. EPA will require that States requesting Fund-financed removals enter into an appropiate cooperative agreement or contract. EPA's general grant regulations provide that grantees and those receiving Federal assistance through a cooperative agreement must share project costs except as otherwise provide by law (see 40 CFR 30.720(a)). Where, as here, the statute is silent as to cost-sharing on certain response actions, EPA can require the States carrying out such actions to contribute at least 5 per cent of the cost of the action. Pursuant to its grant regulations, EPA has decided to require that States pay 10 per cent of planned removal costs at privately-owned sites. The same requirement shall apply to planned removals provided pursuant to a State/EPA contract. The type of legal instrument (i.e., cooperative agreement or contract) used in authorizing the planned removal should not affect the State's share of the cost and, therefore, both arrangements will require a 10 per cent State cost share.

V. Comments on the Hazard Ranking System and the National Priorities List

The preamble to the proposed revisions included a detailed discussion of the Hazard Ranking System (HRS) and the National Priorities List (NPL) (47 FR 10975 through 10977). The Agency received extensive comments on the HRS and NPL. Many of the comments supported the basic structure of the HRS and EPA's proposed development of the NPL. Others made suggestions for general and specific modifications. The Agency has adopted many of the suggested comments and they are discussed below. The HRS is included as Appendix A to the revised Plan. In the preamble to the proposed revisions, the Agency explained why it was deferring publication of the NPL (47 FR 10977). Now that the HRS is finalized, the Agency has requested that the States submit their priority rankings applying the HRS. After the Agency receives the State submissions, it will develop the NPL and propose that list for public comment. When promulgated, the NPL will be Appendix B to the revised Plan.

The Agency has included a very lengthy and, at times, quite technical discussion in response to the comments on the HRS and NPL. The Agency believes that this extensive discussion is necessary in order to respond to all of the significant public comments which often addressed very technical aspects of the HRS. Many of the comments questioned the data requirements of the HRS with a frequent criticism being that the HRS failed to accurately distinguish between the degree of hazard presented at different releases; the result being that the HRS might give high scores to releases that otherwise should not be included on the NPL.

The role and importance of the HRS and NPL must be kept in perspective.

the NPL, which will include at least 400 releases, is merely the first step in considering a release for Fund-financed remedial response. If a release is included on the NPL but a later remedial investigation discloses the hazard to be less significant than originally thought to be, a decision may be made not to provide Fund-financed remedial response. Similarly, the NPL will be reviewed periodically and a release can be added if more extensive data indicate a more significant hazard at the release.

A. Hazard Ranking System

1. *Overview of the Hazard Ranking System.* As discussed in the preamble to the proposed revisions (47 FR 10975), the HRS is designed to estimate the potential hazard presented by releases or threatened releases of hazardous substances, pollutants and contaminants. Application of the HRS to data from an observed or potential release will enable the Agency to calculate a "score" or estimate of the risk from such release. The HRS score for each release will be used in determining the placement of the release on the NPL.

The calculation of the HRS score for a release analyzes the five potential "pathways" of exposure of the human population or a sensitive environment. Each release or potential release is analyzed for exposure from (1) ground water, (2) surface water, (3) air, (4) direct contact, and (5) fire and explosion. A score will be developed for each of the first three "pathways." Pathways (4) and (5) are used to identify emergency situations that require removal action and, therefore, are not considered in calculating the HRS score.

For each "pathway," the HRS analyzes three categories of "factors" that are designed to encompass most aspects of the likelihood of exposure to a hazardous substance through a release and the magnitude or degree of harm from such exposure. The three categories of "factors" analyzed for each of the three "pathways" reflect: (1) The existence or likelihood of a release, (2) the characteristics of the hazardous substances that have been or may be released, and (3) the population or sensitive environment that is threatened. In the HRS, the first category of factors includes three subsets of factors, one for an "observed" release and, as an alternative when no release has been observed, two for assessing the likelihood of a release, designated as "route" and "containment" factors. For purposes of discussion, they will all be considered as part of the first of the three categories of factors. Each of the three categories may have a number of separate "factors" that will each receive a numerical value according to a set scale for each factor. For example, under category (2), factors that would be analyzed and given numerical values would include the toxicity, persistence, and quantity of the hazardous substance.

After numerical values are assigned to each factor, the HRS uses mathematical formulas, chosen to reflect the relative importance and interrelationships of the various factors to calculate a final score. Those formulas combine the numerical values of all "factors" in a category, then combine the three categories within each "pathway," and finally, combine the three pathway scores to yield a final score for the release or potential release. Therefore, the HRS score represents, for each release or potential release, an analysis of the probability and magnitude of harm to the human population or sensitive environment from exposure to hazardous substances as a result of contamination of ground water, surface water, or air.

2. *Response to Comments.* Commenters generally supported the HRS in its structure of "pathways" and "factor" categories, and the mathematical calculations for approximating the relative potential hazard. Thus, the HRS as promulgated today remains fundamentally the same as the proposed HRS. However, commenters did raise significant issues and suggest changes that are addressed below. General comments and responses are contained in subsection (a). Specific comments on the three "factor" categories are arranged according to each category and are addressed in subsection (b).

(a) *Response to General Comments.* (1) *Cost and Availability of Information.* Several commenters maintained that the data required by the HRS to score releases can be very expensive and will slow the remedial action process for many releases. Other commenters argued that some of the data required would not be available. Other commenters suggested that more factors should be considered or that existing factors should be considered in a higher level of detail.

As these conflicting comments indicate, the amount of information to be collected must be balanced against the cost and time required to obtain that information. EPA anticipates that several thousand releases may eventually be evaluated for inclusion on the NPL. The number and type of factors in the HRS must be consistent with the costs of data collection, the large number of releases, and the resources available for implementing the program. The Agency's experience with the Interim Priorities List indicates that the HRS data requirements, after some adjustments, are adequate without being unduly burdensome or costly.

EPA agrees that some of the data required by the proposed HRS may not be readily available. In developing the HRS, the Agency has excluded a number of factors, such as "bioaccumulation," because sufficient information is not currently available. The Agency believes that adequate information exists or can be obtained for each of the remaining factors in the three "factor" categories in the HRS.

Some commenters suggested that such non-technical factors as political concerns, community and socio-economic interests, and previous response actions should be included in the HRS.

The Agency has not included such non-technical considerations in the HRS. Section 105(8)(A) of CERCLA requires the establishment of priorities in light of the relative potential hazard to public health, welfare and the environment, and the HRS is designed to estimate this relative hazard, rather than assess the above subjective factors. However, the Agency may consider community interests and socio-economic factors in determining the appropriate remedial action for releases once they are included on the NPL.

The Agency does not believe that previous response actions should be taken into account in scoring a release. The HRS makes clear that releases are scored on the basis of conditions that existed prior to any response actions. Allowing partial response to affect the score would be a disincentive for public agencies to undertake any clean-up action because Federal funding for full-scale clean-up might not be available. In addition, if responsible parties have undertaken partial or temporary clean-up actions prior to scoring, releases might be excluded from the NPL without sufficient consideration of the need for further action or permanent remedy.

A number of commenters maintained that the HRS promotes the listing of releases with known quantified data, to the detriment of releases where analysis has not been performed.

As discussed above, EPA has tried to minimize the information required for the HRS, so that releases which have not been extensively investigated are not eliminated from the system. However, the HRS does include minimum data requirements. The

alternative would be to score releases on the basis of inadequate information, or to wait until extensive information has been generated for every release. It would be difficult to develop a system that provides a meaningful comparison between releases where information has been collected and releases where little is known. The requirement of section 105(8)(A) of CERCLA to list national priorities will not be met if EPA waits until extensive information has been generated for all releases. Releases for which the minimum data required for HRS scoring do not exist can also be addressed in revisions of the NPL, after adequate information has been collected for these releases.

Some commenters expressed concern that some of the scientific literature referenced in the HRS had not been subject to rigorous peer review.

The scientific literature referenced in the HRS was taken from scientific literature available for public review and scrutiny. In addition, the rating factors have been reviewed by the States, the EPA regional offices and the general public as part of the rulemaking. In developing the HRS, the Agency evaluated additional scientific literature and selected that literature that it believed to be the most appropriate and scientifically sound.

(2) *Pathways.* One commenter suggested that the HRS should be designed so that releases with scores for a particular "pathway" (i.e., ground water, surface water, or air) that exceed a designated threshold are automatically given higher placement on the NPL, or are subject to further analysis.

The Agency believes that the HRS is adequately designed to accommodate situations where a release has a high potential for contamination through a single pathway. The scoring formula of the HRS ensures that if only one pathway is rated with a high score, the HRS score could still be sufficiently high that the release could be included among the highest priorities. Using a designated threshold, as suggested by this comment, would also accomplish this objective. However, EPA does not believe this is necessary and the existing process for aggregating all factors to obtain the score for a relase more accurately reflects the situation at a particular release.

One commenter objected because the HRS gives equal consideration to the air, surface water, and ground water pathways, arguing that ground water contamination has broader implications, is more costly and difficult to clean up, and lasts much longer.

Under the revised HRS, the highest possible score, representing worst case incidents, is the same for each pathway. The Agency does not believe that it can discriminate between the very serious hazard resulting from contamination of ground water or any other pathway.

(3) *Other comments.* Several commenters pointed out that the HRS is not adequate to serve as the basis for making management decisions concerning Fund expenditures for remedial action.

The HRS is designed to rank releases on the basis of hazards presented by each release. However, the HRS is not the sole tool for making Fund management decisions. Decisions concerning Fund expenditures for particular projects are also based on further technical information derived from remedial investigations and cost estimates based on feasibility studies and state assurances (see section 300.67). All of this information must be compiled before a decision can be made that a release on the NPL warrants Fund-financed remedial action.

A number of commenters objected because the HRS was not published in the **Federal Register**. Some argued that the HRS was therefore unavailable for public review and comment.

Section 300.65(d) of the proposed NCP specifically referenced the HRS as the basis for the detailed methods and criteria for ranking hazardous substance releases. The Agency included an address where the HRS could be obtained upon request and solicited comment on the HRS. The substantial comment submitted on the HRS refutes any argument that it was unavailable for public review and comment.

Some commenters objected to what they termed premature publicity on releases when the releases are being analyzed and compared for inclusion on the NPL.

The Agency agrees that premature publicity should be avoided when possible. The process of ranking and selecting releases necessarily involves some degree of publicity because the States are encouraged to involve the public in their selection process. Publicity is also, to some extent, unavoidable because the NPL will be proposed in the **Federal Register** prior to final promulgation.

Some commenters were concerned that the HRS could be manipulated to place certain releases in a higher priority position than justified.

The Agency has instituted a training program for EPA regional offices and States designed to ensure proper application of the HRS, and developed a quality assurance program to review the scoring of releases prior to preparing the NPL. These measures, together with the intent to propose the NPL for comment, are intended to minimize any inconsistencies in scoring or attempts to manipulate the HRS.

(b) *Response to Comments on the Three "Factor" Categories.* (1) *Category 1: Observed Releases or Likelihood of Threatened Releases.* Several commenters asserted that the approach to assigning single scores to "observed" releases is inappropriate because the frequency and quantity of releases are not considered. Commenters argued that a one-time or minor release would be treated as equivalent to a frequent chronic source of release.

The score for an observed release indicates that the likelihood of a release is 100%. The fact that some substances have been released is a good indication that substances at the site can escape and increases the likelihood of a more substantial subsequent release. Data on frequency and quantity of an actual observed release, and data necessary to determine that a release is a minor occurrence rather than a frequent problem, would require standardized long-term monitoring to establish representative concentrations. This would add inordinately to the cost and time needed to score releases. The extent of the release is more appropriately considered during subsequent investigations.

Several commenters stated that releases should not be treated as observed releases if they are within regulatory limits. For example, air emission rates should be compared to emission rates permitted for operating facilities.

The Agency believes that permitted releases of pollutants are not analogous to uncontrolled releases of hazardous substances. First, the actual pattern of nonpermitted releases generally will not be regular or predictable and the observed release used for scoring may be followed by more substantial releases. Continuous or frequent monitoring would be necessary to establish the long-term level of release. Second, emission or effluent limits do not necessarily represent levels which cause no harm to the public health or the environment. These limitations are frequently established on the basis of economic impacts or achievability. Therefore, releases are treated as observed releases whenever hazardous substances, pollutants or contaminants have escaped from a facility.

One commenter suggested that the existence of a release should be measured in the aquifer of concern.

EPA agrees with this comment and has clarified the directions in section 3.5 of the revised HRS, concerning "Targets for the Ground Water Migration Route." The same "aquifer of concern" must be used for all rating factors, so that if a release is observed in any specific aquifer, this aquifer must be used to identify "target" populations as well.

Several commenters argued that qualitative evidence of release, such as objectionable taste in water, should not be equated with quantitative evidence of release, such as measured presence of substances.

The HRS now requires more conclusive evidence to demonstrate the existence of an observed release. Generally, only analytical measurements are acceptable as evidence of an observed release. Qualitative evidence of releases justifies a score for an observed release only if there is conclusive evidence to confirm that a release has occurred at the facility.

Several commenters suggested that the HRS should give greater consideration to the mobility of hazardous substances. A few commenters specifically suggested that the lack of mobility of heavy metals in soil should be taken into account in estimating the likelihood of release.

The HRS considers mobility by assessing the physical state (i.e., whether liquid, gas or solid) of the hazardous substance and assigning the highest value for liquid substances and the lowest value for solid substances. This factor is now considered under the HRS's designation of "route" factor, designed to estimate the likelihood of a release. The Agency does not believe that it is feasible to include other factors reflecting mobility in the HRS. The level of scientific understanding of the transport and fate of hazardous substances in the environment is not adequately developed to justify estimates of the likelihood of a release without an expensive and extensive data collection effort. For example, to determine the mobility of metals at a particular facility, extensive data collection and analyses of the soils and leachate are necessary. EPA believes that these analyses would add inordinately to the cost and time required to collect data, without significantly improving the ability of the HRS to predict the likelihood of release. Other factors which might affect mobility, such as solubility and volatility, have been deleted from the HRS because of insufficient information, and because the information that is available applies only to pure compounds not normally found at hazardous waste releases.

A few commenters objected to designating as "liquid" the physical state of liquids in wastewater treatment ponds regulated by NPDES permits or by RCRA.

The Agency has determined that spills and one-time or continuous accidental releases of untreated or partially treated substances from these facilities may be addressed under CERCLA. Higher values are assigned to liquids because they are more likely to migrate from the facility. If releases from such facilities are scored, there is no reason not to treat liquid hazardous substances as "liquids." If the substance is well controlled because the facility is well operated, the release will receive a low numerical value for the "containment" factors.

Some commenters objected because the HRS does not include geochemical removal mechanisms, such as sorption and coprecipitation, that remove metals and radiochemical pollutants from migrating ground water.

EPA believes that the data base regarding these mechanisms is not sufficiently broad to warrant inclusion in the HRS. If it is shown that these mechanisms will prevent migration of substances at a facility, this fact will be taken into account in determining the need for response action at a particular release.

Some commenters argued that the HRS should provide for scoring the potential for a release to the air.

The HRS has not been changed in this respect. There must be an observed release, rather than a potential release, in the air pathway. Definitive characteristics could not be established for air migration because existing data bases were inadequate. Air releases must currently exist, must be measured, and must not be caused by disturbances from investigations.

One commenter suggested that gases not be considered under the ground water pathway.

EPA disagrees because many gases are soluble in water and therefore may migrate to ground water with leachate from a facility.

Finally, the HRS now provides that, in determining net precipitation to identify the potential for leachate generation at a facility, seasonal rather than annual data may be used when available. In some regions of the country, seasonally heavy rainfall may increase the likelihood of leachate generation, even if net precipitation is low when measured on an annual basis.

(2) *Category 2: "Waste" Characteristics.* Most of the comments on the waste characteristics category of the HRS concerned two issues: toxicity and persistence, and quantity of hazardous substances. (The HRS uses the term "hazardous waste" and "waste characteristics." These terms encompass all hazardous substances that are covered by CERCLA section 101(14) and allow for including those substances meeting the definition of pollutant or contaminant in section 104(a)(2).)

(i) *Toxicity and Persistence.* Some commenters argued that the range of numerical values (generally zero to three) that can be assigned to a factor is too narrow to realistically rate relative toxicity because of the differences among the many substances.

In developing the HRS, EPA reviewed many rating schemes and determined that rating schemes using high, medium and low ratings function in a satisfactory manner for the purposes of the HRS. Releases will be scored on a large number of factors and distinctions among releases will emerge after consideration of all factors.

A number of commenters disagreed with the use of the Sax rating system for chronic effects. They suggested that the HRS rate only acute toxicity because of the lack of recognized authority on chronic toxicity effects. In addition, some commenters suggested that values derived from acute toxicity tests should be applied to identify and classify toxicity values for the HRS.

The Agency believes that the HRS appropriately considers chronic effects. Most exposures to hazardous substances via air and water exist at low levels and extend over a long period. In addition, most projected health effects are chronic. These effects may contribute significantly to the potential hazard of releases to public health and the environment. An in-depth search was made of the scientific literature and state-developed systems to find alternative methods of incorporating acute and chronic toxic effects in the HRS. No system has been identified as a suitable alternative to the rating system developed by Sax. Alternative scoring methods suggested by commenters have been carefully studied and ruled out for reasons including inapplicability, complexity, and expense of application. Exclusive reliance on acute toxicity testing is not appropriate because a system is needed for both acute and chronic values.

Some commenters maintained that the score for the factor evaluating the degree of hazard of substances at a release should not be based on a

substance that is present only in miniscule quantities.

The HRS provides that the score for the factor evaluating the degree of hazard of substances at a release, rated by toxicity and persistence, is based on the most hazardous substance at the release. The HRS has been revised so that if information is available on the amount of the substance present, the hazardous substance used to evaluate the degree of hazard must be present at levels at least equal to the reportable quantities established under section 102 of CERCLA.

Some commenters objected to the fact that the HRS determines degree of hazard by scoring the most hazardous substance that is not adequately contained. Thus, a facility with waste containing only a small proportion of an extremely hazardous substance could score the same for degree of hazard as a facility with waste containing a very high proportion of that substance.

The Agency does not believe that it is possible to require a detailed analysis of the relative proportion of different types of hazardous substances at a facility without inordinate expense and delay. Representing the hazards at facilities on the basis of the most hazardous single compound present will generally provide an adequate evaluation of the relative hazards.

A number of commenters argued that concentration of hazardous substances should be considered in rating toxicity, so that the toxicity of a substance is measured at the point where impacts on human health or the environment actually occur.

The Agency's position is that concentration data on long- or short-term levels are frequently unavailable, controversial, and costly to obtain. Experience in sampling and monitoring programs has shown that actual measurements at different locations of a release may vary considerably. The determination of a representative concentration would require repetitive or continuous monitoring over a long period of time, using the same protocols at all releases to generate comparable data. In addition, the points of human contact vary for each release or potential release. The HRS does assign lower values to target populations that are further from the release; however, EPA does not believe that it is necessary to expend a large portion of the Fund to collect data simply to determine precisely the relative potential risk of a release on a national scale.

Several commenters proposed that a bioaccumulation factor should be added to reflect the fact that some chemicals are stored and accumulated in body tissue.

EPA has investigated the use of bioaccumulation and found that there is no measure of bioaccumulation potential with readily available data that would enable EPA to inlcude this factor in the HRS.

Finally, the HRS now combines toxicity and persistence in a matrix, and the scale has been changed so that their combined value equals zero when toxicity equals zero, regardless of persistence. The change was made for simplicity and to facilitate application of the HRS.

(ii) *Hazardous Substance Quantity.* A number of commenters argued that hazardous substance or "waste" quantity should be part of the assessment of the nature of the substance and that treating quantity as a separate category serves to bias the HRS so that large quantities of low hazard substances score high.

The Agency agrees with this comment. Accordingly, quantity has been changed into an additive factor under "Waste Characteristics," thus reducing its significance to the overall score. In addition, the HRS instructions have been clarified to specifically exclude contaminated soil and water from determinations of hazardous substance quantity.

A number of commenters stated that the HRS is designed to address those releases which have 2,000 or more drums of hazardous substances.

The Agency has changed the HRS so that it no longer requires any minimum quantity of hazardous substances, unless the substances are not present in reportable quantities.

Some commenters maintained that the quantity of substances used to rate the waste quantity factor should be calculatd by multiplying the concentration of hazardous substances by the total quantity of hazardous and nonhazardous substances at the facility. Some suggested that, if the concentration of hazardous and nonhazardous substances at a facility is known, then the waste quantity factor should be determined by only the quantity of hazardous substances at the facility.

The Agency believes any method to identify actual quantities of hazardous substances at a facility must take into account the fact that nearly all substances contain some portion of non-hazardous materials. The Agency has considered several alternative methods and has been unable to develop an internally consistent approach for comparing pure hazardous substance quantity at facilities where definitive information is available with hazardous substance quantity at facilities where such information is not available. Therefore, the HRS remains unchanged and waste quantity is calculated according to the total amount of substances at a facility.

(3) *Category 3: "Target" Population and Sensitive Environment That Is Threatened.* The "target" category consists of factors for estimating the magnitude of the threat to affected populations or sensitive environments potentially exposed to the release. Comments generally addressed three areas: exposure from contaminated ground water, use of water resources, and the sensitive environmental factor.

(i) *Exposure from Contaminated Ground Water.* The method for determining the population potentially exposed to ground water contamination is to estimate the number of people living within a three-mile radius. Some commenters maintained that the actual population that is potentially exposed should be identified where information exists to show that these estimates do not reflect the actual exposed population. They also argued that the HRS should allow consideration of hydrogeologic information on ground water flow direction and natural in-place geologic barriers between shallow and deep aquifers.

The population within a three-mile radius of the facility is still considered the potentially exposed population under the revised HRS. Determining the extent of population actually exposed or threatened by using ground water flow information is generally not practicable. In many instances the information is not available, and in others the flow direction varies. Even where there is extensive knowledge of geohydrology, interpretation is nearly always subject to dispute. Requiring a precise measure of the affected population would add inordinately to the time and expense of applying the HRS. Provisions for limiting the area of concern based on flow are not included in the HRS, because of the lack of reliable data on direction of flow and because the direction of flow frequently varies. The HRS does require that the same aquifer used to identify a release must be used in determining the potentially exposed population. In addition, geohydrological data on known aquifer interruptions may be used to show that potential targets which are located within three miles do not draw from the affected aquifer.

Some commenters objected on the basis that the three-mile radius is excessive in comparison to the area

designated by EPA under the underground injection progam.

The area of review in the Safe Drinking Water Act's Underground Injection Control (UIC) program, however, refers to that area within which existing wells, because of increased formation pressure caused by injection activity, might allow the movement of fluids between formations. It does not refer to any estimate of how far contaminants may travel. The three-mile radius used in the HRS is based on EPA's experience that, in most cases currently under investigation, contaminants can migrant to at least this distance. It should be noted that no commenters disagreed with the selection of three miles for technical or scientific reasons.

Some commenters asserted that, when determining the nearest well, it is not appropriate to assume that houses or buildings near a facility have wells that draw from the aquifer of concern.

The Agency agrees and has changed the text under "Populations Served by Groundwater" (Appendix A, section 3.5) to require more definitive evidence of ground water use. People within three miles who do not use water from the aquifer of concern are not to be counted.

A number of commenters suggested that the HRS should consider the dilution of contaminants by the environmental media since it is the concentration at the probable point of exposure that is of concern.

The HRS has been designed to consider environmental dilution of released hazardous substances by lowering the score of populations potentially exposed as their distance from the hazardous substance increases. A sophisticated analysis of attenuation would require information that is not readily available for most of the releases that should be considered for the NPL.

Finally, the HRS now combines the distance to the nearest well and the population served by ground water into a matrix to provide greater discrimination of scores. The combined value equals zero when either the population served equals zero or the distance to the nearest well is greater then three miles (see Appendix A, section 3.5).

(ii) *Use of Water Resources.* Some commenters maintained that, when considering an aquifer of concern, the HRS should distinguish between aquifers in use, not used, or unusable.

Section 3.5 of the HRS addressing "Targets for Ground Water Use" has been changed, so that points are not assigned for aquifers that are unusable for reasons such as extreme salinity or extremely low yield.

Some commenters felt that the HRS should contain a provision for considering industrial use of ground or surface water which may affect the extent of exposure.

The Agency agrees and has elevated the value for water used for commercial food processing. Though less hazardous than direct consumption of drinking water, this use warrants a higher value than provided in the previous version of the HRS.

A number of commenters suggested that the HRS ratings should consider future use of resources.

The Agency considered ways of addressing future uses, but was unable to develop or identify a mechanism to objectively measure future use. The Agency concluded that attempting to assign numerical values to future uses would be too speculative.

Several commenters asserted that food chain exposure to hazardous substances should be considered in the HRS.

While the food chain is not treated as a separate pathway of exposure, food chain contamination is specifically addressed in rating factors for water use, land use, and the target population exposed to potentially contaminated water through irrigation.

(iii) *Sensitive Environment Factor: The Distance to a Sensitive Environment.* Category 3 includes a factor for assigning a numerical value based on the distance from a hazardous substance release to a sensitive environment, such as wetlands or the critical habitats of endangered species.

Some commenters maintained that the factor assessing the distance from a release to a critical habitat of an endangered species should assess the distance to the "range" of an endangered species, not just the critical habitat. Other commenters suggested that national wildlife refuges should be added to the environmental factor in addition to critical habitats.

The Agency believes that the concept of "range" for endangered species is much too broad to be used in the HRS. The majority of potential exposures of endangered species within their range would be temporary in nature and would likely have little effect on their safety. The Agency has modified the environmental factor to include national wildlife refuges as a sensitive environment.

Several commenters proposed that the environmental factor representing the distance to a wetland should be refined to differentiate between wetlands along streams at high flow conditions and streams at stagnant flow conditions.

The Agency has not made this change because of the difficulties in predicting the transport and fate of hazardous substances and estimating the potential damage based on stream flow rates.

Some commenters argued that flood plains should not be equated with critical habitats in the sensitive environment factor.

EPA agrees because flood plains may accommodate a wide range of activities instead of, or in addition to, serving as critical habitats. The reference to flood plains has been deleted from the sensitive environment factor.

A number of commenters objected to the fact that the HRS assigns the highest score for the factor "distance to a sensitive environment" when a facility is within ¼ mile of federal reserved lands, regardless of how well the facility is constructed. The commenters suggested that this provision reduces the availability of such areas for new facility siting.

The HRS is not used to rank prospective sites for future hazardous waste disposal facilities. Any facility located in such an area that is well constructed and maintained will rank very low due to other factors in the HRS.

Some commenters suggested that a sensitive environment factor should be added to the list of potential targets of ground water contamination. The HRS only includes the sensitive environment as a factor for the surface water and air pathways.

When contaminated ground water is released or flows into surface water, it is considered under the surface water pathway. The Agency is unaware of any serious impacts on sensitive environments due exclusively to ground water pollution. As a result, it is not necessary to add a separate rating factor under the ground water pathway, since sensitive environments are addressed under the surface water pathway.

Finally, a general comment made by several commenters was that there are inconsistencies in the methods used to assign numerical values to the different factors.

The Agency believes that the conditions represented by rating factors in the HRS are not equally important in the evaluation of a hazardous situation. Accordingly, the rating factor scales are intentionally different and multipliers have been chosen based on professional judgment and experience concerning the relative importance of each factor. The selection of scales and multipliers has been confirmed by the consistency of

scores with the perceived hazard at releases.

B. National Priorities List

The most significant comments on the provisions governing the NPL (§ 300.66 (d) and (e)) requested: (1) Clarification of criteria used for including releases on the NPL; (2) explanation of the relation of the NPL to remedial actions; (3) inclusion of procedures for adding and deleting releases from the NPL; (4) deletion of the requirement for State assurances at the time the releases are submitted to EPA; and (5) clarification of provisions for adding State top priority releases to the NPL. The following sections discuss these comments and explain the Agency's changes in response to these comments.

1. *Criteria for Including Releases on the NPL.* Some commenters indicated that it is not clear whether the Plan provided that inclusion (ranking) of a release or "site" on the NPL would be based on the purely "mathematical" factors included in the HRS, or whether other factors will also be considered.

The HRS was developed pursuant to section 105(8)(A) of CERCLA. This section provides for development of criteria and priorities based on relative risk or danger to public health or welfare or the environment, taking into account the following considerations: (1) The population at risk, (2) the hazard potential of hazardous substances at such facilities, (3) the potential for contamination of drinking water supplies, (4) the potential for direct human contact, (5) the potential for destruction of sensitive ecosystems, (6) State preparedness to assure State costs and responsibilities, and (7) other appropriate factors. The HRS was designed to take into account only those aspects of the above considerations (generally, considerations (1) through (5)) that reflect the risk of harm existing at releases and that can be quantified for inclusion in a mathematical model. Once an HRS score has been assigned, the additional factors referenced in section 105(8)(A) will be considered in selecting releases for the NPL, and in selecting releases from the NPL for Fund-financed remedial actions. This process is set forth in Subpart F of the NCP.

Other commenters argued that releases which may present the sufficient degree of risk to be placed on the NPL should nonetheless be excluded if CERCLA does not authorize Fund-financed response. One example is the provision in section 111(e)(3) precluding use of Fund money for remedial action with respect to "federally owned facilities."

The Agency has decided that where available data indicates that active Federal facilities are the source of a release (either inside or outside the facility), these facilities will not be included on the NPL.

2. *Role of the HRS in Selecting Releases from the NPL for Remedial Action.* Many commenters maintained that the HRS does not provide sufficient detail to distinguish among releases for the purpose of deciding when to take remedial action, and therefore all releases on the NPL should be equally eligible for remedial action. Several others stated that, all other factors being equal, releases with a high HRS score should be given a higher priority for remedial action.

The NPL identifies releases that are eligible for remedial action and the relative risk as calculated by the HRS. The actual selection of sites for remedial action depends not only on relative risk but also on the availability of cost-sharing and other State assurances, the existence and status of responsible parties, the status of enforcement actions, and other considerations included in Subpart F of the Plan. In addition, remedial investigations or feasibility studies might produce more precise information that affects the urgency of remedial action. The Agency will therefore not necessarily respond to releases in order of their HRS scores.

3. *Adding and Deleting Releases from the NPL.* Several commenters suggested that the Plan should explicitly provide that the NPL will be updated at least annually as required by CERCLA section 105(8)(B). Other commenters suggested that the Plan should explain the process by which a release can be removed from or added to the NPL after the initial publication of the NPL. Specific grounds suggested by commenters for deleting releases from the List included: (1) The existence of a Federal agreement for clean-up by private parties; (2) a more sophisticated assessment of risk; and (3) voluntary remedial actions that may reduce the release's NPL ranking.

EPA has added to the NCP a provision (§ 300.66(e)(7)), stating that EPA will revise the NPL at least annually. The criteria for adding releases to the NPL are the same criteria for including releases on the initial List. Additions will be made consistent with the process in § 300.66(e) for developing the initial List. The Agency has not included criteria for deleting releases from the List. At this time, EPA did not believe that it had the necessary experience to establish a procedure in the Plan for removing releases from the List. In guidance issued on June 28, 1982, EPA indicated conditions when it might remove releases from the NPL. If, after EPA and the States acquire experience in working with the NPL, it becomes necessary to establish such a procedure in the Plan, EPA will propose the necessary modifications.

4. *State Assurances.* Section 300.65(e) of the proposed revisions to the NCP required States, when submitting releases for inclusion in the NPL, to indicate in a letter of intent either their ability to make the assurances for cost-sharing, future maintenance, and disposal site availability as required by section 104(c)(3) of CERCLA, or their intention to make those assurances at the appropriate time. Many States objected to the requirement to make assurances at this early stage in the process. They argued that States are in no position to make these assurances when submitting releases for inclusion on the NPL, because the appropriate extent of remedy, the types and amounts of wastes that require off-site disposal and the amounts of money needed to fulfill these assurances are uncertain. States also argued that they should not be required to provide assurances at a stage when EPA has not committed to providing funds for remedial action on a site.

EPA has reconsidered this requirement in light of the public comments and has decided to eliminate the requirement for assurances when releases are submitted for inclusion on the NPL. There will be sufficient time before remedial actions are initiated for the States to provide the necessary assurances.

5. *State Priority Submissions.* Several commenters suggested that EPA should clarify the provision for States to identify their top priority release. One commenter requested that EPA explicitly acknowledge that the State's top priority release need not be the top ranked under the HRS.

Section 300.66(d)(3) provides that each State may designate a release as the State's highest priority release by certifying that the release presents the greatest danger to public health, welfare and the environment among known releases in the State. The State's highest priority release does not have to be the State's highest ranked release under the HRS.

One commenter indicated that releases should be included on the NPL at the initiative of States, and that EPA should include releases only after consultation and general agreement with the States.

The great majority of the releases considered for inclusion on the NPL will

be at the initiative of the States. EPA has the authority, however, to add releases where necessary to assure that the NPL reflects, to the extent possible, the releases presenting the greatest risk or danger to public health, welfare and the environment. Section 300.66(e)(1) provides that States' priorities will be reviewed and consolidated by EPA into the NPL, and that EPA may add, in consultation with the States, any additional priority releases known to EPA.

VI. Comments Regarding Planned Removal

In the preamble to the proposed revisions, EPA explained its reasons for delineating two categories of removal actions—"immediate" and "planned" (47 FR 10975). This delineation was intended to specify those circumstances when the Agency believed it would be appropriate for the Fund to finance a removal action. The delineation neither authorized response actions beyond the statutory definitions of removal, nor improperly restricted the types of removal actions authorized by the Act.

Many commenters felt that the proposed description of planned removals was confusing and not adequately explained. Other commenters expressed concern that the criteria for taking a planned removal were too broad or undefined and did not adequately differentiate planned removal from immediate removal or remedial action. In order to more clearly delineate those situations in which planned removals may be taken and the purposes for which this category of response is intended, EPA has modified § 300.67.

Section 300.67(a)(1) allows for planned removals when the conditions for terminating an immediate removal exist, yet a substantial cost savings can be realized by completing the action and not demobilizing equipment and resources. EPA believes that such response flexibility is needed to ensure the effective use of Fund money and to achieve the greatest amount of protection of public health and the environment with the funds available. This category will be used to respond to releases at which a small amount of work is necessary to complete clean-up at a release, thus avoiding the high costs of demobilizing equipment only to mobilize again for a continued response. In addition, § 300.67(a)(2) allows action at a release that is not on the National Priorities List and that does not meet the criteria for an immediate removal, yet poses a risk to public health or the environment that requires action before the release could be added to the National Priorities List for remedial action.

Some commenters questioned whether planned removals were needed at all, or whether the statutory categories of removal and remedial action could suffice.

Immediate removals are intended for response to situations of immediate and significant harm to human life or health or the environment; these are emergency situations which require rapid immediate response. Other situations also exist which require an expedited response, but not an immediate one. In these situations, more deliberation can be given to planning the response action. The statutory category removal action covers both of these situations. By making this distinction between immediate and expedited response, the Plan provides for better management of the Fund.

Section 300.67(b) requires that any request for a planned removal be made by the State governor or his or her designee. This request must include relevant information about the release and assurances for cost-sharing. Many commenters questioned EPA's proposal to require State cost-sharing for planned removal actions. Commenters felt that States would not have sufficient funds to meet these requirements; that such a requirement would delay response action unnecessarily; and that CERCLA did not authorize requiring State cost-sharing for removal actions.

EPA has chosen to require cost-sharing for planned removals, in exercise of its discretion under the statute and EPA grant regulations (discussed in Section IV above), for a number of reasons. First, such cost-sharing provides evidence that the State is committed to removal action at the site in question, and has made the determination that action is needed to prevent a significant risk to public health or the environment. Second, the statute provides for and encourages an active State role in selecting the releases that require response and in sharing the costs of response. This requirement contributes to effectuating the State role under CERCLA. The NCP section on planned removals provides for both aspects of this role. Planned removals will only be undertaken if the State governor or his designee requests such action. Therefore, the Plan now gives the States a high degree of flexibility in selecting their own sites for receiving Federal money. The request for planned removal, however, must be accompanied by a plan for the removal action and by assurance that the State will help in the funding of the action.

Finally, although situations appropriate for planned removals require expedited action, EPA believes that there will be sufficient time before taking a planned removal to arrange for cost-sharing with the affected State without causing delay in response.

Several commenters noted that it would be contradictory to require a State to submit a planned removal site for the National Priorities List, since there would be no point in listing a release as a priority after it had been cleaned up.

EPA has consequently eliminated this requirement. Other commenters noted that the provisions of § 300.66 of the proposal were inconsistent at several points; for example, in requiring a planned removal action to minimize and mitigate damages without relying on future response actions, while also emphasizing actions which are consistent with any subsequent remedial activities. EPA has therefore eliminated these provisions. EPA has also eliminated from this section the requirement that pollution reports be submitted, since the requirement that OSCs submit these reports is already included in Subpart C.

To fulfill the mandate of CERCLA section 105(3), EPA has added considerable detail to the section on planned removals pertaining to the appropriate extent of planned removal action. The Plan now delineates the types of situations in which planned removal action may be appropriate (§ 300.67(a)), the criteria for taking planned removal action (§ 300.67 (a) and (c)), and the criteria for terminating a planned removal action (§ 300.67(d)). The Plan reiterates the statutory limitation in CERCLA on the time period and dollar expenditure allowed for removal action except under certain specified conditions.

VII. Comments and Modifications Relating to Individual Subparts

This section responds to additional comments (not discussed above) and explains other changes made to each subpart of the Plan as a result of comments.

A. Subpart A

Several commenters noted that § 300.3 of Subpart A merely repeated the statutory requirements for the NCP's content. Other commenters suggested that, instead of this repetition, the Plan should clearly delineate its coverage.

EPA agrees and has replaced the list of statutory requirements in the Plan with a new § 300.3(a) which specifies the scope of Federal response

authorities under Section 311 of the CWA and under CERCLA. In addition, EPA has added a new paragraph (b) to this section which summarizes the scope of the Plan's provisions. This summary more accurately reflects the coverage of the Plan.

Many commenters suggested modifications to the definitions in § 300.6. In most cases, the suggested modifications pertained to definitions that were taken directly from the Clean Water Act or CERCLA, and modification was deemed unnecessary.

Several commenters noted that it was unclear that the definition of "size class of discharges" in § 300.6 referred only to discharges of oil. EPA has modified the definition by changing the undefined term "pollution" to "oil discharges" and stating explicitly that it means discharges of oil only. It is noted that the term "discharge," as used in the Plan, applies only to oil.

Other commenters suggested that the Plan establish size classes for releases of hazardous substances. Most of the commenters were concerned that reporting requirements under CERCLA were too stringent and could lead to reporting of insignificant releases.

EPA does not believe it is appropriate to establish in the Plan general size classes for releases of hazardous substances, since the quantity of a hazardous substance is not always indicative of its toxicity. Small quantities of one hazardous substance may be more toxic and present a more significant threat to human health than greater quantities of other hazardous substances. CERCLA establishes reporting requirements for releases of hazardous substances and authorizes EPA to establish specific reportable quantities for releases of all hazardous substances. Until such time as EPA develops regulations revising reportable quantities, section 102(b) of CERCLA assigns a reportable quantity of one pound to substances defined as hazardous by section 101(14) of CERCLA, with the exception of those substances for which reportable quantities have been established pursuant to section 311(b)(4) of the Clean Water Act. For the above stated reasons, the Agency believes that it is neither appropriate nor necessary to establish size classes of releases for hazardous substances in the Plan. Definition of reportable quantities is not a requirement of section 105 of CERCLA. Rather, the Agency has initiated separate proceedings to address this matter as required by section 102 of CERCLA.

A few commenters noted that the definition of "coastal zone" contained in the Plan differs from that under the Coastal Zone Management Act (CZMA) and questioned whether it should be consistent. The definition included in the Plan specifies that it is to be used only "for the purpose of this Plan." This term is used in the Plan for the sole purpose of distinguishing between EPA and USCG jurisdictional areas for response activities. Accordingly, it need not be consistent with the CZMA definition.

One significant modification to Subpart A is in response to comments that specific decision-making responsibilities in the Plan should be clarified. Commenters noted that the use of the terms "lead agency" and "on-scene coordinator" (OSC) referred only to Federal officials, to the exclusion of State officials, and that the term "lead agency" was unclear. EPA has modified the definitions of "lead agency" and "OSC" to provide that both may include a State agency or official acting pursuant to the terms and authorities granted through a contract or cooperative agreement with the Federal government. This modification acknowledges the important role States may exercise in response actions. The term "lead agency" refers to the Federal or State official that provides the OSC. "Lead agency" is used because several agencies are granted the authorities that will be exercised by the "lead agency" under the Plan. These authorities often extend beyond the authority of an OSC.

To further delineate the responsibilities of OSCs, the final revised Plan includes a provision for designation of a "responsible official" to exercise OSC authority in certain situations. The new term "responsible official" refers to those individuals responsible for undertaking planned removals or remedial actions under CERCLA. The definition includes State officials if the State is granted this authority pursuant to a contract or cooperative agreement. EPA added this term to clarify that, in the case of planned removal or remedial actions, the official in charge may not always be called an OSC. In such long-term actions, the official in charge could be an OSC, but is more likely to be another official of the Federal or State government. Accordingly, this official is defined as a "responsible official" and is given the authorities and responsibilities assigned to OSCs.

Finally, commenters suggested that it was inappropriate to require that volunteers be recruited and trained by the response authority. This provision is simply intended to require that volunteers be competent for the actions for which they are being utilized. EPA has clarified this provision by deleting the words "recruited" and "trained" from the definition of volunteer in § 300.6 and has clarified § 300.25(c) pertaining to volunteers. This modification is discussed below.

B. Subpart B

Subpart B delineates the responsibilities and roles that all levels of government and private entities may play in response activities. Several commenters suggested that § 300.21 detail the delegations given to the various Federal agencies in Executive Orders 12316 and 11735. In addition, several commenters suggested that Subpart B should include an outline of the specific responsibilities and capabilities of Federal agencies under the Plan. A few commenters suggested that additional material on the roles of HHS and FEMA would be appropriate, since they have new response authority under CERCLA.

EPA does not believe it is necessary to include details from Executive Orders 12316 and 11735. Both are referenced in § 300.21 and are readily available to the public. Details from Executive Order 11735 were not repeated in the existing Plan, and experience indicates that there was no misunderstanding resulting from their absence in the Plan. EPA notes that where delegations are germane to the Plan, they are stated in the appropriate context, as in the division of responsibilities between EPA and USCG in response actions noted in § 300.33(a).

In addition, EPA finds it unnecessary to specifically list all the responsibilities and capabilities each agency has to bring to bear in a response action. Responsibilities and capabilities are subject to constant change by statutory modifications and reorganizations and, because of resource constraints, capabilities will vary. EPA believes the Plan appropriately delineates the responsibilities that each agency should fulfill in the context of the national response structure and the potential capabilities of each agency. EPA agrees, however, that the roles of FEMA, HHS and DOD deserve special mention in the Plan. Unlike the section 311 program, in which response authority was vested only in the USCG and EPA, Executive Order 12316 grants certain response authorities to FEMA, HHS and DOD. EPA has added an explanation of the division of responsibilities between EPA, USCG, FEMA, HHS and DOD in a new § 300.23(e).

Section 300.22 of Subpart B requires that, where appropriate, discharges of radioactive materials will be handled

pursuant to the appropriate Federal radiological plan. EPA recognizes that many such incidents may not be covered by authorities under CERCLA or the CWA. The precise extent of response authority under CERCLA has not been determined. Accordingly, any clean-up activity under CERCLA of radioactive releases will be determined on a case-by-case basis. Federal authorities for responding to radiological incidents fall within the purview of several agencies. To assure that the Federal government adequately coordinates these authorities, there are several existing mechanisms and others under development. For radioactive releases from commercial nuclear power plants, Federal emergency response is coordinated by FEMA and the NRC through the National Radiological Emergency Preparedness/Response Plan for Commercial Nuclear Power Plant Accidents (Master Plan), 45 FR 84910. For radioactive releases not associated with commercial nuclear power plants, the Federal radiological assessment and monitoring is coordinated by DOE under the Interagency Radiological Assistance Plan (IRAP). FEMA is preparing a comprehensive Federal plan that will encompass all types of radiological incidents that may require a Federal response. It will include incidents or accidents at commercial nuclear power plants. The tentative title for the new Federal plan is the Federal Radiological Emergency Response Plan (FRERP). The IRAP has been revised and updated by DOE and will soon be republished as the Federal Radiological Monitoring and Assessment Plan (FRMAP). The FRMAP will be incorporated into the FRERP to establish the latter as one single Federal response plan for any type of significant radiological emergency.

Several commenters suggested that § 300.22 (a) through (c), relating to coordination of Federal agency activities, should include the mandatory "shall" rather than "should."

EPA disagrees and notes again that Federal agency responsibilities will vary due to statutory and budgetary constraints beyond the control of EPA as author of the Plan. EPA cannot impose obligations upon these agencies which they may not be able to fulfill. The Plan must be flexible enough to accommodate these changing conditions. Agency budgets and missions are modified annually. Moreover, Interagency Agreements, Memoranda of Understanding, and guidance documents are the appropriate mechanisms for detailed descriptions of tasks each agency will perform.

Several commenters stated that the thresholds contained in § 300.22(d) did not include a "substantial" threat of release as required by statute.

Section 300.22(d)(2) refers to enforcement authority under section 106(a) of CERCLA, rather than response authority under section 104(a) of CERCLA. Section 106(a) of CERCLA does not require a "substantial" threat as does section 104. Due to this difference, no change is necessary.

One commenter objected to the fact that § 300.22(d)(2) allowed the NRT to recommend that EPA or USCG exercise its enforcement authorities, since the NRT is not delegated such authority. EPA agrees and has deleted this provision.

A few commenters questioned the wording of § 300.22(e) stating that it gives a great deal of authority to the government to coordinate private behavior and that terms such as "pollution" and "large" quantity of oil were not defined. This provision is taken directly from section 311(b)(2)(A) of the Clean Water Act. In this section, Congress did not define the referenced terms. In situations requiring the exercise of this authority, decisions must necessarily be subjective since they are based on the unique circumstances surrounding each situation.

Many commenters stated that it was unclear which agencies were "participating" agencies under § 300.23 (a) and (c). EPA has clarified this by deleting the term "participating" agencies in § 300.23 and noting instead that the agencies are the "Federal" agencies listed in paragraph (b) of the same section. The agencies listed in paragraph (b) are the current members of the National Response Team. EPA has deleted HUD and SBA from this list since they are not current members.

One commenter suggested it was preferable to put the requirement that Federal agencies provide representation to the NRT and RRT and assist in formulating regional and local plans in section 300.23(c), in order to include agency responsibilities to the NRT and RRTs in one place. EPA agrees and has added this requirement in § 300.23(c)(3).

To avoid duplication in the Plan, EPA has deleted the second sentence of § 300.24 (d), (e) and (f) and instead added a cross-reference to the new § 300.62 (discussed in section IV above) which more comprehensively outlines the State role under CERCLA.

Some commenters requested State participation in the Regional Response Team be greater and that it be mandatory. Other commenters questioned whether State participation in RRT activities was a reimburseable cost.

Section 300.24 does allow States full membership on the RRT. This membership is not mandatory, however, since States should have the discretion to participate or not participate given State needs and resources. The issue of which costs are eligible is not one that the Plan resolves. Rather, the extent to which costs will be reimbursed shall be specified in individual cooperative agreements with States. Another commenter noted that §§ 300.24(a) and 300.32(b)(2) were contradictory in that § 300.32 allows local governments to fully participate in RRT activities while § 300.24(a) makes local participation contingent upon approval of the State representative. EPA agrees that these sections are inconsistent and has modified § 300.32(b)(2) to provide that only States have the same status as Federal members (i.e. voting members), leaving local participation subject to the provisions of § 300.24(a).

Other commenters stated that the provisions of § 300.24(c) potentially created duplicative State programs and unnecessarily encouraged States to take response and enforcement actions. EPA disagrees. This section merely recognizes that many States have active response and enforcement programs which are in no way pre-empted by CERCLA. Where such programs exist, EPA encourages their use. This section recognizes that such programs and the Federal program are important complements to one another. One commenter stated that the Plan should not indicate a preference for State enforcement action over Federal action. EPA agrees and notes that § 300.24(c) encourages State enforcement but does not indicate a preference over Federal enforcement action.

Other commenters objected to the use of the term "potentially" in referring to responsible parties in § 300.24(c) and elsewhere in the Plan.

EPA used this term in response to comments on earlier drafts of the Plan which raised objections to calling all involved parties responsible until enough evidence was gathered for the Agency to determine that they are responsible. Since this is often a time-consuming process, EPA has used the term "potentially" responsible.

A few commenters questioned whether the Plan adequately specified those actions that would be eligible for Federal funding.

Subpart F establishes criteria upon which decisions as to eligibility for Federal funding will be based. The

eligibility of particular actions will be decided on a case-by-case basis using these factors. The Plan cannot ensure funding approval for specific actions since current demands for response and expected future demands exceed available funds.

Many commenters were confused as to the provisions in § 300.25 (d) through (f). Several questioned when the Fund will be used to pay for private party clean-up, and whether the section prohibits the taking of remedial action by any person who does not have prior approval. Moreover, commenters stated that § 300.25(e) of the proposal implied that anyone who does not intend to seek Fund reimbursement needs no prior approval. Others questioned whether there should be any prior approval requirements.

In response to these concerns, EPA has substantially modified § 300.25 (d) through (f). Paragraphs (e) and (f) of the proposal have been eliminated and paragraph (d) has been rewritten to require that persons who intend to undertake response actions, and seek reimbursement from the Fund, must obtain preauthorization in order for the response action to be considered consistent with the Plan for purposes of section 111(a)(2) of CERCLA. This provision does not apply to the Federal government or to a State or other person acting pursuant to a contract or cooperative agreement.

Section 111(a)(2) of CERCLA allows payment of claims for response costs incurred by "any other person" as a result of carrying out the NCP, *provided* that such costs are approved under the Plan and certified by the responsible Federal official. Section 300.25(d) provides the mechanism for approval of such costs under the NCP. This mechanism is through notice to the Administrator or her designee and submission of an application for prior approval (preauthorization) of the action.

This preauthorization process allows EPA to better manage Fund money, and helps ensure that private response is conducted in an environmentally sound manner. Further, the preauthorization process gives persons who wish to submit response claims a method to assure themselves that their costs will meet the approval component of section 111(a)(2). EPA is developing procedures for processing such claims pursuant to section 112 of CERCLA.

The provision requiring that private response actions be preauthorized is included in the Plan to ensure that Fund money is spent in a cost-effective and environmentally sound manner, regardless of the party taking the action. In the case of those operating pursuant to a contract or cooperative agreement, EPA can assure consistency with the NCP through the agreement. In the case of the Federal government taking Fund-financed action, consistency with the Plan is assured through internal agency approval procedures. Section 300.25(d) imposes a similar advance approval requirement on those wishing to bring a claim against the Fund for response costs in accordance with section 111(a)2). Section 300.25(d) does not apply to private parties who undertake response actions, but do not intend to seek reimbursement from the Fund.

C. Subpart C

Subpart C establishes the national and regional response structure and explains the role of government and private entities in the response structure.

Several commenters requested further detail in § 300.32(a) on the responsibilities and authorities of the NRT. EPA believes this section adequately details the role of the NRT as the national organization for coordinating Federal response to major pollution incidents and developing recommended actions for national response policies. Roles and responsibilities of the NRT during response actions are detailed in § 300.34 (f) and (g). One commenter noted that, while the Plan allows the NRT to make recommendations on training, equipping, and protecting response teams and coordination of governmental and private entities, section 105 requires that such provisions be specified in the Plan. EPA notes that the Plan does specify these components throughout Subparts B and C. The provision regarding the NRT is intended to allow the body to recommend improvements or modifications in these areas, based on its collective expertise.

Some commenters objected to deletion of material from the existing Plan relating to by-laws of the NRT. EPA eliminated these provisions because they were considered "ministerial" and neither necessary nor appropriate in the Plan. Section 300.32(a) allows the NRT to adopt such by-laws as it deems necessary to its operations. Other commenters suggested making provision in the Plan that NRT meetings be open to the public. Again, such a provision is not appropriate in this Plan, since some meetings may be public and others may require executive session. It is more efficient for the NRT to provide for these decisions in its own procedures.

Several commenters asked how membership on the NRT is determined and suggested that the Plan provide for State membership on the RRT. EPA has clarified the membership process by adding a sentence to § 300.32(a)(1) which provides that agencies may request membership on the NRT by forwarding such requests to the chairman. States are not permitted to be members of the NRT; participation is limited to members with a national presence. The RRT is the appropriate coordinative body for States. The NRT likewise restricts Federal agency members to those with a national presence. For example, the Tennessee Valley Authority is a Federal entity that is very active in response activities. It is a member only of the RRT, however, because its activities are limited to a single geographic area.

Several commenters pointed out that the provisions of § 300.32(a)(7)(i) were confusing since they implied that the NRT responds only to nationally significant releases. EPA has clarified this section by providing that the NRT maintains national readiness to respond to incidents which are beyond regional capability. This provision clarifies that the NRT role is complementary to that of the RRT.

Other commenters maintained that the Plan vested broad and unspecified discretionary authorities in the NRT and RRTs. These commenters believed that certain responsibilities vested in the NRT and RRTs should be specified in the Plan. EPA disagrees. The Plan provides the NRT and RRTs with the authority they require to act as effective coordinating bodies. Their activities are not exclusive of the Plan; rather, they are complementary to the Plan. For example, the NRT is empowered to develop procedures for ensuring coordination of response activities among the various levels of government and private entities (§ 300.32(a)(7)(iv)). This authority obviously does not preempt the rest of Subparts B and C which also provide for such coordination. This section is simply one of the many provisions in these subparts to assure such coordination.

Several commenters were confused over the role of State and local governments on the Regional Response Teams. EPA has clarified § 300.32(b) to provide that States may be voting members on the RRT, while local representatives may participate in meetings in a non-voting capacity. The reason for allowing only one vote per State is to assure efficiency of RRT operations. Allowing an unlimited number of representatives from a single State to vote would distort the fairness of representation on the RRT. This would result in an unwieldy and unfair

voting system, which could be biased toward whoever had the most people in attendance. It should be noted that voting is rarely necessary within either the NRT or RRTs since members usually achieve consensus.

Another commenter suggested that the Plan specify those agencies that compose the Regional Response Team. Such specification is not appropriate to the national Plan, since participating agencies may vary from region to region. Therefore, specification is left to the regional plans.

Several commenters suggested that qualifications for various response personnel mentioned in Subpart C (OSC, SSC, etc.) be included in the Plan. EPA believes that the Plan is an inappropriate place to specify personnel qualifications. Depending on the area covered, qualifications may vary and they are more appropriately considered in the hiring process, not through regulation.

Section 300.33 of the Plan discusses the division of responsibilities, roles and coordinating activities that should be used in a response. Section 300.33(a) specifies the geographic division of response authority between EPA and the USCG. Because commenters noted that, within the USCG/EPA division, DOD has authority for response to releases from its own facilities, EPA has inserted this exception in § 300.33(a).

Many commenters urged that the Plan clearly state that the OSC is responsible for response operations, that others at the scene are under the direction of the OSC, and that the OSC must not be unduly hampered by officials not at the scene. Section 300.33(b) of the Plan clearly specifies that it is the OSC that directs on-scene operations. That is, the OSC is the official in charge of directing on-scene operations. The OSC's authority is subject only to other response authorities delegated under Executive Order 12316. Otherwise, the OSC directs all activities during a response action. The special assistance authorized by Subpart C (i.e., the SSC, ERT and strike forces) includes entities which may be called upon by the OSC to assist in response operations. EPA is sensitive to the fact that response should not be unduly delayed while awaiting approvals or concurrence by officials who are removed from the scene.

Section 300.33(b) (1) through (10) provides a checklist of OSC responsibilities during a response. This list is complementary to responsibilities in Subparts E and F and serves primarily to assure appropriate coordination by the OSC. One commenter suggested adding to § 300.33(b)(6) a requirement that the OSC notify FEMA of situations potentially requiring evacuation, temporary housing, or permanent relocation. EPA agrees and has added this requirement and consolidated § 300.33(b) (6) and (9) into a single paragraph. In addition, in order to assure that the notifications for which an OSC has responsibility are stated in one place, EPA has added a sentence to § 300.33(b)(7) noting that the OSC may call upon HHS for advice in the worker health and safety area and included a new paragraph (9) requiring notification of affected Federal land managing agencies. Several commenters stated that in § 300.33(b), the OSC also should be required to notify State and local agencies. EPA does not believe this notification is necessary since the Plan already provides for the National Response Center to notify the Governor of the affected State or his or her designee of discharges or releases. Other State and local agencies should arrange to be notified through their State's mechanisms.

A few commenters suggested that the Emergency Response Team (ERT) responsibilities cited in § 300.33(d) of the proposal be expanded and that only the OSC be allowed to request the support of the ERT. EPA does not believe expansion of ERT responsibilities is necessary, since those detailed in the Plan are broad examples of the types of services the ERT provides. Although the OSC is the primary requester of ERT services, the ERT also may be needed for response activities by others. EPA believes this flexbility should be preserved in the Plan. Another commenter stated that the Plan leaves to the ERT decisions which should be made in the Plan. EPA notes that nowhere in § 300.34(c) does the Plan require decision making by the ERT—it simply outlines ERT expertise which can be called upon.

Several commenters questioned how the RRT decides whether or not to activate. Some of these commenters were concerned that the RRT should not become involved in response operations without approval of the OSC. The Regional Response Team is activated when the criteria in § 300.34(f) are met. It is not necessary for the RRT to receive OSC concurrence to activate. Instead, the chairman of the RRT makes the decision as to whether the RRT should be activated (often on the basis of a request from a State representative). In the majority of cases, the chairman is from the same agency as the OSC, and, in fact, can be the OSC's supervisor. Therefore, there should be no disagreement as to the need to activate the RRT. Imposition of formal OSC concurrence requirements are unnecessary and inappropriate.

Section 300.34(f)(5)(iv) allows the RRT to suggest replacement of the OSC. A few commenters suggested that private parties also be allowed to do so. Certainly, the Plan does not preclude such a request; however, it is inappropriate to encourage such requests in the Plan, especially since the OSC will often be involved in situations where private parties have failed to clean up properly. Requests for replacement of OSCs should not occur every time a responsible party disagrees with the OSC action.

Several commenters noted that proposed § 300.36(c) did not clearly state the CERCLA and CWA requirements for reporting discharges and releases. Accordingly, EPA has clarified the Plan to note that reports of discharges or releases of oil and hazardous substances above reportable quantities should be made in accordance with 33 CFR Part 153, and section 103(a) of CERCLA. In addition, EPA has eliminated § 300.35(d) regarding pollution reports since the same requirement appears elsewhere in the Plan. A few commenters requested that § 300.36 of the proposal note that the Spill Clean-up Inventory System (SKIM) is also available to private parties. EPA agrees and has noted this availability in § 300.37.

D. Subpart D

Subpart D establishes requirements for Federal regional contingency plans and Federal local contingency plans. Several commenters requested that additional detail be added to the NCP regarding the required content of these plans. EPA does not believe additional material is necessary. First, in the case of regional plans, § 300.42 (a), (b) and (c) outlines the components that should be included in such plans, and explicitly states that regional plans will follow the format of the NCP to the extent possible. This provides guidance to the regions on the topics which should be covered in their plans. Further detail could result in an unduly rigid mechanistic formula for developing regional plans. EPA recognizes that each region will have distinct needs in developing such plans and has provided the flexibility to allow these plans to be tailored to regional needs. These plans are required to be developed by RRTs in consultation with States.

In the case of Federal local plans (§ 300.43), EPA has deleted the requirement that they follow the format of the national Plan. Several

commenters pointed out that this section gave inadequate attention to local needs and conditions. By deleting the requirement that Federal local plans should follow the NCP, EPA is providing greater flexibility for local plans to be developed in accordance with provisions in § 300.43(a) and to be adequately coordinated with existing local response structures.

Finally, several commenters questioned why the Plan did not require State and local contingency planning by State and local governments. EPA strongly encourages all levels of government to undertake such planning; however, EPA believes it is only appropriate for the NCP to specify mandatory planning by Federal entities.

Several commenters suggested that the Plan require adoption of State and local plans when they accomplish the same purposes as the Federal regional or Federal local plan. Such a requirement is unnecessary in this Plan. First, regional plans cover Federal regions which cross State boundaries, thus State plans would not be appropriate as regional plans. Second, both Federal regional and Federal local plans outline how Federal entities will coordinate with State and local governments. Local and State plans generally deal with coordination of State and local entities. Because of these differences, such a requirement would, in most cases, simply pose an additional burden of examining and determining that such Plans are not appropriate. It should be noted, however, that nothing in this Plan precludes drawing upon State and local plans where they are appropriate.

Conversely, other suggested that State plans be required to conform to the NCP. EPA does not believe that such a requirement is appropriate to the national Plan since States should be free to tailor State plans to particular State needs. This would not, however, preclude EPA from requiring State planning as a condition for receipt of Federal funds.

E. Subpart E

Subpart E establishes procedures for responding to discharges of oil pursuant to section 311 of the Clean Water Act. This section reflects the experience gained in oil removal under that program and remains largely unchanged from the existing Plan. Like Subpart F, this subpart includes phases of response, beginning with discovery of discharges under § 300.51, and continuing through documentation for cost recovery actions in § 300.54. In addition, § 300.55 contains a summary of actions the OSC should take upon being notified of a discharge of oil; § 300.56 details requirements for pollution reports, which are reports submitted on removal actions; § 300.57 details special considerations for safety of personnel and waterfowl conservation which must be considered during removal action; and § 300.58 details funding requriements for oil removal.

EPA received very few comments on this Subpart. Most comments generally favored EPA's decision not to make any significant changes to the procedures in the existing Plan for responding to oil discharges. The comments and modifications to Subpart E are discussed below.

Some commenters noted that Subpart E did not clearly differentiate between the requirements for persons "in charge" and "responsible parties" under section 311 of the CWA. EPA has clarified this distinction in two provisions. First, § 300.51(a)(1) has been modified to clarify that notification requirements in case of oil spills under section 311(b)(5) apply to all persons "in charge," not "responsible parties." Second, similar clarification has been made to § 300.55(a)(4) where "responsible party" has been changed to a "discharger or other person."

One commenter noted that § 300.58 did not adequately discuss all sources of funding available for oil response actions. EPA agrees and has modified § 300.58(c) to more clearly differentiate between oil related funds, including the oil pollution fund authorized by section 311(k) of the CWA; the fund authorized by the Deepwater Port Act; the fund authorized by the Outer Continental Shelf Lands Act; and the fund authorized by the Trans-Alaska Pipeline Authorization Act.

F. Subpart F

Subpart F is the major new section of the NCP. It establishes the management system under which response to hazardous substances will be undertaken. Although most of Subpart F applies to Fund-financed response, it should be noted that § 300.68 (e) through (j) also applies to clean-up by responsible parties. Subpart F establishes seven phases of response, from discovery through various levels of response to documentation of response for cost recovery purposes. The phases are designed to give response personnel a decisionmaking framework for undertaking response action. All of the phases need not be undertaken. For example, Phase III—Immediate Removal, will not be necessary at all releases, nor will all releases be eligible for such funding.

Several commenters stated that the process established in Subpart F appears to contemplate a lengthy planning process. One commenter suggested that the Plan include deadlines for particular actions. Another suggested that planning be minimized.

EPA believes that the response steps established in Subpart F assure that Fund money is spent in the most judicious manner on the most severe problems by providing several check points for taking further action. Such checks are necessary, since at each step in the planning process new information may become available showing that the problem is not as severe as anticipated or that it is, in fact, more severe than anticipated. The inclusion of such check points does not cause delay or lengthy planning. Subpart F allows the planning to be tailored to the complexity of the problem presented.

Many commenters suggested that, throughout Subpart F, the term "release" should explicitly include "substantial threat of release" under section 104(a) of CERCLA. EPA notes that the Plan's definition of "release" (see § 300.6) incorporates this term in order to avoid repeating the phrase. Where the Plan refers to section 106 of CERCLA in which enforcement authority does not include "substantial threat" but merely a threat posing imminent and substantial endangerment, the Plan notes this through reference to section 106 of CERCLA. The same scheme has been used with regard to discharges of oil.

Section 300.61 sets forth basic hazardous substance response authorities and policies. Several commenters questioned the adequacy of § 300.61(c)(3) and pointed out that it is important to keep the public informed and to include them in the decision-making process. Specific comments included: (1) Strong advocacy of greater emphasis on public participation; (2) that the Plan places unlimited and unquestioned authority in the hands of the lead agency and NRT; (3) that there should be some procedure to enable the public to understand the protection they are being provided; and (4) that the Plan should include specific procedural requirements for public information and consultation.

EPA agrees that it is important to be sensitive to the needs of communities affected by hazardous substance releases and has incorporated this in § 300.61(c)(3). EPA has devoted substantial effort toward developing an effective community relations program which has been implemented through guidance documents. In order to indicate

that the Agency has issued guidance in this area, EPA has added in § 300.61(c)(3) that it is necessary to be sensitive to local concerns "in accordance with applicable guidance." The guidance provides for development of community relations programs on a site-by-site basis.

EPA has added a new § 300.62 on the State role under CERCLA. EPA decided to add this new section to emphasize the ability of States to undertake responsibility for much of the response detailed in Subpart F. This new section is discussed at length in Section IV of this Preamble.

Section 300.63 of Subpart F is the first step in any response. It details the methods by which releases are discovered, and therefore, the methods by which response personnel became aware of potential problems. This section is required by section 105(1) of CERCLA. The provisions of this section are discussed at length in Section II of this preamble. A few specific comments on this section are noted here. Several commenters noted that § 300.62(b) of the proposal was unclear as to the notification requirements for reporting releases to the NRC. EPA has clarified this provision in a new § 300.63(b) by detailing the requirements for notification and noting that reporting requirements under section 103(a) of CERCLA arise when a reportable quantity is released. Another commenter pointed out that States may not want to be notified in the case of minor releases pursuant to proposed § 300.62. EPA notes that this is a statutory requirement of section 103 of CERCLA.

Section 300.64 of the Plan establishes the procedures for performing a preliminary assessment of releases. This assessment is generally based on readily available information and is tailored to the particular type of release (i.e., emergency or long-term). In situations requiring emergency action pursuant to § 300.65, this initial investigation and evaluation will be short. In the case of slower, long-term releases, this step will be more extensive and is the first step for investigating and evaluating the problems posed by the release. The content of this section is discussed generally in Section II above. Additional comments are noted below.

Several commenters said that the Plan was not specific enough regarding the appropriate extent of a preliminary assessment and that the assessment procedures were not adequate for evaluating a release. Others requested that such assessments be eliminated since assessments can be very time consuming and costly.

EPA believes that § 300.64 is sufficiently detailed. The preliminary assessment is for screening purposes only—it is not the final evaluation for determining whether remedial action is needed. Requirements for a more detailed preliminary assessment would interfere with and delay the decision making process at this stage of the response. For example, a less severe release where information is readily available would allow an expedited assessment. More serious releases with little information available would require an extended assessment. For this reason, EPA has included the methods which may be employed to undertake an assessment, while the lead agency reserves the discretion to tailor the assessment to the factors pertaining to the individual release. EPA further notes that the assessment is just the first step in evaluating a release. It is used to screen out those releases which may not merit a Federal response. For example, EPA's experience indicates that the vast majority of classic spills are responded to by private parties or State or local governments, making further Federal involvement unnecessary or very limited. The assessment also allows the lead agency to quickly move into Phase III and take emergency action, if necessary; to determine that the release requires further evaluation under Phase IV, through a site inspection, and perhaps investigation; or to determine that it does not require Fund-financed response. This preliminary assessment assures that limited Fund money is available to respond to the most significant releases.

Other commenters questioned the need for a site visit during Phase II. A site visit will be made only in those situations in which additional information is needed (§ 300.64(b)) to allow the lead agency to make an informed decision on the appropriate response to the release.

One commenter pointed out that § 300.63(b) would have prohibited a site visit if sophisticated safety equipment was needed, thus prohibiting a visit even if such equipment was available. EPA agrees that this provision could be better worded and has replaced this requirement with: "* * * if conditions are such that it may be performed safely." This modification allows such visits to be taken when safety equipment is readily available, while still assuring the safety of response personnel going on or near the release.

A few commenters questioned how EPA will determine whether further response is required, i.e., whether certain levels of contamination will be responded to while others will not. During the preliminary assessment, one cannot determine with certainty the degree of contamination. For this reason, EPA has included the factors of § 300.64(c) for the lead agency to use in determining when no further action is necessary. Amount of contaimination alone is not the sole determining factor. The other factors of § 300.64(c) must be considered as well.

Section 300.65 establishes criteria for undertaking immediate removals (i.e., emergency response). Several commenters contended that the criteria for taking immediate removal needed to be more detailed. The Plan gives several examples of the types of situations requiring emergency action as well as a threshold for taking such action (see § 300.65(a)). EPA does not believe that further detail is appropriate. The Agency has listed as examples those situations that will clearly require emergency response. For those situations that are not specifically listed, application of the criteria contained in § 300.65(a) will determine whether emergency removal is necessary. EPA believes that this format provides the flexibility required for effective response to a wide range of emergencies.

Several commenters pointed out that the statutory requirement of § 104(c)(3) of CERCLA for limiting response to six months or $1 million was omitted from the section on Immediate Removal. EPA agrees that the statutory requirement should be reiterated in the Plan and has accordingly added a new paragraph (d).

Several commenters suggested that a substantial amount of decisionmaking authority should be delegated to OSCs in order that response not be delayed pending consultation with officials not at the site. Another commenter suggested requiring OSC consultation with EPA Headquarters to assure consistency of Fund expenditures. Moreover, one commenter suggested that the Plan allow OSCs to spend up to $500,000 on removal actions. EPA agrees that response personnel must be able to address classic emergency situations in a timely manner, and believes that § 300.65 facilitates timely response. EPA does not believe, however, that delegations of spending authority should be included in the Plan, since such delegations are often subject to modifications. Internal agency approval processes for EPA personnel to expend funds are neither appropriate to the Plan nor required by section 105 of CERCLA. Instead, § 300.65 contains the methods and criteria for determining whether the problem should be addressed as an emergency, leaving administrative

funding procedures to Agency guidance and directives.

Section 300.66—Phase IV provides for continuing evaluation of releases through investigation and inspection of the release, and details the procedure for using the Hazard Ranking System and compiling the National Priorities List. Section II of this preamble discusses investigation and inspection activities and Section V discusses the establishment of the National Priorities List.

Section 300.67—Phase V sets forth the criteria for undertaking planned removal actions. A discussion of comments related to planned removal provisions in the Plan is included in Section VI above.

Section 300.68—Phase VI provides methods and criteria for undertaking remedial action and for determining the appropriate extent of remedy. A full discussion of the criteria and methods for determining the appropriate extent of remedy and the comments on these criteria and methods is set forth in Sections II and III of this preamble.

Section 300.69—Phase VII requires response personnel to maintain and collect information during all response actions for potential use in cost recovery. This section of proposed revisions is unchanged except for the addition to paragraph (b) of the provision that information and reports on response actions must be forwarded by response personnel only when taking Fund-financed action. This modification clarifies that Federal agencies, such as DOD, that take remedial action using their own funds need not forward such reports to the RRC or NRT.

Section 300.70 sets forth methods for remedying releases in accordance with section 105 of CERCLA. A discussion of this provision is included in Section II of this preamble. Several comments were received suggesting minor modifications and additions to this section. The Agency has incorporated those modifications and additions that included appropriate methods for remedying releases and covered by a category already listed that were not already included in the methods listed in § 300.70

Section 300.71 establishes requirements for worker health and safety. This section was proposed as § 300.70 and detailed worker health and safety considerations, eligible and noneligible costs, and methods for obtaining funding under the Disaster Relief Act. EPA has deleted the eligible and noneligible costs section of the proposal. Several commenters found the section vague and confusing. Since it is difficult to discern cost components that are eligible or noneligible from broad categories which are outlined in the proposal, EPA is deleting this section. EPA notes that delineation of eligible and noneligible costs in the Plan is not a requirement of section 105 of CERCLA. Eligible costs are specifically defined in State contracts or cooperative agreements and other guidance (such as OMB circulars and EPA grant regulations).

Proposed § 300.70(a) (now section 300.71) has been modified to clarify that response personnel must comply with applicable OSHA regulations. EPA has deleted the requirement that OSCs submit safety reports to the work group established pursuant to section 301(f) of CERCLA. The work group has nearly completed its study and recommendations; thus, it is unnecessary for OSCs to submit safety reports for the group's consideration.

G. Subpart G

Section 111(h)(1) of CERCLA provides that damages for injury to, destruction of, or loss of natural resources resulting from a release of hazardous substance, for purposes of CERCLA and section 311(f) (4) and (5) of the CWA, will be assessed by Federal officials designated by the President under the National Contingency Plan. If further provides that designated officials will act as trustees for purposes of section 111 of CERCLA and section 311(f)(5) of the CWA.

Section 111(b) of CERCLA allows claims to be asserted against the Superfund for (1) claims asserted and compensable but unsatisfied under section 311 of the CWA which are modified by section 304 of CERCLA; and (2) other claims resulting from a release or threat of release of a hazardous substance from a vessel or facility for injury to, destruction of, or loss of natural resources, including cost for damage assessment. Such claims may be asserted only by the President, acting as trustee, for natural resources over which the United States has sovereign rights, or natural resources within the territory or the fishery conservation zone to the extent they are managed or protected by the United States, or by any State for natural resources within the boundary of that State belonging to, managed by, controlled by, or appertaining to the State.

Section 107(f) of CERCLA provides that the President or authorized representative of a State will act on behalf of the public as trustee to recover for damages to natural resources pursuant to section 107 of CERCLA.

Subpart G implements these provisions, pursuant to Executive Order 12316, by designating those Federal trustees who will act on behalf of the President in assessing damages, bringing claims, and recovering damages for natural resources under these provisions of CERCLA. A few commenters were concerned that Subpart G did not adequately note the purposes for which trustees are appointed. EPA has clarified this by noting in section 300.72 that Subpart G is limited to the purposes of CERCLA. To clarify that States are also given authority to undertake such actions, EPA has added a new § 300.73 that provides that States are trustees for resources within the States' boundaries, belonging to, managed by, controlled by, or appertaining to the State. In addition, EPA has added a new subsection in § 300.72. Section 300.72(a) designates trustees for land subject to the management or protection of a Federal land managing agency and § 300.72(b) designates trustees for fixed or non-fixed resources subject to the management or protection of a Federal agency. These subsections are intended to clarify trusteeship responsibility for these individual resources. Subsequent sections have been renumbered accordingly.

In addition, EPA has also modified § 300.72(c) to clarify that in subsection (c), where affected resources are subject to the respective statutory authorities and jurisdictions of both DOI and DOC in the geographical areas identified in this subsection, they will act as co-trustees. In order to facilitate more efficient and effective exercise of Federal trusteeship responsibilities, the DOC and DOI, as part of the co-trusteeship responsibility for waters subject to tidal influence and for contiguous upland areas where a pollution incident may affect resources under the authorities of both agencies, are encouraged to enter, as soon as practicable, into a Memorandum of Understanding which will delineate the respective trusteeship responsibilities of each agency in these areas. Co-trusteeship will not apply to a resource(s) for which either agency has sole management or protective responsibility. In these cases, the agency having that responsibility will act as sole Federal trustee. EPA has also added a provision to § 300.74 which encourages that, in cases where trustees have concurrent jurisdiction, the trustees coordinate their activities. The term "natural resources," as defined by CERCLA, is extremely broad. The term includes both fixed and non-fixed resources. It is, therefore, possible that trusteeship responsibilities will overlap. Since natural resource assessment, damage assessment, and restoration

planning generally will need to be performed and restoration plans developed on a geographic basis, it is important that trustees coordinate efforts.

H. Subpart H

The proposed Subpart H replaced Annex X of the previous Plan and provided for a case-by-case authorization by the Administrator or her designee of the use of dispersants or other chemicals in treating oil discharges or hazardous substance releases. The Agency explained in the preamble to the proposed revisions (47 FR 10978) that it was eliminating the detailed testing procedures of Annex X in order to simplify the process for authorizing the use of dispersants and other chemicals. Testing procedures and a process for authorizing use of dispersants and other chemicals would be developed as the Agency gained greater knowledge on this subject.

Many commenters objected to the proposed Subpart H. Most commenters urged that the decision making authority should not be with the Administrator or a designee in Headquarters but rather should be with the OSC in order to enable rapid decision making. Several other commenters suggested that the Plan should include testing procedures to enable the Agency to develop a list of acceptable dispersants and other chemicals that could be used as a guide in decision making. Finally, some commenters stated that Subpart H should provide for involvement of the affected State in the decision making process.

In response to these comments, EPA has made the following changes to Subpart H. First, the proposed text of § 300.81(b) has been deleted as being unnecessary and, in its place, provision has been made for OSCs to authorize the use of dispersants or other chemicals. The OSC may authorize the use of dispersants or other chemicals to treat discharges of oil, if such dispersants or other chemicals are on EPA's Acceptance List developed pursuant to the testing and acceptance procedures of the previous Plan. There are three important limitations in this authorization. First, it applies only to discharges of oil and not to releases of hazardous substances. OSCs have much greater experience in responding to discharges of oil than releases of hazardous substances into water. Additionally, most of the dispersants or other chemicals on EPA's Acceptance List are for use primarily in treating discharges of oil. The second limitation is that OSCs may only authorize use of dispersants or other chemicals on EPA's Acceptance List. That list includes twenty-eight products tested and found acceptable for their intended purposes pursuant to Annex X of the previous Plan. While EPA believes that the procedures in former Annex X need modification to simplify the testing requirements, EPA also believes that the decisions to include those twenty-eight products on the list were sound and that they can be used in an environmentally safe manner under the proper conditions and directions. Finally, the Agency, in § 300.81(b), has specifically provided that the affected State will be consulted regarding the use of any dispersant or other chemicals in the waters of such State. The OSC must also obtain the concurrence of the EPA representative to the Regional Response Team.

For those dispersants and other chemicals not on EPA's Acceptance List, § 300.81(c) continues to provide that the Administrator or her designee may authorize use of such products for discharges of oil or releases of hazardous substances. This provision ensures that any product may be authorized for use if it is determined that such product can be used safely in the waters into which the oil has been discharged or the hazardous substances released.

Subpart H, at this time, does not include testing procedures and a process for designation dispersants or other chemicals as acceptable for use. However, the Agency is developing new testing procedures and will propose those procedures and an approval process for public comment in the near future. The time constraints for promulgating the final revisions precluded completion of development of new testing procedures in time for including them in this publication.

VIII. Other Comments

This section discusses additional issues raised by comments which were generally applicable to the Plan or a particular subpart, or which were outside the scope of the NCP.

Several commenters objected to language in the Plan that used the term "should" in lieu of "shall." In some instances, EPA agreed with the comments and has modified the language. Each of these modifications is noted in the discussion above of the individual subparts. However, EPA believes that, in the remaining cases, use of the term "should" is preferable for several reasons. First, EPA sought, in revising the Plan, to provide a document that would allow the Federal government, or States acting under contracts or cooperative agreements, the flexibility to design response actions to the particular needs of individual releases. Use of the term "shall" would impose upon response personnel the duty to routinely perform certain actions regardless of site-specific exigencies, thus inhibiting timely and effective response. Second, response personnel have many mandatory statutory requirements that they must meet prior to or during a response. Where there is a mandatory statutory requirement, the Plan specifies those requirements as mandatory. However, if the Plan were to make all other requirements mandatory (such as notification of all other Federal agencies, all individual State agencies, and all involved parties) response personnel would be faced with an enormous administrative burden that would severely hamper their ability to perform their primary objective of timely and effective response. Finally, in the new CERCLA response program, there is, to date, little experience in responding to releases from hazardous waste sites. EPA has made mandatory these provisions relating to activities that experience has shown to be necessary at all hazardous waste sites, or which are required by statutes. EPA has provided discretion for other activities that may be appropriate. This allows the OSC or responsible official to make the decision, based on the particular site conditions, that an action is or is not appropriate.

Other commenters questioned whether permits would be required for CERCLA sites. EPA also believes this is an issue beyond the scope of the NCP. This issue will be resolved in conjunction with those EPA programs that affect CERCLA actions.

Several commenters asked what criteria EPA would use in determining whether a release poses an "imminent and substantial endangerment." This term has limited usage in CERCLA, and it pertains exclusively to response authority thresholds for Fund-financed response to pollutants and contaminants under section 104(a) of CERCLA and to the threshold for enforcement actions under section 106 of CERCLA. Section 106 is not implemented through the Plan. The term is a legal term of art which the courts have interpreted through a series of cases, and thus, is beyond the scope of the NCP.

Many commenters questioned how clean-up of Federal facilities would be addressed. EPA is currently developing guidance on this issue. Since the issue requires agreement among Federal agencies as to their respective clean-up obligations, EPA believes that the issue should be resolved in guidance, or

through Memoranda of Understanding, rather than through the Plan.

Several commenters objected to the deletion of Annex VI of the previous Plan which contained sampling procedures. Suggestions included: (1) That, if deleted, a manual should thoroughly cover sampling; and (2) that a separate section should specify basic elements of a site assessment, including reference to sampling and test protocols. The Plan does specify the basic elements for site assessments in sections 300.64 and 300.66. However, EPA does not believe it is necessary to include technical sampling guidance in the Plan and notes that sampling procedures are not required by section 105 of CERCLA. However, EPA agrees that sampling procedures are important in assessing sites and, accordingly, has begun preparation of a sampling manual.

One commenter suggested that Subpart F should provide for restoration of natural resources. The statute does not require that the Plan address resource restoration, other than that which is incidental to the actual response operation. The appropriate place for addressing the restoration phase is through the damage assessment regulations and claims procedures required by sections 301 and 112 of CERCLA.

A few commenters noted that treatment of oil and hazardous substances as separate entities in the Plan makes it difficult to report and fund incidents involving both oil and hazardous substances. EPA will coordinate such incidents on a case-by-case basis. The statutory authorities (and, therefore, funding and response requirements) for the two types of materials are distinct. Reporting of discharges or releases should not pose a problem since both are reported to one central telephone number.

Several commenters raised issues regarding CERCLA enforcement efforts. Enforcement efforts are not addressed by the NCP. Guidelines for use of enforcement authorities have been published in a separate document at 47 FR 20664 (May 13, 1982).

IX. Regulatory Impact Analysis; Regulatory Flexibility Act

An analysis of the economic impacts of the revisions to the NCP was conducted to determine whether the revised NCP is a major rule under Executive Order 12291 and, therefore, required the preparation of a Regulatory Impact Analysis. EPA concluded that the revised Plan is a major rule because it is likely to result in an annual effect on the economy of $100 million or more. The Regulatory Impact Analysis is available for inspection at Room S–398, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. This regulation was reviewed by the Office of Management and Budget.

As required by the Regulatory Flexibility Act of 1980, the Agency has reviewed the impact of the revised NCP on small entities. EPA certifies that the NCP will not have a significant impact on a substantial number of small entities. Aside from the level of clean-up required by responsible parties, the NCP does not address enforcement actions. However, the Regulatory Impact Analysis recognizes that some enforcement actions (including cost recovery actions) taken against parties responsible for hazardous substance releases at sites that are identified on the National Priorities List after it is published. Therefore, some of these costs have been included in assessing the total impact of the NCP. Moreover, it is a matter of Agency discretion whether or not to proceed with enforcement actions against small entities which may be significantly affected by such actions. Therefore, there are no *necessary* adverse impacts on small entities directly associated with the NCP.

As part of the Regulatory Impact Analysis of the revised NCP, EPA estimated that some 60 small firms might be adversely affected by enforcement actions associated with the NCP. This estimate is based on the relative proportions of small firms to other size firms within affected industries, and is not reflective of actual responsibilities of small firms for particular hazardous substance releases. The Agency is consequently not committed to taking this number of enforcement actions against small firms, nor limited to this figure. Nevertheless, EPA estimates that this would result in far less than 20 percent of the total number of small firms experiencing adverse effects. In general, parties responsible for hazardous substance releases may be found across a full range of industries and SIC codes. No small organizations will be adversely affected by the revised NCP, nor is there any likelihood of significant impacts on a substantial number of small municipalities as a result of enforcement actions associated with the NCP. Interested parties are referred to the details of the analysis, which is available for inspection at Room S–398, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials Intergovernmental relations, National resources, Occupational safety and health, Oil pollution, Reporting and record keeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: July 8, 1982.

Anne M. Gorsuch,

Administrator.

Part 1510, Title 40 of the Code of Federal Regulations is redesignated as Part 300 in a new Subchapter J of chapter I and revised to read as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

Subchapter J—Superfund Programs

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Appendix A—Uncontrolled Hazardous Waste Site Ranking System; a users manual.

Authority: Sec. 105, Pub. L. 96–510, 94 Stat. 2764, 42 U.S.C. 9605 and sec. 311(c)(2), Pub. L 92–500, as amended; 86 Stat. 865, 33 U.S.C. 1321(c)(2); Executive Order 12316, 47 FR 42237 (August 20, 1981); Executive Order 11735, 38 FR 21243 (August 1973).

Subpart A—Introduction

§ 300.1 Purpose and objectives.

The purpose of the National Oil and Hazardous Substances Pollution Contingency Plan (Plan) is to effectuate the response powers and responsibilities created by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERLA) and the authorities established by section 311 of the Clean Water Act (CWA), as amended.

§ 300.2 Authority.

The Plan is required by section 105 of CERCLA, 42 U.S.C. 9605, and by section 311(c)(2) of the CWA, as amended, 33 U.S.C. 1321(c)(2). In Executive Order 12316 (46 FR 42237) the President delegated to the Environmental Protection Agency the responsibility for the amendment of the NCP and all of the other functions vested in the President by section 105 of CERCLA. Amendments to the NCP shall be coordinated with members of the National Response Team prior to publication for notice and comment. Amendments shall also be coordinated with the Federal Emergency Management Agency and the Nuclear Regulatory Commission in order to avoid inconsistent or duplicative requirements in the emergency planning responsibilities of those agencies.

§ 300.3 Scope.

(a) The Plan applies to all Federal agencies and is in effect for:

(1) The navigable waters of the United States and adjoining shorelines, for the contiguous zone, and the high seas beyond the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act or the Deep Water Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976). (See sections 311(b)(1) and 502(7) of the Clean Water Act.)

(2) Releases or substantial threats of releases of hazardous substances into the environment, and releases or substantial threats of releases of pollutants or contaminants which may present an imminent and substantial danger to public health or welfare.

(b) The Plan provides for efficient, coordinated and effective response to discharges of oil and releases of hazardous substances, pollutants and contaminants in accordance with the authorities of CERCLA and the CWA. It provides for:

(1) Division and specification of responsibilities among the Federal, State and local governments in response actions, and appropriate roles for private entities.

(2) The national response organization that may be brought to bear in response actions, including description of the organization, response personnel and resources that are available to respond.

(3) The establishment of requirements for Federal regional and Federal local contingency plans, and encouragement of pre-planning for response by other levels of government.

(4) Procedures for undertaking removal operations pursuant to section 311 of the Clean Water Act.

(5) Procedures for undertaking response operations pursuant to CERCLA.

(6) Designation of trustees for natural resources for purposes of CERCLA.

(7) National policies and procedures for the use of dispersants and other chemcials in removal and response actions.

(c) In implementing this Plan, consideration shall be given to the Joint Canada/U.S. Contingency Plan; the U.S./Mexico Joint Contingency Plan and international assistance plans and agreements, security regulations and responsibilities based on international agreements, Federal statutes and executive orders. Actions taken pursuant to this Plan shall conform to the provisions of international joint contingency Plans, where they are applicable. The Department of State should be consulted prior to taking any action which may affect its activities.

§ 300.4 Application.

The Plan is applicable to response taken pursuant to the authorities under CERCLA and section 311 of the CWA.

§ 300.5 Abbreviations.

(a) Department and Agency Title Abbreviations.

DOC—Department of Commerce
DOD—Department of Defense
DOE—Department of Energy
DOI—Department of the Interior
DOJ—Department of Justice
DOL—Department of Labor
DOS—Department of State
DOT—Department of Transportation
EPA—Environmental Protection Agency
FEMA—Federal Emergency Management Agency
HHS—Department of Health and Human Services
NIOSH—National Institute for Occupational Safety and Health
NOAA—National Oceanic and Atmospheric Administration
OSHA—Occupational Safety and Health Administration
USCG—U.S. Coast Guard
USDA—U.S. Department of Agriculture

(b) Operational Title Abbreviations.

ERT—Environmental Response Team
FCO—Federal Coordinating Officer
NRC—National Response Center
NRT—National Response Team
NSF—National Strike Force
OSC—On-Scene Coordinator
PAAT—Public Affairs Assist Team
PIAT—Public Information Assist Team
RRC—Regional Response Center
RRT—Regional Response Team
SSC—Scientific Support Coordinator

§ 300.6 Definitions.

Terms not defined in this section have the meaning given by CERCLA or the CWA.

Claim, as defined by section 101(4) of CERCLA, means a demand in writing for a sum certain.

Claimant, as defined by section 101(5) of CERCLA, means any person who presents a claim for compensation under CERCLA.

Coastal zone, as defined for the purpose of this Plan, means all U.S. waters subject to the tide, U.S. waters of the Great Lakes, specified ports and harbors on the inland rivers, waters of the contiguous zone, other waters of the high seas subject to this Plan, and the land surface or land substrata, ground waters, and ambient air proximal to those waters. The term coastal zone delineates an area of Federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreements and identified in Federal regional contingency plans.

Contiguous zone means the zone of the high seas, established by the United

States under Article 24 of the Convention on the Territorial Sea and Contiguous Zone, which is contiguous to the territorial sea and which extends nine miles seaward from the outer limit of the territorial sea.

Discharge, as defined by section 311(a)(2) of CWA, includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping of oil. For purposes of this Plan, discharge shall also mean substantial threat of discharge.

Drinking water supply, as defined by section 101(7) of CERCLA, means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act) or as drinking water by one or more individuals.

Environment, as defined by section 101(8) of CERCLA, means (a) the navigable waters of the United States, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the U.S. under the Fishery Conservation and Management Act of 1976, and (b) any other surface water, ground water, drinking water supply, land surface and subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

Facility, as defined by section 101(9) of CERCLA, means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (b) any site or area where a hazardous substance has been deposited, stored, disposed of or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

Federally permitted release, as defined by section 101(10) of CERCLA, means (a) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act; (b) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a condition of such permit; (c) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems; (d) discharges in compliance with a legally enforceable permit under section 404 of the Federal Water Pollution Control Act; (e) releases in compliance with a legally enforceable final permit issued pursuant to section 3005 (a) through (d) of the Solid Waste Disposal Act from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure or bioassay limitation or condition, or other control on the hazardous substances in such releases; (f) any release in compliance with a legally enforceable permit issued under section 102 or section 103 of the Marine Protection, Research and Sanctuaries Act of 1972; (g) any injection of fluids authorized under Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator of EPA) pursuant to part C of the Safe Drinking Water Act; (h) any emission into the air subject to a permit or control regulation under section 111, section 112, title 1 part C, title 1 part D, or State implementation plans submitted in accordance with Section 110 of the Clean Air Act (and not disapproved by the Administrator of EPA), including any schedule or waiver granted, promulgated, or approved under these sections; (i) any injection of fluids or other materials authorized under applicable State law (1) for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water, (2) for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas, or (3) which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected; (j) the introduction of any pollutant into a publicly-owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of section 307 (b) or (c) of the CWA and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act, and (k) any release of source, special nuclear, or by-product material, as those terms are defined in the Atomic Energy Act of 1954, in compliance with a legally enforceable license, permit, regulation, or order issue pursuant to the Atomic Energy Act of 1954.

Fund or Trust Fund means the Hazardous Substance Response Trust Fund established by section 221 of CERCLA.

Ground water, as defined by section 101(12) of CERCLA, means water in a saturated zone or stratum beneath the surface of land or water.

Hazardous substance, as defined by section 101(14) of CERCLA, means (a) any substance designated pursuant to section 311(b)(2)(A) of the CWA; (b) any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA; (c) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress); (d) any toxic pollutant listed under section 307(a) of the CWA; (e) any hazardous air pollutant listed under section 112 of the Clean Air Act; and (f) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The terms do not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (a) through (f) of this paragraph, and the term does not include natural gas, natural gas liquids, liquified natural gas or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

Inland zone means the environment inland of the coastal zone excluding the Great Lakes and specified ports and harbors of inland rivers. The term inland zone delineates the area of Federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreement and identified in Federal regional contingency plans.

Lead agency means the Federal agency (or State agency operating pursuant to a contract or cooperative agreement executed pursuant to section 104(d)(1) of CERCLA) that provides the on-scene coordinator or the responsible official.

Natural Resources, as defined by section 101(16) of CERCLA, means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of fishery conservation zones established by the Fishery Conservation and Management Act of 1976), any State or local government or any foreign government.

Offshore facility, as defined by section 101(17) of CERCLA and section 311(a)(11) of the CWA, means any facility of any kind located in, on, or under any of the navigable waters of the U.S. and any facility of any kind which

is subject to the jurisdiction of the U.S. and is located in, on, or under any other waters, other than a vessel or a public vessel.

Oil, as defined by section 311(a)(1) of CWA, means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

Oil pollution fund means the fund established by section 311(k) of the CWA.

Onshore facility, (a) as defined by section 101(18) of CERCLA means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land or non-navigable waters within the United States; and (b) as defined by section 311(a)(10) of CWA means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States other than submerged land.

On-Scene Coordinator means the Federal official predesignated by the EPA or the USCG (or a State official acting pursuant to a contract or cooperative agreement executed pursuant to section 104(d)(1) of CERCLA) to coordinate and direct Federal responses under this Plan; provided, however, that with respect to releases from DOD facilities or vessels, the OSC shall be designated by DOD.

Person, as defined by section 101(21) of CERCLA, means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, U.S. Government, State, municipality, commission, political subdivision of a State, or any interstate body.

Plan means the National Oil and Hazardous Substances Pollution Contingency Plan published under section 311(c) of the CWA and revised pursuant to section 105 of CERCLA.

Pollutant or contaminant, as defined by section 104(a)(2) of CERCLA, shall include, but not be limited to, any element, substance, compound, or mixture, including disease causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingesting through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformation, in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under section 101(14)(A) through (F) of CERCLA, nor does it include natural gas, liquified natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and synthetic gas).

Release, as defined by section 101(22) of CERCLA, means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes (a) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons; (b) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; (c) release of source, by-product or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such act, or, for the purposes of section 104 of CERCLA or any other response action, any release of source, by-product, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and (d) the normal application of fertilizer. For the purposes of this Plan, release also means substantial threat of release.

Remove or removal, as defined by section 311(a)(8) of CWA refers to removal of oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare. As defined by section 101(23) of CERCLA, remove or removal means the clean-up or removal of released hazardous substances from the environment; such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment; such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances; the disposal of removed material; or the taking or such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or the environment, which may otherwise result from such release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) of CERCLA, and any emergency assistance which may be provided under the Disaster Relief Act of 1974.

Remedy or remedial action, as defined by section 101(24) of CERCLA, means those actions consistent with permanent remedy taken instead of, or in addition to, removal action in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, clean-up of released hazardous substances or contaminated materials recycling or reuse, diversion, destruction, segregation or reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances or may otherwise be necessary to protect the public health or welfare. The term does not include offsite transport of hazardous substances, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances or contaminated materials unless the President determines that such actions (a) are more cost-effective than other remedial actions; (b) will create new capacity to manage in compliance with subtitle C of the Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility; or (c) are necessary to protect public health or welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of such substances or materials.

Respond or response, as defined by section 101(25) of CERCLA, means remove, removal, remedy, or remedial action.

Responsible official refers to the Federal offical (or State official acting pursuant to a contract or cooperative agreement executed pursuant to section 104(d)(1) of CERCLA), assigned by the lead agency, responsible for coordinating planned removals, remedial actions and related activities under Subpart F of this plan. Where reference is made to the responsibilities and authorities of an OSC, those responsibilities and authorities also apply to a responsible official.

Size classes of discharges refers to the following size classes of oil discharges which are provided as guidance to the OSC and serve as the criteria for the actions delineated in Subpart E. They are not meant to imply associated degrees of hazard to public health or welfare, nor are they a measure of environmental damage. Any oil discharge that poses a substantial threat to the public health or welfare or results in critical public concern shall be classified as a major discharge regardless of the following quantitative measures:

(a) *Minor discharge* means a discharge to the inland waters of less than 1,000 gallons of oil or a discharge to the coastal waters of less than 10,000 gallons of oil.

(b) *Medium discharge* means a discharge of 1,000 to 10,000 gallons of oil to the inland waters or a discharge of 10,000 to 100,000 gallons of oil to the coastal waters.

(c) *Major discharge* means a discharge of more than 10,000 gallons of oil to the inland waters or more than 100,000 gallons of oil to the coastal waters.

Trustee means any Federal natural resources management agency designated in Subpart G of this plan, and any State agency which may prosecute claims for damages under section 107(f) of CERCLA.

United States, as defined by section 311(2)(5) of CWA, refers to the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands. As defined by section 101(27) of CERCLA, United States and State include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, The Commonwealth of the Northern Marianas and any other territory or possession over which the U.S. has jurisdiction.

Volunteer means any individual accepted to perform services by a Federal agency which has authority to accept volunteer services (example: see 16 U.S.C. 742f(c)). A volunteer is subject to the provisions of the authorizing statute, and § 300.25 of this Plan.

Subpart B—Responsibility

§ 300.21 Duties of President delegated to Federal agencies.

(a) In Executive Order 11735 and Executive Order 12316 the President delegated certain functions and responsibilities vested in him by the CWA and CERCLA, respectively. Responsibilities so delegated shall be responsibilities of Federal agencies under this Plan unless:

(1) Responsibility is redelegated pursuant to section 8(f) of Executive Order 12316, or

(2) Executive Order 11735 or Executive Order 12316 is amended or revoked.

§ 300.22 Coordination among and by Federal agencies.

(a) Federal agencies should coordinate their planning and response activities through the mechanisms described in Subpart C of this Plan and other means as may be appropriate.

(b) Federal agencies should coordinate planning and response action with affected State and local government and private entities.

(c) Federal agencies with facilities or other resources which may be useful in a Federal response situation should make those facilities or resources available consistent with agency capabilities and authorities.

(d) When the Administrator of EPA or the Secretary of the Department in which the Coast Guard is operating determines:

(1) That there is an imminent and substantial threat to the public health or welfare because of a discharge of oil from any offshore of onshore facility; or

(2) That there may be an imminent and substantial endangerment to the public health or welfare of the environment because of a release or threatened release of a hazardous substance, from a facility; he/she may request the Attorney General to secure the relief necessary to abate the threat. The action described here is in addition to any actions taken by a State or local government for the same purpose.

(e) In accordance with section 311(d) of CWA, whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare, because of a discharge or an imminent discharge from a vessel of large quantities of oil or hazardous substances designated pursuant to section 311(b)(2)(A) of CWA, the United States may:

(1) Coordinate and direct all public and private efforts to abate the threat;

(2) Summarily remove and, if necessary, destroy the vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. The authority for these actions has been delegated under Executive Order 11735 to the Administrator of EPA and the Secretary of the Department in which the Coast Guard is operating, respectively, for the waters for which each designates the OSC under this Plan.

(f) Response actions to remove discharges originating from the Outer Continental Shelf Lands Act operations shall be in accordance with this Plan.

(g) Where appropriate, discharges of radioactive materials shall be handled pursuant to the appropriate federal radiological plans.

§ 300.23 Other assistance by Federal agencies.

(a) Each of the Federal agencies listed in paragraph (b) of this section has duties established by statute, executive order, or Presidential directive which may be relevant to Federal response action following or in prevention of a discharge of oil or a release of a hazardous substance, pollutant or contaminant. These duties may also be relevant to the rehabilitation, restoration, and replacement of damaged or lost natural resources. Federal regional contingency plans should call upon agencies to carry out these duties in a coordinated manner.

(b) The following Federal agencies may be called upon by an OSC during the planning or implementation of a response to provide assistance in their respective areas of expertise, consistent with their capabilities and legal authorities:

(1) Department of Agriculture.
(2) Department of Commerce.
(3) Department of Defense.
(4) Department of Energy.
(5) Federal Emergency Management Agency.
(6) Department of Health and Human Services.
(7) Department of the Interior.
(8) Department of Justice.
(9) Department of Labor.
(10) Department of State.
(11) Department of Transportation.
(12) Environmental Protection Agency.

(c) In addition to their general responsibilities under paragraph (a) of this section Federal agencies should:

(1) Make necessary information available to the NRT, RRTs, and OSCs.

(2) Inform the NRT and RRTs (consistent with national security considerations) of changes in the availability of resources that would affect the operations of the Plan.

(3) Provide representative as necessary to the NRT and RRTs and assist RRTs and OSCs in formulating Federal regional and Federal local contingency plans.

(d) All Federal agencies are responsible for reporting releases of hazardous substances and discharges of oil from facilities or vessels which are under their jurisdiction or control in accordance with section 103 of CERCLA, and Subparts E and F of this Plan.

(e) Executive Order 12316 delegates to the USCG and EPA all authorities under sections 104 (a) and (b) and 101(24) of CERCLA subject to the following:

(1) HHS is delegated all authorities under section 104(b) of CERCLA relating to a determination that illness, disease or complaints thereof may be attributable to exposure to a hazardous substance, pollutant or contaminant. (In addition, section 104(i) of CERCLA calls upon HHS to: establish appropriate disease/exposure registries; conduct appropriate health surveys and studies; develop and provide appropriate testing for exposed individuals; develop, maintain and provide information on health effects of toxic substances; and maintain a list of areas restricted or closed because of toxic substance contamination.)

(2) FEMA is delegated the authorities vested in the President by section 104(a) of CERCLA to the extent they require permanent relocation of residents, businesses, and community facilities or temporary evacuation and housing of threatened individuals not otherwise provided for. (FEMA is also delegated authority under section 101(24) of CERCLA to the extent they require a determination by the President that "permanent relocaton of residents and businesses and community facilities" is included within the terms "remedy" and "remedial action" as defined in section 101(24) of CERCLA.)

(3) DOD is delegated all authority of section 104 (a) and (b) of CERCLA with respect to releases from DOD facilities or vessels, including vessels owned or bareboat chartered and operated.

(f) If the situation is beyond the capability of State and local governments and the statutory authority of Federal agencies, the President, acting upon a request by the Governor, may declare a major disaster or emergency and appoint a Federal Coordinating Officer to assume responsibility for direction and control of the Federal response.

§ 300.24 State and local participation.

(a) Each State governor is requested to assign an office or agency to represent the State on the appropriate RRT. Local governments are invited to participate in activities on the appropriate RRT as may be provided by State law or arranged by the State's representative. The State's representative may participate fully in all facets of activities of the appropriate RRT and is encouraged to designate the element of the State government that will direct State supervised response operations.

(b) State and local government agencies are encouraged to include contingency planning for response, consistent with this Plan and Regional Contingency Plans, in all emergency and disaster planning.

(c) States are encouraged to use State authorities to compel potentially responsible parties to undertake response actions, or to themselves undertake response actions which are not eligible for Federal funding.

(d) States may enter into contracts or cooperative agreements pursuant to section 104(c)(3) and (d) of CERCLA or section 311(c)(2)(H) of the CWA, as appropriate, to undertake actions authorized under Subparts E and F of this Plan. Requirements for entering into these agreements are included in §§ 300.58 and 300.62 of this Plan.

§ 300.25 Non-Government participation.

(a) Industry groups, academic organizations, and others are encouraged to commit resources for response operations. Specific commitments should be listed in Federal regional and Federal local contingency plans.

(b) It is particularly important to use the valuable technical and scientific information generated by the non-government local community along with those from Federal and State government to assist the OSC in devising clean-up strategies where effective standard techniques are unavailable, and to ensure that pertinent research will be undertaken to meet national needs.

(c) Federal local contingency plans should establish procedures to allow for well-organized, worthwhile, and safe use of volunteers. Local plans should provide for the direction of volunteers by the OSC, or by other Federal, State or local officials knowledgeable in contingency operations and capable of providing leadership. Local plans also should identify specific areas in which volunteers can be used, such as beach surveillance, logistical support, and bird and wildlife treatment. Unless specifically requested by the OSC, volunteers generally should not be used for physical removal or remedial activities. If, in the judgement of the OSC or an appropriate participating agency, dangerous conditions exist, volunteers shall be restricted from on-scene operations.

(d) If any person other than the Federal government or a State or person operating under contract or cooperative agreement with the United States, takes response action and intends to seek reimbursement from the Fund, such actions to be in conformity with this Plan for purposes of section 111(a)(2) of CERCLA may only be undertaken if such person notifies the Administrator of EPA or his/her designee prior to taking such action and receives prior approval to take such action.

Subpart C—Organization.

§ 300.31 Organizational concepts.

Three fundamental kinds of activity are performed pursuant to the Plan: planning and coordination, operations at the scene of a discharge and/or release, and communications. The organizational elements created to perform these activities are discussed below in the context of their roles in these activities.

§ 300.32 Planning and coordination.

(a) National planning and coordination is accomplished through the National Response Team (NRT).

(1) The NRT consists of representatives from the agencies named in § 300.23. Each agency shall designate a member to the team and sufficient alternates to ensure representation, as agency resources permit. Other agencies may request membership on the NRT by forwarding such requests to the chairman of the NRT.

(2) Except for periods of activation because of a response action, the representative of EPA shall be the chairman and the representative of USCG shall be the vice chairman of the NRT. The vice chairman shall maintain records of NRT activities along with national, regional, and local plans for response actions. When the NRT is activated for response action, the chairman shall be the representative of the Federal lead agency.

(3) While the NRT desires to achieve a consensus on all matters brought before it, certain matters may prove unresolvable by this means. In such cases, each cabinet, department or agency serving as a participating agency on the NRT may be accorded one vote in NRT proceedings.

(4) The NRT may establish such by-laws and committees as it deems appropriate to further the purposes for which it is established.

(5) When the NRT is not activated for a response action, it shall serve as a standing committee to evaluate methods of responding to discharges or releases, to recommend needed changes in the response organization and to recommend revisions to this Plan.

(6) The NRT may consider and make recommendations to appropriate agencies on the training, equipping and protection of response teams and necessary research, development, demonstration, and evaluation to improve response capabilities.

(7) Direct planning and preparedness responsibilities of the NRT include:

(i) Maintaining national readiness to respond to a major discharge of oil or release of a hazardous substance or pollutant or contaminant which is beyond regional capabilities;

(ii) Monitoring incoming reports from all RRTs and activating when necessary;

(iii) Reviewing regional responses to oil discharges and hazardous substance releases, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations; and

(iv) Developing procedures to ensure the coordination of Federal, State, and local governments and private response to oil discharges and releases of hazardous substances, pollutants or contaminants.

(8) The NRT may consider matters referred to it for settlement by an RRT.

(b) The RRT serves as the regional body for planning and preparedness actions before a response action is taken and for coordination and advice during such action. The RRT consists of regional representatives of the participating agencies and representatives of State governments (and local governments as agreed upon with States).

(1) Except when the RRT is activated for a removal incident, the representatives of EPA and USCG shall act as co-chairmen.

(2) Each participating agency should designate one member and at least one alternate member to the RRT. Participating States may also designate one member and at least one alternate member to the Team. All agencies and States may also provide additional representatives as observers to meetings of the RRT.

(3) RRT members should designate representatives from their agencies to work with OSCs in developing Federal local contingency plans, providing for the use of agency resources, and in responding to discharges and releases (see § 300.43).

(4) Federal regional and Federal local plans should adequately provide the OSC with assistance from the Federal agencies commensurate with agencies' resources, capabilities, and responsibilities within the region. During a response action, the members of the RRT should seek to make available the resources of their agencies to the OSC as specified in the Federal regional and Federal local contingency plans.

(5) Affected States are encouraged to participate actively in all RRT activities (see § 300.24(a)), to designate representatives to work with the RRT and OSCs in developing Federal regional and Federal local plans, to plan for and make available State resources, and to serve as the contact point for coordination of response with local government agencies whether or not represented on the RRT.

(6) The RRT serves as a standing committee to recommend changes in the regional response organization as needed, to revise the regional plan as needed, and to evaluate the preparedness of the agencies and the effectiveness of local plans for the Federal response to discharges and releases. The RRT should:

(i) Make continuing review of regional and local responses to discharges or releases, considering available legal remedies, equipment readiness and coordination among responsible public agencies and private organizations.

(ii) Based on observations of response operations, recommend revisions of the National Contingency Plan to the NRT.

(iii) Consider and recommend necessary changes based on continuing review of response actions in the region.

(iv) Review OSC actions to help ensure that Federal regional and Federal local contingency plans are developed satisfactorily.

(v) Be prepared to respond to major discharges or releases outside the region.

(vi) Meet at least semi-annually to review response actions carried out during the preceding period, and consider changes in Federal regional and Federal local contingency plans.

(vii) Provide letter reports on their activities to the NRT twice a year, no later than January 31 and July 31. At a minimum, reports should summarize recent activities, organizational changes, operational concerns, and efforts to improve State and local conditions.

(c) The OSC is responsible for developing any Federal local contingency plans for the Federal response in the area of the OSC's responsibility. This may be accomplished in cooperation with the RRT and designated State and local representatives (see § 300.43). Boundaries for Federal local contingency plans shall coincide with those agreed upon between EPA, DOD and the USCG (subject to Executive Order 12316) to determine OSC areas of responsibility and should be clearly indicated in the regional contingency plan. Where practicable, consideration should be given to jurisdictional boundaries established by State and local plans.

(d) Scientific support for the development of regional and local plans is organized by appropriate agencies to provide special expertise and assistance. Generally, the Scientific Support Coordinator (SSC) for plans encompassing the coastal area will be provided by NOAA, and the SSC for the inland area will be provided by EPA or DOI. This delineation of responsibility may be modified within a region by agreement between DOC, DOI, and EPA representatives to the RRT. SSCs may be obtained from other agencies if determined to be appropriate by the RRT.

§ 300.33 Response operations.

(a) EPA and USCG shall designate OSCs for all areas in each region provided, however, that DOD shall designate OSCs for releases from DOD facilities and vessels. DOD will be the immediate removal response authority with respect to incidents involving DOD military weapons and munitions. Immediate removal actions involving nuclear weapons should be conducted in accordance with the joint Department of Defense, Department of Energy, and Federal Emergency Management Agency Agreement for Response to Nuclear Incidents and Nuclear Weapons Significant Incidents, of January 8, 1981. The USCG will furnish or provide OSCs for oil discharges and for the immediate removal of hazardous substances, pollutants, or contaminants into or threatening the coastal zone except that the USCG will not provide predesignated OSCs for discharges and releases from hazardous waste management facilities or in similarly chronic incidents. EPA shall furnish or provide OSCs for oil discharges and hazardous substance releases into or

threatening the inland zone and, unless otherwise agreed, for all planned removals and remedial actions.

(b) The OSC directs Federal Fund-financed response efforts and coordinates all other Federal efforts at the scene of a discharge or release subject to Executive Order 12316. As part of the planning and preparation for response, the OSCs shall be predesignated by the regional or district head of the lead agency.

(1) The first official from an agency with responsibility under this plan to arrive at the scene of the discharge or release should coordinate activities under this Plan until the OSC arrives.

(2) The OSC shall, to the extent practicable under the circumstances, collect pertinent facts about the discharge or release, such as its source and cause; the existence of potentially responsible parties; the nature, amount, and location of discharged or released materials; the probable direction and time of travel of discharged or released materials; the pathways to human exposure; potential impact on human health, welfare and safety; the potential impact on natural resources and property which may be affected; priorities for protecting human health, welfare and the environment; and appropriate cost documentation.

(3) The OSC shall direct response operations (see Subparts E and F for descriptive details). The OSC's effort shall be coordinated with other appropriate Federal, State, local and private response agencies.

(4) The OSC shall consult regularly with the RRT in carrying out this Plan and will keep the RRT informed of activities under this Plan.

(5) The OSC shall advise the appropriate State agency (as agreed upon with each State) as promptly as possible of reported discharges and releases.

(6) The OSC shall evaluate incoming information and immediately advise FEMA of potential major disaster situations. In the event of a major disaster or emergency, under the Disaster Relief Act of 1974 (Pub. L. 93–288), the OSC will coordinate any response activities with the Federal Coordinating Officer designated by the President. In addition, the OSC should notify FEMA of situations potentially requiring evacuation, temporary housing, and permanent relocation.

(7) In those instances where a possible public health emergency exists, the OSC should notify the HHS representative to the RRT. Throughout response actions, the OSC may call upon the HHS representative for assistance in determining public health threats and for advice on worker health and safety problems.

(8) All Federal agencies should plan for emergencies and develop procedures for dealing with oil discharges and releases of hazardous substances (designated under section 311(b)(2) of the CWA) from vessels and facilities under their jurisdiction. All Federal agencies, therefore, are responsible for designating the offices that can coordinate response to such incidents in accordance with this Plan and applicable Federal regulations and guidelines. If, in the opinion of the OSC, the responsible Federal agency does not act promptly or take appropriate action to respond to a discharge or release caused by a facility or vessels under its jurisdiction, the OSC in charge of area where the discharge or release occurs may conduct appropriate response activities. With respect to discharges or releases from Department of Defense (DOD) facilities and vessels, the OSC shall be furnished by the DOD.

(9) The OSC should advise the affected land managing agency and trustees of natural resources, as promptly as possible, of releases and discharges affecting Federal resources under its jurisdiction.

(10) The OSC is responsible for addressing worker health and safety concerns at a response scene, in accordance with §§ 300.57 and 300.71 of this Plan.

(11) The OSC shall submit pollution reports to the RRC and appropriate agencies as significant developments occur during removal actions.

§ 300.34 Special Forces and Teams.

(a) The National Strike Force (NSF) consists of the Strike Teams established by the USCG on the Atlantic, Pacific and Gulf coasts and includes emergency task forces to provide assistance to the OSC.

(1) The Strike Teams can provide communication support, advice and assistance for oil and hazardous substances removal. These teams also have knowledge of ship salvage, damage control, and diving. Additionally, they are equipped with specialized containment and removal equipment, and have rapid transportation available. When possible, the Strike Teams will train the emergency task forces and assist in the development of regional and local contingency plans.

(2) The OSC may request assistance from the Strike Teams. Requests for a team may be made directly to the Commanding Officer of the appropriate team, the USCG member of the RRT, the appropriate USCG Area Commander, or the Commandant of the USCG through the NRC.

(b) Each USCG OSC manages emergency task forces trained to evaluate, monitor, and supervise pollution responses. Additionally, they have limited "initial aid" response capability to deploy equipment prior to the arrival of a clean-up contractor, or other response personnel.

(c)(1) The Emergency Response Team (ERT) is established by EPA in accordance with its disaster and emergency responsibilities. The ERT includes expertise in biology, chemistry, hydrology, geology and engineering.

(2) It can provide access to special de-contamination equipment for chemical releases and advice to the OSC in hazard evaluation; risk assessment; multimedia sampling and analysis program; on-site safety, including development and implementation plans; clean-up techniques and priorities; water supply de-contamination and protection; application of dispersants; environmental assessment; degree of clean-up required; and disposal of contaminated material.

(3) The ERT also provides both introductory and intermediate level training courses to prepare response personnel.

(4) OSC or RRT requests for ERT support should be made to the EPA representative on the RRT; the EPA Headquarters, Director, Office of Emergency and Remedial Response; or the appropriate EPA regional emergency coordinator.

(d) When requested by the OSC, the SSC shall serve as a member of the OSC's staff and assist the OSC in fulfilling responsibilities in support of response actions. The extent and nature of SSC involvement in the operational mode shall be determined by the OSC. The SSC may:

(1) Coordinate response from the scientific community to OSC requests for assistance and to requests from the OSC, as appropriate, for performance of environmental assessment.

(2) Serve as the principal liaison for scientific advice from the scientific community to the OSC. The SSC shall ensure that differing scientific views within the scientific community are communicated to the OSC in a timely manner.

(3) The SSC will assist in responding to requests for assistance from State and Federal agencies regarding scientific studies and environmental assessments. Details on provision of access to scientific support shall be included in regional contingency plans.

(e) The USCG Public Information Assist Team (PIAT) and the EPA Public Affairs Assist Team (PAAT) may help OSCs and regional or district offices meet the demands for public information and participation during major responses. Requests for these teams may be made through the NRC.

(f)(1) The RRT should be activated by the Chairman as an emergency response team when a discharge or release:

(i) Exceeds the response capability available to the OSC in the place where it occurs;

(ii) Transects regional boundaries; or

(iii) May pose a substantial threat to the public health, welfare or to the environment, or to regionally significant amounts of property. Regional contingency plans shall specify detailed criteria for activation of RRTs.

(2) When the RRT is activated for an immediate removal action, the chairman shall be the representative of the lead agency. When the RRT is activated for a Fund-financed planned removal or remedial action, the chairman shall be the representative of EPA.

(3) The RRT may be activated during any pollution emergency by a request from any RRT representative to the chairman of the Team. Request for RRT activation shall later be confirmed in writing. Each representative, or an appropriate alternate, should be notified immediately when the RRT is activated.

(4) During prolonged removal or remedial action, the RRT may not need to be activated or may need to be activated only in a limited sense, or have available only those members of the RRT who are directly affected or can provide direct response assistance.

(5) When the RRT is activated for a discharge or release, agency representatives shall meet at the call of the chairman and may:

(i) Monitor and evaluate reports from the OSC. The RRT may advise the OSC on the duration and extent of Federal response and may recommend to the OSC specific actions to respond to the discharge or release.

(ii) Request other Federal, State or local government, or private agencies to provide resources under their existing authorities to respond to a discharge or release or to monitor response operations.

(iii) Help the OSC prepare information releases for the public and for communication with the NRT.

(iv) If the circumstances warrant, advise the regional or district head of the agency providing the OSC that a different OSC should be designated.

(v) Submit Pollution Reports (POLREPS) to the NRC as significant developments occur.

(6) When the RRT is activated, affected States may participate in all RRT deliberations. State government representatives participating in the RRT have the same status as any Federal member of the RRT.

(7) The RRT can be deactivated by agreement between the EPA and USCG team members. The time of deactivation should be included in the POLREPS.

(g) The NRT should be activated as an emergency response team when an oil discharge or hazardous substance release:

(1) Exceeds the response capability of the region in which it occurs;

(2) Transects regional boundaries;

(3) Involves significant population hazards or national policy issues, substantial amounts of property, or substantial threats to natural resources; or

(4) Is requested by any NRT member.

(h) When activated for a response action, the NRT shall meet at the call of the chairman and may:

(1) Monitor and evaluate reports from the OSC. The NRT may recommend to the OSC, through the RRT, actions to combat the discharge or release.

(2) Request other Federal, State and local governments, or private agencies, to provide resources under their existing authorities to combat a discharge or release or to monitor response operations.

(3) Coordinate the supply of equipment, personnel, or technical advice to the affected region from other regions or districts.

§ 300.35 Multi-regional responses.

(a) If a discharge or release moves from the area covered by one Federal local or Federal regional contingency plan into another area, the authority for removal or response actions should likewise shift. If a discharge or release or substantial threat of discharge or release affects areas covered by two or more regional plans, the response mechanisms of both may be activated. In this case, removal or response actions of all regions concerned shall be fully coordinated as detailed in the regional plans.

(b) There shall be only one OSC at any time during the course of a response operation. Should a discharge or release affect two or more areas, the EPA, DOD and USCG, as appropriate, shall give prime consideration to the area vulnerable to the greatest damage. The RRT shall designate the OSC if EPA, DOD and USCG members are unable to agree on the designation. The NRT shall designate the OSC if members of one RRT or two adjacent RRTs are unable to agree on the designation.

(c) Where the USCG has provided the OSC for emergency response to a release from hazardous waste management facilities located in the coastal zone, the responsibility for response action shall shift to EPA, in accordance with EPA/USCG agreements.

§ 300.36 Communications.

(a) The NRC is the national communications center for activities related to response actions. It is located at USCG Headquarters in Washington, D.C. The NRC receives and relays notices of discharges or releases to the appropriate OSC, disseminates OSC and RRT reports to the NRT when appropriate, and provides facilities for the NRT to use in coordinating a national response action when required.

(b) The Commandant, USCG, will provide the necessary communications, plotting facilities, and equipment for the NRC.

(c) Notice of an oil discharge or a release of a hazardous substance in an amount equal to or greater than the reportable quantity must be made immediately in accordance with 33 CFR Part 153, Subpart B and section 103(a) of CERCLA, respectively. Notification shall be made to the NRC Duty Officer, HQ USCG, Washington, D.C. telephone (800) 424–8802 (or current local telephone number). All notices of discharges or releases received at the NRC shall be relayed immediately by telephone to the OSC and State.

(d) The RRC provides facilities and personnel for communications, information storage, and other requirements for coordinating response. Each regional plan will specify the location for the RRC.

§ 300.37 Response equipment.

The Spill Cleanup Inventory (SKIM) system is available to help OSCs and RRTs and private parties gain rapid information as to the location of response and support equipment. This inventory is accessible through the NRC and USCG's OSCs. The inventory includes private and commercial equipment, as well as government resources. The RRTs and OSCs shall ensure that data in the system are current and accurate. The USCG is responsible for maintaining and updating the system with RRT and OSC input.

Subpart D—Plans.

§ 300.41 Regional and local plans.

(a) In addition to the National Contingency Plan (NCP), a Federal regional plan shall be developed for

each standard Federal region and, where practicable, a Federal local plan shall be developed.

(b) These plans will be available for inspection at EPA regional offices or USCG district offices. Addresses and telephone numbers for these offices may be found in the United States Government Manual (issued annually) or in local telephone directories.

§ 300.42 Regional contingency plans.

(a) The RRTs, working with the States, shall develop Federal regional plans for each standard Federal region. The purpose of these plans is coordination of a timely, effective response by various Federal agencies and other organizations to discharges of oil and releases of hazardous substances, pollutants and contaminants in order to protect public health, welfare and the environment. Regional contingency plans should include information on all useful facilities and resources in the region, from government, commercial, academic and other sources. To the greatest extent possible, regional plans will follow the format of the National Contingency Plan.

(b) SSCs shall organize and coordinate the contributions of scientists of each region to the response activities of the OSC and RRT to the greatest extent possible. SSCs, with advice from RRT members, shall also develop the parts of the regional plan that relate to scientific support.

(c) Regional plans shall contain lines of demarcation between the inland and coastal zones, as mutually agreed upon by USCG and EPA.

§ 300.43 Local contingency plans.

(a) Each OSC shall maintain a Federal local plan for response in his or her area of responsibility, where practicable. In areas in which the USCG provides the OSC, such plans shall be developed in all cases. The plan should provide for a well-coordinated response that is integrated and compatible with the pollution response, fire, emergency and disaster plansof local, State and other non-Federal entities. The plan should identify the probable locations of discharges or releases, the available resources to respond to multi-media incidents, where such resources can be obtained, waste disposal methods and facilities consistent with local and State plans developed under the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), and a local structure for responding to discharges or releases.

(b) While the OSC is responsible for developing Federal local plans, a successful planning effort will depend upon the full cooperation of all the agencies' representatives and the development of local capabilities to respond to discharges or releases. Particular attention should be given, during the planning process, to developing a multi-agency local response team for coordinating on-scene efforts. The RRT should ensure proper liaison between the OSC and local representatives.

Subpart E—Operational Response Phases for Oil Removal

§ 300.51 Phase I—Discovery and notification.

(a) A discharge of oil may be discovered through:

(1) A report submitted by the person in charge of the vessel or facility in accordance with statutory requirements;

(2) Deliberate search by patrols; and

(3) Random or incidental observation by government agencies or the public.

(b) Reports of discharges should be made to the NRC or the nearest USCG or EPA office. All reports shall be promptly relayed to the NRC if not previously reported to the responsible OSC. Federal regional and Federal local plans shall provide for prompt reporting to the NRC, RRC, and appropriate State agency (as agreed upon with the State).

(c) Upon receipt of a notification of discharge, the NRC shall promptly notify the OSC. The OSC shall proceed with the following phases as outlined in Federal regional and Federal local plans.

§ 300.52 Phase II—Preliminary assessment and initiation of action.

(a) The OSC for a particular area is responsible for promptly initiating preliminary assessment.

(b) The preliminary assessment shall be conducted using available information, supplemented where necessary and possible by an on-scene inspection. The OSC shall undertake actions to:

(1) Evaluate the magnitude and severity of the discharge or threat to public health and welfare and the environment;

(2) Assess the feasibility of removal;

(3) Determine the existence of potential responsible parties; and

(4) Ensure that jurisdiction exists for undertaking additional response actions.

(c) The OSC, in consultation with legal authorities when appropriate, shall make a reasonable effort to have the discharger voluntarily and promptly perform removal actions. The OSC shall ensure adequate surveillance over whatever actions are initiated. If effective actions are not being taken to eliminate the threat, or if removal is not being properly done, the OSC shall so advise the responsible party. If the responsible party does not take proper removal actions, or is unknown, or is otherwise unavailable, the OSC shall, pursuant to section 311(c)(1) of the CWA, determine whether authority for a Federal response exists, and, if so, take appropriate response actions. Where practicable, continuing efforts should be made to encourage response by responsible parties.

(d) The OSC should ensure that the trustees of affected natural resources are notified, in order that the trustees may initiate appropriate actions when natural resources have been or are likely to be damaged (see Subpart G).

§ 300.53 Phase III—Containment, countermeasures, clean-up, and disposal.

(a) Defensive actions should begin as soon as possible to prevent, minimize, or mitigate damage to the public health or welfare or the environment. Actions may include: analyzing water samples to determine the source and spread of the oil; controlling the source of discharge; measuring and sampling; damage control or salvage operations; placement of physical barriers to deter the spread of the oil or to protect endangered species; control of the water discharged from upstream impoundment; and the use of chemicals and other materials in accordance with Subpart H, to restrain the spread of the oil and mitigate its effects.

(b) Appropriate actions should be taken to recover the oil or mitigate its effects. Of the numerous chemical physical methods that may be used, the chosen methods should be the most consistent with protecting the public health and welfare and the environment. Sinking agents shall not be used.

(c) Oil and contaminated materials recovered in clean-up operations shall be disposed of in accordance with Federal regional and Federal local contingency plans.

§ 300.54 Phase IV—Documentation and cost recovery.

(a) Documentation shall be collected and maintained to support all actions taken under the CWA and to form the basis for cost recovery. In general, documentation should be sufficient to prove the source and circumstances of the incident, the responsible party or parties, and impact and potential impacts to the public health and welfare and the environment. When appropriate, documentation should also be collected for scientific understanding of the environment and for the research and development of improved response

methods and technology. Damages to private citizens (including loss of earnings) are not addressed by this Plan. Evidentiary and cost documentation procedures and requirements are specified in the USCG Marine Safety Manual (Commandant Instruction M16000.3) and 33 CFR Part 153.

(b) The OSC shall ensure the necessary collection and safeguarding of information, samples, and reports. Samples and information must be gathered expeditiously during the response to ensure an accurate record of the impacts incurred. Documentation materials shall be made available to the trustees of affected natural resources where practicable.

(c) Information and reports obtained by the EPA or USCG OSC shall be transmitted to the appropriate offices responsible for follow-up actions.

§ 300.55 General pattern of response.

(a) When the OSC receives a report of a discharge, actions normally should be taken in the following sequence:

(1) Immediately notify the RRT and NRC when the reported discharge is an actual or potential major discharge.

(2) Investigate the report to determine pertinent information such as the threat posed to public health or welfare, or the environment, the type and quantity of polluting material, and the source of the discharge.

(3) Officially classify the size of the discharge and determine the course of action to be followed.

(4) Determine whether a discharger or other person is properly carrying out removal. Removal is being done properly when:

(i) The clean-up is fully sufficient to minimize or mitigate damage to the public welfare (removal efforts are "improper" to the extent that Federal efforts are necessary to prevent further damage).

(ii) The removal efforts are in accordance with applicable regulations and guidelines, including this Plan.

(5) Determine whether a State or political subdivision has the capability to carry out response actions and a contract or cooperative agreement has been established with the appropriate fund administrator for this purpose.

(6) Notify the RRT (including the affected State), SSC, and the trustees of affected natural resources in accordance with the applicable regional plan.

(b) The preliminary inquiry will probably show that the situation falls into one of five classes. These classes and the appropriate response to each are outlined below:

(1) If the investigation shows that no discharge exists, the case shall be considered a false alarm and should be closed.

(2) If the investigation shows a minor discharge with the responsible party taking proper removal action, contact should be established with the party. The removal action should be monitored to ensure continued proper action.

(3) If the investigation shows a minor discharge with improper removal action being taken, the following measures shall be taken:

(i) An immediate effort should be made to stop further pollution.

(ii) The responsible party shall be advised of what action will be so considered appropriate.

(iii) If the responsible party does not properly respond, he shall be notified of his potential liability for Federal response performed under the CWA. This liability includes all costs of removal and may include the costs of assessing and restoring damaged natural resources and other actual or necessary costs of a Federal response.

(iv) The OSC shall notify appropriate State and local officials, keep the RRT advised and initiate Phase III operations as conditions warrant.

(v) Information shall be collected for possible recovery of response costs in accordance with § 300.54.

(4) When the investigation shows that an actual or potential medium oil discharge exists, the OSC shall follow the same general procedures as for a minor discharge. If appropriate, the OSC shall recommend activation of the RRT.

(5) When the investigation shows an actual or potential major oil discharge, the OSC shall follow the same procedures as for minor and medium discharges.

§ 300.56 Pollution reports.

(a) Within 60 days after the conclusion of a major discharge or when requested by the RRT, the EPA or USCG OSC shall submit to the RRT a complete report on the response operation and the actions taken. The OSC shall at the same time send a copy of the report to the NRT. The RRT shall review the OSC's report and prepare an endorsement to the NRT for review. This shall be accomplished within 30 days after the report has been received.

(b) The OSC's report shall accurately record the situation as it developed, the actions taken, the resources committed and the problems encountered. The OSC's recommendations are a source for new procedures and policy.

(c) The format for the OSC's report shall be as follows:

(1) Summary of Events—A chronological narrative of all events, including:

(i) The cause of the discharge;

(ii) The initial situation;

(iii) Efforts to obtain response by responsible parties;

(iv) The organization of the response;

(v) The resources committed;

(vi) The location (water body, State, city, latitude and longitude) of the oil discharge and an indication of whether the discharge was in connection with activities regulated under the Outer Continental Shelf Lands Act (OCSLA), the Trans-Alaska Pipeline Authority Act or Deepwater Port Act; or whether it might have or actually did affect natural resources managed or protected by the U.S.;

(vii) Comments on Federal or State efforts to replace or restore damaged natural resources and damage assessment activities; and

(viii) Details of any threat abatement actions taken under section 311 (c) or (d) of the CWA.

(2) Effectiveness of Removal Actions—A candid and thorough analysis of the effectiveness of removal actions taken by:

(i) The responsible party;

(ii) State and local forces;

(iii) Federal agencies and special forces; and

(iv) (If applicable) contractors, private groups and volunteers.

(3) Problems Encountered—A list of problems affecting response with particular attention to problems of intergovernmental coordination.

(4) Recommendations—OSC recommendations, including at a minimum:

(i) Means to prevent a recurrence of the discharge;

(ii) Improvement of response actions;

(iii) Any recommended changes in the National Contingency Plan or Federal regional plan.

§ 300.57 Special considerations.

(a) *Safety of Personnel*—The OSC should be aware of threats to human health and safety and shall ensure that persons entering the response area use proper precautions, procedures, and equipment and that they possess proper training. Federal local plans shall identify sources of information on anticipated hazards, precautions, and requirements to protect personnel during response operations. Names and phone numbers of people with relevant information shall be included. Responsibility for the safety of all Federal employees rests with the heads of their agencies. Accordingly, each Federal employee on the scene must be apprised of and conform with OSHA regulations and other deemed necessary

by the OSC. All private contractors who are working on-site must conform to applicable provisions of the Occupational Safety and Health Act and standards deemed necessary by the OSC.

(b) *Waterfowl Conservation*—The DOI representative and the State liaison to the RRT shall arrange for the coordination of professional and volunteer groups permitted and trained to participate in waterfowl dispersal, collection, cleaning, rehabilitation and recovery activities (consistent with 16 U.S.C. 703–712 and applicable State laws). Federal regional and Federal local plans will, to the extent practicable, identify organizations or institutions that are permitted to participate in such activities and operate such facilities. Waterfowl conservation activities will normally be included in Phase III response actions (§ 300.53 of this subpart).

§ 300.58 Funding.

(a) If the person responsible for the discharge does not act promptly or take proper removal actions, or if the person responsible for the discharge is unknown, Federal discharge removal actions may begin under section 311(c)(1) of the CWA. The discharger, if known, is liable for the costs of Federal removal in accordance with section 311(f) of the CWA and other Federal laws.

(b) Actions undertaken by the participating agencies in response to pollution shall be carried out under existing programs and authorities when available. This Plan intends that Federal agencies will make resources available, expend funds, or participate in response to oil discharges under their existing authority. Authority to expend resources will be in accordance with agencies' basic statutes and, if required, through interagency agreements. Specific interagency reimbursement agreements may be signed when necessary to ensure that the Federal resources will be available for a timely response to a discharge of oil. The ultimate decision as to the appropriateness of expending funds rests with the agency that is held accountable for such expenditures.

(c) The OSC shall exercise sufficient control over removal operations to be able to certify that reimbursement from the following funds is appropriate:

(1) The oil pollution fund, administered by the Commandant, USCG, has been established pursuant to section 311(k) of the CWA. Regulations governing the administration and use of the fund are contained in 33 CFR Part 153.

(2) The fund authorized by the Deepwater Port Act is administered by the Commandant, USCG. Governing regulations are contained in 33 CFR Parts 136 and 150.

(3) The fund authorized by the Outer Continental Shelf Lands Act, as amended, is administered by the Commandant, USCG. Governing regulations are contained in 33 CFR Parts 136 and 150.

(4) The fund authorized by the Trans-Alaska Pipeline Authorization Act is administered by a Board of Trustees under the purview of the Secretary of the Interior. Governing regulations are contained in 43 CFR Part 29.

(d) Response actions other than removal, such as scientific investigations not in support of removal actions or law enforcement, shall be provided by the agency with legal responsibility for those specific actions.

(e) The funding of a response to a discharge from a Federally operated or supervised facility or vessel is the responsibility of the operating or supervising agency.

(f) The following agencies have funds available for certain discharge removal actions:

(1) EPA may provide funds to begin timely discharge removal actions when the OSC is an EPA representative.

(2) The USCG pollution control efforts are funded under "operating expenses." These funds are used in accordance with agency directives.

(3) The Department of Defense has two specific sources of funds which may be applicable to an oil discharge under appropriate circumstances. (This does not consider military resources which might be made available under specific conditions.)

(i) Funds required for removal of a sunken vessel or similar obstruction of navigation are available to the Corps of Engineers through Civil Works Appropriations, Operations and Maintenance, General.

(ii) The U.S. Navy may conduct salvage operations contingent on defense operational commitments, when funded by the requesting agency. Such funding may be requested on a direct cite basis.

(4) Pursuant to section 311(c)(2)(H) of the CWA, the State or States affected by a discharge of oil, may act where necessary to remove such discharge and may, pursuant to 33 CFR Part 153, be reimbursed from the pollution revolving fund for the reasonable costs incurred in such a removal.

(i) Removal by a State is necessary within the meaning of section 311(c)(2)(H) of the CWA when the OSC determines that the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs does not effect removal properly, or is unknown, and that:

(A) State action is required to minimize or mitigate significant damage to the public health or welfare which Federal action cannot minimize or mitigate, or

(B) Removal or partial removal can be done by the State at a cost which is less than or not significantly greater than the cost which would be incurred by the Federal departments or agencies.

(ii) State removal actions must be in compliance with this Plan in order to qualify for reimbursement.

(iii) State removal actions are considered to be Phase III actions, under the same definitions applicable to Federal agencies.

(iv) Actions taken by local governments in support of Federal discharge removal operations are considered to be actions of the State for purposes of this section. Federal regional and Federal local plans shall show what funds and resources are available from participating agencies under various conditions and cost arrangements. Interagency agreements may be necessary to specify when reimbursement is required.

Subpart F—Hazardous Substance Response

§ 300.61 General.

(a) This subpart establishes methods and criteria for determining the appropriate extent of response authorized by CERCLA when any hazardous substance is released or there is a substantial threat of such a release into the environment, or there is a release or substantial threat of a release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare.

(b) Section 104(a)(1) of CERCLA authorizes removal or remedial action unless it is determined that such removal or remedial action will be done properly by the owner or operator of the vessel or facility from which the release or threat of release emanates, or by any other responsible party.

(c) In determining the need for and in planning or undertaking Fund-financed action, response personnel should, to the extent practicable, consider the following:

(1) Encourage State participation in response actions (see § 300.63).

(2) Conserve Fund monies by encouraging private party clean-up.

(3) Be sensitive to local community concerns (in accordance with applicable guidance).

(4) Rely on established technology when feasible and cost-effective.

(5) Encourage the participation and sharing of technology by industry and other experts.

§ 300.62 State role.

(a) States are encouraged to undertake actions authorized under this subpart. Section 104(d)(1) of CERCLA authorizes EPA to enter into contracts or cooperative agreements with the State to take response actions authorized under CERCLA, when EPA determines that the State has the capability to undertake such actions.

(b) EPA will provide assistance from the Fund to States pursuant to a contract or cooperative agreement. The agreement can authorize States to undertake most actions specified in this Subpart.

(c)(1) Pursuant to section 104(c)(3) of CERCLA, before any Fund-financed remedial action may be taken, the affected State(s) must enter into a contract or cooperative agreement with the Federal government.

(2) Included in such contract or cooperative agreement must be assurances by the State consistent with requirements of section 104(c)(3) of CERCLA.

(d) Prior to remedial design activity, the State must make a firm commitment, through either a cooperative agreement or a new or amended State contract, to provide funding for remedial implementation by:

(1) Authorizing the reduction of a State credit to cover its share of costs;

(2) Identifying currently available funds earmarked for remedial implementation; or

(3) Submitting a plan with milestones for obtaining necessary funds.

(e) State credits allowed under section 104(c)(3) of CERCLA must be documented on a site-specific basis for State out-of pocket, non-Federal eligible response costs between January 1, 1978, and December 11, 1980. Prior to remedial investigation activity at a site, the State must submit its estimate of these costs as a part of the pre-application package when a cooperative agreement is used, or as a part of the State contract. State credits will be applied against State cost shares for Federally-funded remedial actions. A State cannot be reimbursed from the Fund for credit in excess of its matching share.

(f) Pursuant to section 104(c)(2) of CERCLA, prior to determining any appropriate remedial action, EPA shall consult with the affected State or States.

§ 300.63 Phase I—Discovery or notification.

(a) A release may be discovered through:

(1) Notification in accordance with sections 103(a) or (c) of CERCLA;

(2) Investigation by government authorities conducted in accordance with section 104(e) of CERCLA or other statutory authority;

(3) Notification of a release by a Federal or State permit holder when required by its permit;

(4) Inventory efforts or random or incidental observation by government agencies or the public;

(5) Other sources.

(b) If not reported previously, a release should be promptly reported to the NRC. Section 103(a) of CERCLA requires any person in charge of a vessel or facility to immediately notify the NRC as soon as he has knowledge of a release (other than a federally permitted release) of a hazardous substance from such vessel or facility in an amount equal to or greater than the reportable quantity determined pursuant to section 102(b) of CERCLA. The NRC shall convey the notification expeditiously to appropriate government agencies, and in the case of notices received pursuant to section 103(a), the NRC shall also notify the Governor of any affected State.

(c) Upon receipt of a notification of a release, the NRC shall promptly notify the appropriate OSC.

§ 300.64 Phase II—Preliminary assessment.

(a) A preliminary assessment of a release identified for possible CERCLA response should be undertaken by the lead agency. If the reported release potentially requires immediate removal, the preliminary assessment should be done as promptly as possible. Other releases shall be assessed as soon as practicable. The lead agency should base its assessment on readily available information. This assessment may include:

(1) Evaluation of the magnitude of the hazard;

(2) Identification of the source and nature of the release;

(3) Determination of the existence of a non-Federal party or parties ready, willing, and able to undertake a proper response; and

(4) Evaluation of factors necessary to make the determination of whether immediate removal is necessary.

(b) A preliminary assessment of releases from hazardous waste management facilities may include collection or review of data such as site management practices, information from generators, photographs, analysis of historical photographs, literature searches, and personal interviews conducted as appropriate. In addition, a perimeter (off-site) inspection may be necessary to determine the potential for a release. Finally, if more information is needed, a site visit may be performed, if conditions are such that it may be performed safely.

(c) A preliminary assessment should be terminated when the OSC determines:

(1) There is no release;

(2) The source is neither a vessel nor a facility;

(3) The release involves neither a hazardous substance, nor a pollutant or contaminant that may pose an imminent and substantial danger to public health or welfare;

(4) The amount released does not warrant Federal response;

(5) A party responsible for the release, or any other person, is providing appropriate response, and on-scene monitoring by the government is not recommended or approved by the lead agency; or

(6) The assessment is completed.

§ 300.65 Phase III—Immediate removal.

(a) In determining the appropriate extent of action to be taken at a given release, the lead agency shall first review the preliminary assessment to determine if immediate removal action is appropriate. Immediate removal action shall be deemed appropriate in those cases in which the lead agency determines that the initiation of immediate removal action will prevent or mitigate immediate and significant risk of harm to human life or health or to the environment from such situations as:

(1) Human, animal, or food chain exposure to acutely toxic substances;

(2) Contamination of a drinking water supply;

(3) Fire and/or explosion; or

(4) Similarly acute situations.

(b) If the lead agency determines that immediate removal is appropriate, defensive actions should begin as soon as possible to prevent or mitigate danger to the public health, welfare, or the environment. Actions may include, but are not limited to:

(1) Collecting and analyzing samples to determine the source and dispersion of the hazardous substance and documenting those samples for possible evidentiary use.

(2) Providing alternative water supplies.

(3) Installing security fencing or other measures to limit access.

(4) Controlling the source of release.

(5) Measuring and sampling.

(6) Moving hazardous substances off-site for storage, destruction, treatment, or disposal provided that the substances are moved to a facility that is in compliance with subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

(7) Placing physical barriers to deter the spread of the release.

(8) Controlling the water discharge from an upstream impoundment.

(9) Recommending to appropriate authorities the evacuation of threatened individuals.

(10 Using chemicals and other materials in accordance with Subpart H to restrain the spread of the substance and to mitigate its effects.

(11) Executing damage control or salvage operations.

(c) Immediate removal actions are complete when, in the opinion of the lead agency, the criteria in subsection (a) of § 300.65 are no longer met and any contaminated waste materials transported off-site have been treated or disposed of properly.

(d) Immediate removal action shall be terminated after $1 million has been obligated for the action or six months have elapsed from the date of initial response to a release or threatened release unless it is determined that:

(1) Continued response actions are immediately required to prevent, limit or mitigate an emergency;

(2) There is an immediate risk to public health or welfare or the environment; and

(3) Such assistance will not otherwise be provided on a timely basis.

(e) If the lead agency determines that the release still may require planned removal or remedial action, the lead agency or a State may initiate, either simultaneously or sequentially, Phase IV or V as appropriate.

§ 300.66 Phase IV—Evaluation and determination of appropriate response—planned removal and remedial action.

(a) The purpose of this phase is to determine the appropriate action when the preliminary assessment indicates that further response may be necessary or when the OSC requests and the lead agency concurs that further response should follow an immediate removal action.

(b) As soon as practicable, an inspection will be undertaken to assess the nature and extent of the release and to assist in determining its priority for Fund-financed response.

(c)(1) Pursuant to section 104 (b) and (e) of CERCLA, the responsible official may undertake investigations, monitoring, surveys, testing and other information gathering as appropriate. These efforts shall be undertaken jointly by the Federal or State officials responsible for providing Fund-financed response and those responsible for enforcing legal requirements.

(2) A major objective of an inspection is to determine if there is any immediate danger to persons living or working near the facility. In general, the collection of samples should be minimized during inspection activities; however, situations in which there is an apparent risk to the public should be treated as exceptions to that practice. Examples of apparent risk include use of nearby wells for drinking water, citizen complaints of unusual taste or odor in drinking water, or chemical odors or unusual health problems in the vicinity of the release. Under those circumstances, a sampling protocol should be developed for the inspection to allow for the earliest possible detection of any human exposure to hazardous substances. The site inspection may also address:

(i) Determining the need for immediate removal action;

(ii) Assessing amounts, types and location of hazardous substances stored;

(iii) Assessing potential for substances to migrate from areas where they were originally located;

(iv) Determining or documenting immediate threats to the public or environment.

(d) *Methods for Establishing Priorities.* (1) States that wish to submit candidates for the National Priorities List must use the Hazard Ranking System (included in Appendix A) to rank the releases.

(2) EPA will notify States at least thirty days prior to the deadline for submitting candidate releases for the National Priorities List or any subsequent revisions.

(3) Each State may designate a facility as the State's highest priority release by certifying, in writing signed by the Governor or the Governor's designee, that the facility presents the greatest danger to public health, welfare or the environment among known facilities in the State.

(e) *National Priorities List.* (1) Compiling the National Priorities List—EPA Regional Office will review State hazard rankings to ensure uniform application of the Hazard Ranking System and may add, in consultation with the States, any additional priority releases known to EPA. The States' priorities will be reviewed and consolidated by EPA Headquarters into a National Priorities List pursuant to section 105(8) of CERCLA. To the extent practicable, each State's designated top priority facility will be included among the one hundred highest priority facilities.

(2) No facilities presently owned by the Federal Government will be included on the National Priorities List.

(3) EPA will submit the recommended National Priorities List to the NRT for review and comment.

(4) EPA will publish a proposed National Priorities List for public comment.

(5) The National Priorities List is presented in Appendix B.

(6) Ranking of Releases—Similar hazard ranking scores assigned to releases cannot accurately differentiate among risks represented by the releases. Thus, in order to avoid misleading the public that real differences in risk exist, similar scores may be grouped on the National Priorities List.

(7) EPA will revise and publish the National Priorities List at least once annually. In addition, revisions will give notice of the deletion (if any) of releases previously listed.

§ 300.67 Phase V—Planned removal.

(a) Planned removal may be undertaken pursuant to a contract or cooperative agreement when the lead agency determines that:

(1) There would be a substantial cost savings by continuing a response action with the equipment and resources mobilized for an immediate removal action taken pursuant to § 300.64, but terminate pursuant to § 300.64(c); or

(2) The public and/or environment will be at risk from exposure to hazardous substances if response is delayed at a release not on the National Priorities List.

(b) Planned removal must be requested by the Governor of the affected State or his designee. Requests must include:

(1) A description of the nature and extent of the release;

(2) A description of actions taken or underway at the site;

(3) A description of the proposed planned removal; and

(4) Assurances that the State will pay at least 10 percent of the costs of the action, including all future maintenance, or at least 50 percent or such greater amount as EPA may determine appropriate, taking into account the degree of responsibility of the State or political subdivision, of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof.

(c) Among the factors that EPA will use to determine whether a planned removal is appropriate under § 300.67(a)(2) are the following:

(1) Actual or potential direct contact with hazardous substances by nearby population;

(2) Contaminated drinking water at the tap;

(3) Hazardous substances in drums, barrels, tanks, or other bulk storage containers, that are known to pose a serious threat to public health or the environment;

(4) Highly contaminated soils largely at or near surface, posing a serious threat to public health or the environment;

(5) Serious threat of fire or explosion; or

(6) Weather conditions that may cause substances to migrate and pose a serious threat to public health or the environment.

(d) Planned removal actions shall be terminated when the lead agency determines that the risk to the public health or the environment has been abated. In making this determination, the lead agency shall consider whether the factors listed in § 300.66(c) continue to apply to the release and whether any contaminated waste materials transported off-site have been treated or disposed of properly.

(e) Unless the EPA finds that (1) continued response actions are immediately required to prevent, limit or mitigate an emergency, (2) there is an immediate risk to public health or welfare or the environment, and (3) such assistance will not otherwise be provided on a timely basis, obligations from the Fund, other than those authorized by section 104(b) of CERCLA, shall not continue after $1 million has been obligated for response actions or six months has elapsed from the date of initial response to the release.

§ 300.68 Phase VI—Remedial action.

(a) Remedial actions taken pursuant to this section (other than responses at Federal facilities) are those responses to releases on the National Priorities List that are consistent with permanent remedy to prevent or mitigate the migration of a release of hazardous substances into the environment.

(b) States are encouraged to undertake Fund-financed remedial actions in accordance with § 300.62 of this Plan.

(c) As an alternative or in addition to Fund-financed remedial action, the lead agency may seek, through voluntary agreement or administrative or judicial process, to have those persons responsible for the release clean up in a manner that effectively mitigates and minimizes damage to, and provides adequate protection of, public health, welfare, and the environment. The lead agency shall evaluate the adequacy of clean-up proposals submitted by responsible parties or determine the level of clean-up to be sought through enforcement efforts, by consideration of the factors discussed in paragraphs (e) through (j) of this section. The lead agency will not, however, apply the cost balancing considerations discussed in paragraph (k) of this section to determine the appropriate extent of responsible party clean-up.

(d)(1) The lead agency, in cooperation with State(s), will examine available information and determine, based on the factors in paragraph (g) of this section, the type or types of remedial response that may be needed to remedy the release. This scoping will serve as the basis for requesting funding for a remedial investigation and feasibility study:

(i) In the case of initial remedial measures, a single request may be made by a State for funding the remedial investigation, feasibility study, design and implementation, in order that such measures may be expedited while continuing the remainder of the remedial planning process.

(ii) In the case of source control or off-site remedial action, the initial funding request should be for the remedial investigation and feasibility study. Requests for funding of design and implementation should be made after the completion of the feasibility study.

(2) As a remedial investigation progresses, the project may be modified if the lead agency determines that, based on the factors in 300.68(e), such modifications would be appropriate.

(e) In determining the appropriate extent of remedial action, the following factors should be used to determine the type or types of remedial action that may be appropriate:

(1) In some instances, initial remedial measures can and should begin before final selection of an appropriate remedial action if such measures are determined to be feasible and necessary to limit exposure or threat of exposure to a significant health or environmental hazard and if such measures are cost-effective. Compliance with § 300.67(b) is a prerequisite to taking initial remedial measures. The following factors should be used in determining whether initial remedial measures are appropriate:

(i) Actual or potential direct contact with hazardous substances by nearby population. (Measures might include fences and other security precautions.)

(ii) Absence of an effective drainage control system (with an emphasis on run-on control). (Measures might include drainage ditches.)

(iii) Contaminated drinking water at the tap. (Measures might include the temporary provision of an alternative water supply.)

(iv) Hazardous substances in drums, barrels, tanks, or other bulk storage containers, above surface posing a serious threat to public health or the environment. (Measures might include transport of drums off-site.)

(v) Highly contaminated soils largely at or near surface, posing a serious threat to public health or the environment. (Measures might include temporary capping or removal of highly contaminated soils from drainage areas.)

(vi) Serious threat of fire or explosion or other serious threat to public health or the environment. (Measures might include security or drum removal.)

(vii) Weather conditions that may cause substances to migrate and to pose a serious threat to public health or the environment. (Measures might include stabilization of berms, dikes or impoundments.)

(2) Source control remedial actions may be appropriate if a substantial concentration of hazardous substances remain at or near the area where they were originally located and inadequate barriers exist to retard migration of substances into the environment. Source control remedial actions may not be appropriate if most substances have migrated from the area where originally located or if the lead agency determines that the substances are adequately contained. Source control remedial actions may include alternatives to contain the hazardous substances where they are located or eliminate potential contamination by transporting the hazardous substances to a new location. The following criteria should be assessed in determining whether and what type of source control remedial actions should be considered:

(i) The extent to which substances pose a danger to public health, welfare, or the environment. Factors which should be considered in assessing this danger include:

(A) Population at risk;

(B) Amount and form of the substance present;

(C) Hazardous properties of the substances;

(D) Hydrogeological factors (e.g. soil permeability depth to saturated zone, hydrologic gradients, proximity to a drinking water aquifer); and

(E) Climate (rainfall, etc.).

(ii) The extent to which substances have migrated or are contained by either natural or man-made barriers.

(iii) The experiences and approaches used in similar situations by State and Federal agencies and private parties.

(iv) Environmental effects and welfare concerns.

(3) In some situations it may be appropriate to take action (referred to as offsite remedial actions) to minimize and mitigate the migration of hazardous substances and the effects of such migration. These actions may be taken when the lead agency determines that source control remedial actions may not effectively mitigate and minimize the threat and there is a significant threat to public health, welfare, or the environment. These situations typically will result from contamination that has migrated beyond the area where the hazardous substances were originally located. Offsite measures may include provision of permanent alternative water supplies, management of a drinking water aquifer plume or treatment of drinking water aquifers. The following criteria should be used in determining whether and what type of offsite remedial actions should be considered:

(i) Contribution of the contamination to an air, land or water pollution problem.

(ii) The extent to which the substances have migrated or are expected to migrate from the area of their original location and whether continued migration may pose a danger to public health, welfare or environment.

(iii) The extent to which natural or man-made barriers currently contain the hazardous substances and the adequacy of the barriers.

(iv) The factors listed in paragraph (e)(2)(i) of this section.

(v) The experiences and approaches used in similar situations by State and Federal agencies and private parties.

(iv) Environmental effects and welfare concerns.

(f) A remedial investigation should be undertaken by the lead agency (or responsible party if the responsible party will be developing a clean-up proposal) to determine the nature and extent of the problem presented by the release. This includes sampling and monitoring, as necessary, and includes the gathering of sufficient information to determine the necessity for and proposed extent of remedial action. During the remedial investigation, the original scoping of the project may be modified based on the factors in § 300.68(e). Part of the remedial investigation involves assessing whether the threat can be mitigated and minimized by controlling the source of the contamination at or near the area where the hazardous substances were originally located (source control remedial actions) or whether additional actions will be necessary because the hazardous substances have migrated from the area of their original location (offsite remedial actions).

(g) *Development of Alternatives.* A limited number of alternatives should be developed for either source control or offsite remedial actions (or both) depending upon the type of response that has been identified under paragraphs (e) and (f) of this section as being appropriate. One alternative may be a no-action alternative. No-action alternatives are appropriate, for example, when response action may cause a greater environmental or health danger than no action. These alternatives should be developed based upon the assessment conducted under paragraphs (e) and (f) of this section and reflect the types of source control or offsite remedial actions determined to be appropriate under paragraphs (e) and (f) of this section.

(h) *Initial Screening of Alternatives.* The alternatives developed under paragraph (g) of this section will be subjected to an initial screening to narrow the list of potential remedial actions for further detailed analysis. Three broad criteria should be used in the initial screening of alternatives:

(1) *Cost.* For each alternative, the cost of installing or implementing the remedial action must be considered, including operation and maintenance costs. An alternative that far exceeds (e.g. by an order of magnitude) the costs of other alternatives evaluated and that does not provide substantially greater public health or environmental benefit should usually be excluded from further consideration.

(2) *Effects of the Alternative.* The effects of each alternative should be evaluated in two ways: (i) Whether the alternative itself or its implementation has any adverse environmental effects; and (ii) for source control remedial actions, whether the alternative is likely to achieve adequate control of source material, or for offsite remedial actions, whether the alternative is likely to effectively mitigate and minimize the threat of harm to public health, welfare or the environment. If an alternative has significant adverse effects, it should be excluded from further consideration. Only those alternatives that effectively contribute to protection of public health, welfare, or the environment should be considered further.

(3) *Acceptable Engineering Practices.* Alternatives must be feasible for the location and conditions of the release, applicable to the problem, and represent a reliable means of addressing the problem.

(i) *Detailed Analysis of Alternatives.*

(1) A more detailed evaluation will be conducted of the limited number of alternatives that remain after the initial screening in paragraph (h).

(2) The detailed analysis of each alternative should include:

(A) Refinement and specification of alternatives in detail, with emphasis on use of established technology;

(B) Detailed cost estimation, including distribution of costs over time;

(C) Evaluation in terms of engineering implementation, or constructability;

(D) An assessment of each alternative in terms of the extent to which it is expected to effectively mitigate and minimize damage to, and provide adequate protection of, public health, welfare, and the environment, relative to the other alternatives analyzed; and

(E) An analysis of any adverse environmental impacts, methods for mitigating these impacts, and costs of mitigation.

(3) In performing the detailed analysis of alternatives, it may be necessary to gather additional data in order to complete the analysis.

(j) The appropriate extent of remedy shall be determined by the lead agency's selection of the remedial alternative which the agency determines is cost-effective (i.e. the lowest cost alternative that is technologically feasible and reliable and which effectively mitigates and minimizes damage to and provides adequate protection of public health, welfare, or the environment).

(k) Section 104(c)(4) of CERCLA requires that the need for protection of public health, welfare and the environment at the facility under consideration be balanced against the amount of money available in the Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the need for immediate action. Accordingly, in determining the appropriate extent of remedy for Fund-financed response, the lead agency also must consider the need to respond to other releases with Fund monies.

§ 300.69 Phase VII—Documentation and cost recovery.

(a) During all phases, documentation shall be collected and maintained to support all actions taken under this Plan, and to form the basis for cost recovery. In general, documentation should be sufficient to provide the

source and circumstances of the condition, the identity of responsible parties, accurate accounting of Federal costs incurred, and impacts and potential impacts to the public health, welfare and environment.

(b) The information and reports obtained by the lead agency for Fund-financed response action should be transmitted to the RRC. Copies can then be forwarded to the NRT, members of the RRT, and others as appropriate.

§ 300.70 Methods of remedying releases.

(a) The following section lists methods for remedying releases that may be considered by the lead agency in taking response action. This list of methods should not be considered inclusive of all possible methods of remedying releases.

(b) *Engineering Methods for On-Site Actions.*—(1)(i) *Air emissions control*—The control of volatile gaseous compounds should address both lateral movement and atmospheric emissions. Before gas migration controls can be properly installed, field measurements to determine gas concentrations, pressures, and soil permeabilities should be used to establish optimum design for control. In addition, the types of hazardous substances present, the depth to which they extend, the nature of the gas and the subsurface geology of the release area should, if possible, be determined. Typical emission control techniques include the following:

(A) Pipe vents;
(B) Trench vents;
(C) Gas barriers;
(D) Gas collection systems;
(E) Overpacking.

(ii) *Surface water controls*—These are remedial techniques designed to reduce waste infiltration and to control runoff at release areas. They also serve to reduce erosion and to stabilize the surface of covered sites. These types of control technologies are usually implemented in conjunction with other types of controls such as the elimination of ground water infiltration and/or waste stabilization, etc. Technologies applicable to surface water control include the following:

(A) Surface seals;
(B) Surface water diversion and collection systems:
(*1*) Dikes and berms;
(*2*) Ditches, diversions, waterways;
(*3*) Chutes and downpipes;
(*4*) Levees;
(*5*) Seepage basins and ditches;
(*6*) Sedimentation basins and ponds;
(*7*) Terraces and benches.
(C) Grading;
(D) Revegetation.

(iii) *Ground water controls*—Ground water pollution is a particularly serious problem because, once an aquifer has been contaminated, the resource cannot usually be cleaned without the expenditure of great time, effort and resources. Techniques that can be applied to the problem with varying degrees of success are as follows:

(A) Impermeable barriers:
(*1*) Slurry walls;
(*2*) Grout curtains;
(*3*) Sheet pilings.
(B) Permeable treatment beds;
(C) Ground water pumping:
(*1*) Water table adjustment;
(*2*) Plume containment.
(D) Leachate control—Leachate control systems are applicable to control of surface seeps and seepage of leachate to ground water. Leachate collection systems consist of a series of drains which intercept the leachate and channel it to a sump, wetwell, treatment system, or appropriate surface discharge point. Technologies applicable to leachate control include the following:
(*1*) Subsurface drains;
(*2*) Drainage ditches;
(*3*) Liners.

(iv) *Contaminated water and sewer lines*—Sanitary sewers and municipal water mains located down gradient from hazardous waste disposal sites may become contaminated by infiltration of leachate or polluted ground water through cracks, ruptures, or poorly sealed joints in piping. Technologies applicable to the control of such contamination to water and sewer lines include:

(A) Grouting;
(B) Pipe relining and sleeving;
(C) Sewer relocation.

(2) *Treatment technologies.* (i) *Gaseous emissions treatment*—Gases from waste disposal sites frequently contain malodorous and toxic substances, and thus require treatment before release to the atmosphere. There are two basic types of gas treatment systems:

(A) Vapor phase adsorption;
(B) Thermal oxidation.

(ii) *Direct waste treatment methods*—In most cases, these techniques can be considered long-term permanent solutions. Many of these direct treatment methods are not fully developed and the applications and process reliability are not well demonstrated. Use of these techniques for waste treatment may require considerable pilot plant work. Technologies applicable to the direct treatment of wastes are:

(A) Biological methods:
(*1*) Treatment via modified conventional wastewater treatment techniques;
(*2*) Anaerobic, aerated and facultative lagoons;
(*3*) Supported growth biological reactors.
(B) Chemical methods:
(*1*) Chlorination;
(*2*) Precipitation, flocculation, sedimentation;
(*3*) Neutralization;
(*4*) Equalization;
(*5*) Chemical oxidation.
(C) Physical methods:
(*1*) Air stripping;
(*2*) Carbon absorption;
(*3*) Ion exchange;
(*4*) Reverse osmosis;
(*5*) Permeable bed treatment;
(*6*) Wet air oxidation;
(*7*) Incineration.

(iii) *Contaminated soils and sediments*—In some cases where it can be shown to be cost-effective, contaminated sediments and soils will be treated on the site. Technologies available include:

(A) Incineration;
(B) Wet air oxidation;
(C) Solidification;
(D) Encapsulation;
(E) In situ treatment:
(*1*) Solution mining, (soil washing or soil flushing);
(*2*) Neutralization/detoxification;
(*3*) Microbiological degradation.

(c) *Offsite Transport for Storage, Treatment, Destruction or Secure Disposition.*—(1) *General*—Offsite transport or storage, treatment, destruction, or secure disposition offsite may be provided in cases where EPA determines that such actions:

(i) Are more cost-effective than other forms of remedial actions;

(ii) Will create new capacity to manage, in compliance with Subtitle C of the Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility; or

(iii) Are necessary to protect public health, welfare, or the environment from a present or potential risk which may be created by further exposure to the continued presence of such substances or materials.

(2) *Contaminated soils and sediments may be removed from the site.* Technologies used to remove contaminated sediments on soils include:

(i) Excavation;
(ii) Hydraulic dredging;
(iii) Mechanical dredging.

(d) *Provision of Alternative Water Supplies*—Alternative water supplies can be provided in several ways:

(1) Provision of individual treatment units;

(2) Provision of water distribution system;

(3) Provision of new wells in a new location or deeper wells;

(4) Provision of cisterns;

(5) Provision of bottled or treated water;

(6) Provision of upgraded treatment for existing distribution systems.

(e) *Relocation*—Permanent relocation of residents, businesses, and community facilities may be provided where it is determined that human health is in danger and that, alone or in combination with other measures, relocation would be cost-effective and environmentally preferable to other remedial response. Temporary relocation may also be taken in appropriate circumstances.

§ 300.71 Worker health and safety.

Lead agency personnel should be aware of hazards, due to a release of hazardous substances, to human health and safety and exercise great caution in allowing civilian or government personnel into an affected area until the nature of the release has been ascertained. Accordingly, the OSC or responsible official must conform to applicable OSHA requirements and other guidance. All private contractors who are working at the scene of a release must conform to applicable provisions of the Occupational Safety and Health Act and any other requirements deemed necessary by the lead agency.

Subpart G—Trustees for Natural Resources.

§ 300.72 Designation of Federal trustees.

When natural resources are lost or damaged as a result of a discharge of oil or release of a hazardous substance, the following officials are designated to act as Federal trustees pursuant to section 111(h)(1) of CERCLA for purposes of sections 111(h)(1), 111(b) and 107(f) of CERCLA:

(a)(1) *Natural Resource Loss.* Damage to resources of any kind located on, over or under land subject to the management or protection of a Federal land managing agency, other than land or resources in or under United States waters that are navigable by deep draft vessels, including waters of the contiguous zone and parts of the high seas to which the National Contingency Plan is applicable and other waters subject to tidal influence.

(2) *Trustee.* The head of the Federal land managing agency, or the head of any other single entity designated by it to act as trustee for a specific resource.

(b)(1) *Natural Resource Loss.* Damage to fixed or non-fixed resources subject to the management or protection of a Federal agency, other than land in resources in or under United States waters that are navigable by deep draft vessels, including waters of the contiguous zone and parts of the high seas to which the National Contingency Plan is applicable and other waters subject to tidal influence.

(2) *Trustee.* The head of the Federal agency authorized to manage or protect these resources by statute, or the head of any other single entity designated by it to act as trustee for a specific resource.

(c)(1) *Natural Resource Loss.* Damage to resource of any kind subject to the management or protection of a Federal agency and lying in or under United States waters that are navigable by deep draft vessels, including waters of the contiguous zone and parts of the high seas to which the National Contingency Plan is applicable and other waters subject to tidal influence, and upland areas serving as habitat for marine mammals and other species subject to the protective jurisdiction of NOAA.

(2) *Trustee.* The Secretary of Commerce or the head of any other single Federal entity designated by it to act as trustee for a specific resource; provided, however, that where resources are subject to the statutory authorities and jurisdictions of the Secretaries of the Departments of Commerce or the Interior, they shall act as co-trustees.

(d)(1) *Natural Resource Loss.* Damages to natural resources protected by treaty (or other authority pertaining to Native American tribes) or located on lands held by the United States in trust for Native American communities or individuals.

(2) *Trustee.* The Secretary of the Department of the Interior, or the head of any other single Federal entity designated by it to act as trustee for specific resources.

§ 300.73 State trustees.

Pursuant to section 111(h)(1) of CERCLA and for purposes of sections 111(h)(1), 111(b) and 107(f) of CERCLA, States may act as trustee for damage to resources within the boundary of a State belonging to, managed by, controlled by, or appertaining to such State.

§ 300.74 Responsibilities of trustees.

(a) The Federal trustees for natural resources shall be responsible for assessing damages to the resources in accordance with regulations promulgated under section 301(c) of CERCLA, seeking recovery for the losses from the person responsible or from the Fund, and devising and carrying out restoration, rehabilitation and replacement plans pursuant to CERCLA.

(b) Where there are multiple trustees, because of co-existing or contiguous natural resources or concurrent jurisdictions, they shall coordinate and cooperate in carrying out these responsibilities.

Subpart H—Use of Dispersants and Other Chemicals

§ 300.81 General.

(a) Section 311(c)(2)(G) of the Clean Water Act requires that EPA prepare a schedule of dispersants and other chemicals, if any, that may be used in carrying out the plan.

(b) The OSC, with the concurrence of the EPA representative to the RRT and in consultation with the States, may authorize the use of dispersants and other chemicals on oil spills; provided, however, that such dispersants and other chemicals must be on the list of accepted dispersants prepared by EPA.

(c) In the case of dispersants and other chemicals not included on the list of accepted dispersants, EPA will continue to authorize use on a case-by-case basis. Case-by-case approvals will be made by the Administrator or her designee.

Appendix A—Uncontrolled Hazardous Waste Site Ranking Sustem; A Users Manual

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1.0 Introduction

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (Pub. L. 96–510) requires the President to identify the 400 facilities in the nation warranting the highest priority for remedial action. In order to set the priorities, CERCLA requires that criteria be established based on relative risk or danger, taking into account the population at risk; the hazardous potential of the substances at a facility; the potential for contamination of drinking water supplies, for direct human contact, and for destruction of sensitive ecosystems; and other appropriate factors.

This document describes the Hazard Ranking System (HRS) to be used in evaluating the relative potential of uncontrolled hazardous substance facilities to cause health or safety problems, or ecological or environmental damage. Detailed instructions for using the HRS are given in the following sections. Uniform application of the ranking system in each State will permit EPA to identify those releases of hazardous substances that pose the greatest hazard to humans or the environment. However, the HRS by itself cannot establish priorities for the allocation of funds for remedial action. The HRS is a means for applying uniform technical judgment regarding the potential hazards presented by a facility relative to other facilities. It does not address the feasibility, desirability, or degree of cleanup required. Neither does it deal with the readiness or ability of a State to carry out such remedial action as may be indicated, or to meet other conditions prescribed in CERCLA.

The HRS assigns three scores to a hazardous facility:

- S_M reflects the potential for harm to humans or the environment from migration of a hazardous substance away from the facility by routes involving ground water, surface water, or air. It is a composite of separate scores for each of the three routes.
- S_{FE} reflects the potential for harm from substances that can explode or cause fires.
- S_{DC} reflects the potential for harm from direct contact with hazardous substances at the facility (i.e., no migration need be involved).

The score for each hazard mode (migration, fire and explosion and direct contact) or route is obtained by considering a set of factors that characterize the potential of the facility to cause harm (Table 1). Each factor is assigned a numerical value (on a scale of 0 to 3, 5 or 8) according to prescribed guidelines. This value is then multiplied by a weighting factor yielding the factor score. The factor scores are then combined: scores within a factor category are added; then the total scores for each factor category are multiplied together to develop a score for ground water, surface water, air, fire and explosion, and direct contact.

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TABLE 1

COMPREHENSIVE LIST TO RATING FACTORS

HAZARD MODE	FACTOR CATEGORY	FACTORS		
		GROUND WATER ROUTE	SURFACE WATER ROUTE	AIR ROUTE
Migration	Route Characteristics	• Depth to Aquifer of Concern • Net Precipitation • Permeability of Unsaturated Zone • Physical State	• Facility Slope and Intervening Terrain • One-Year 24-Hour Rainfall • Distance to Nearest Surface Water • Physical State	
	Containment	• Containment	• Containment	
	Waste Characteristics	• Toxicity/Persistence • Hazardous Waste Quantity	• Toxicity/Persistence • Hazardous Waste Quantity	• Reactivity/Incompatibility • Toxicity • Hazardous Waste Quantity
	Targets	• Ground Water Use • Distance to Nearest Well/ Population Served	• Surface Water Use • Distance to Sensitive Environment • Population Served/Distance to Water Intake Downstream	• Land Use • Population Within 4-Mile Radius • Distance to Sensitive Environment
Fire and Explosion	Containment	• Containment		
	Waste Characteristics	• Direct Evidence • Ignitability • Reactivity • Incompatibility • Hazardous Waste Quantity		
	Targets	• Distance to Nearest Population • Distance to Nearest Building • Distance to Nearest Sensitive Environment • Land Use • Population Within 2-Mile Radius • Number of Buildings Within 2-Mile Radius		
Direct Contact	Observed Incident	• Observed Incident		
	Accessibility	• Accessibility of Hazardous Substances		
	Containment	• Containment		
	Toxicity	• Toxicity		
	Targets	• Population Within 1-Mile Radius • Distance to Critical Habitat		

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In computing S_{FE} or S_{DC}, or an individual migration route score, the product of its factor category scores is divided by the maximum possible score, and the resulting ratio is multiplied by 100. The last step puts all scores on a scale of 0 to 100.

S_M is a composite of the scores for the three possible migration routes:

$$S_M = \frac{1}{1.73}\sqrt{S_{gw}^2 + S_{sw}^2 + S_a^2}$$

where:
S_{gw} = ground water route score
S_{sw} = surface water route score
S_a = air route score

The effect of this means of combining the route scores is to emphasize the primary (highest scoring) route in aggregating route scores while giving some additional consideration to the secondary or tertiary routes if they score high. The factor 1/1.73 is used simply for the purpose of reducing S_M scores to a 100-point scale.

The HRS does not quantify the probability of harm from a facility or the magnitude of the harm that could result, although the factors have been selected in order to approximate both those elements of risk. It is a procedure for ranking facilities in terms of the potential threat they pose by describing:

- The manner in which the hazardous substances are contained,
- The route by which they would be released,
- The characteristics and amount of the harmful substances, and
- The likely targets.

The multiplicative combination of factor category scores is an approximation of the more rigorous approach in which one would express the hazard posed by a facility as the product of the probability of a harmful occurrence and the magnitude of the potential damage.

The ranking of facilities nationally for remedial action will be based primarily on S_M. S_{FE} and S_{DC} may be used to identify facilities requiring emergency attention.

2.0 Using the Hazard Ranking System—General Considerations

Use of the HRS requires considerable information about the facility, its surroundings, the hazardous substances present, and the geological character of the area down to the aquifers that may be at risk.

Figure 1 illustrates a format for recording general information regarding the facility being evaluated. It can also serve as a cover sheet for the work sheets used in the evaluation.

Where there are no data for a factor, it should be assigned a value of zero. However, if a factor with no data is the only factor in a category (e.g., containment), then the factor is given a score of 1. If data are lacking for more than one factor in connection with the evaluation of either S_{gw}, S_{sw}, S_a, S_{FE}, or S_{DC}, that route score is set at zero.

The following sections give detailed instructions and guidance for rating a facility. Each section begins with a work sheet designed to conform to the sequence of steps required to perform the rating. Guidance for evaluating each of the factors then follows. Using the guidance provided, attempt to assign a score for each of the three possible migration routes. Bear in mind that if data are missing for more than one factor in connection with the evaluation of a route, then you must set that route score at 0 (i.e., there is no need to assign scores to factors in a route that will be set at 0).

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Facility name: _____

Location: _____

EPA Region: _____

Person(s) in charge of the facility: _____

_____

_____

Name of Reviewer: _____ Date: _____

General description of the facility:

(For example: landfill, surface impoundment, pile, container; types of hazardous substances; location of the facility; contamination route of major concern; types of information needed for rating; agency action, etc.)

_____

_____

_____

_____

_____

_____

_____

Scores: S_M = (S_{gw} = S_{sw} = S_a =)

S_{FE} =

S_{DC} =

FIGURE 1
HRS COVER SHEET

BILLING CODE 6560-50-C

3.0 Ground Water Migration Route

3.1 *Observed Release.* If there is direct evidence of release of a substance of concern from a facility to ground water, enter a score of 45 on line 1 of the work sheet for the ground water route (Figure 2); then you need not evaluate route characteristics and containment factors (lines 2 and 3). Direct evidence of release must be analytical. If a contaminant is measured (regardless of frequency) in ground water or in a well in the vicinity of the facility at a significantly (in terms of demonstrating that a release has occurred, not in terms of potential effects) higher level than the background level, then quantitative evidence exists, and a release has been observed. Qualitative evidence of release (e.g., an oily or otherwise objectionable taste or smell in well water) constitutes direct evidence only if it can be confirmed that it results from a release at the facility in question. If a release has been observed, proceed to "3.4 *Waste Characteristics*" to continue scoring. If direct evidence is lacking, enter a value of 0 on line 1 and continue the scoring procedure by evaluating *Route Characteristics.*

3.2 *Route Characteristics. Depth to aquifer of concern* is measured vertically from the lowest point of the hazardous substances to the highest seasonal level of the saturated zone of the aquifer of concern (Figure 3). This factor is one indicator of the ease with which a pollutant from the facility could migrate to ground water. Assign a value as follows:

Distance (feet)	Assigned value
>150	0
76 to 150	1
21 to 75	2
0 to 20	3

Net precipitation (precipitation minus evaporation) indicates the potential for leachate generation at the facility. Net seasonal rainfall (seasonal rainfall minus seasonal evaporation) data may be used if available. If net precipitation is not measured in the region in which the facility is located, calculate it by subtracting the mean annual lake evaporation for the region (obtained from Figure 4) from the normal annual precipitation for the region (obtained from Figure 5). EPA Regional Offices will have maps for areas outside the continental U.S. Assign a value as follows:

Net precipitation (inches)	Assigned value
<−10	0
−10 to +5	1
+5 to +15	2
>+15	3

Permeability of unsaturated zone (or intervening geological formations) is an indicator of the speed at which a contaminant could migrate from a facility. Assign a value from Table 2.

TABLE 2.—PERMEABILITY OF GEOLOGIC MATERIALS[1]

Type of material	Approximate range of hydraulic conductivity	Assigned value
Clay, compact till, shale; unfractured metamorphic and igneous rocks.	$<10^{-7}$ cm/sec	0
Silt, loess, silty clays, silty loams, clay loams; less permeable limestone, dolomites, and sandstone; moderately permeable till.	$<10^{-5}>10^{-7}$ cm/sec	1
Fine sand and silty sand; sandy loams; loamy sands; moderately permeable limestone, dolomites, and sandstone (no karst); moderately fractured igneous and metamorphic rocks, some coarse till.	$<10^{-3}>10^{-5}$ cm/sec	2
Gravel, sand; highly fractured igneous and metamorphic rocks; permeable basalt and lavas; karst limestone and dolomite.	$>10^{-3}$ cm/sec	3

[1] Derived from: Davis, S. N., *Porosity and Permeability of Natural Materials in Flow-Through Porous Media,* R.J.M. DeWest ed., Academic Press, New York, 1969; Freeze, R.A. and J.A. Cherry, *Groundwater,* Prentice-Hall, Inc., New York, 1979.

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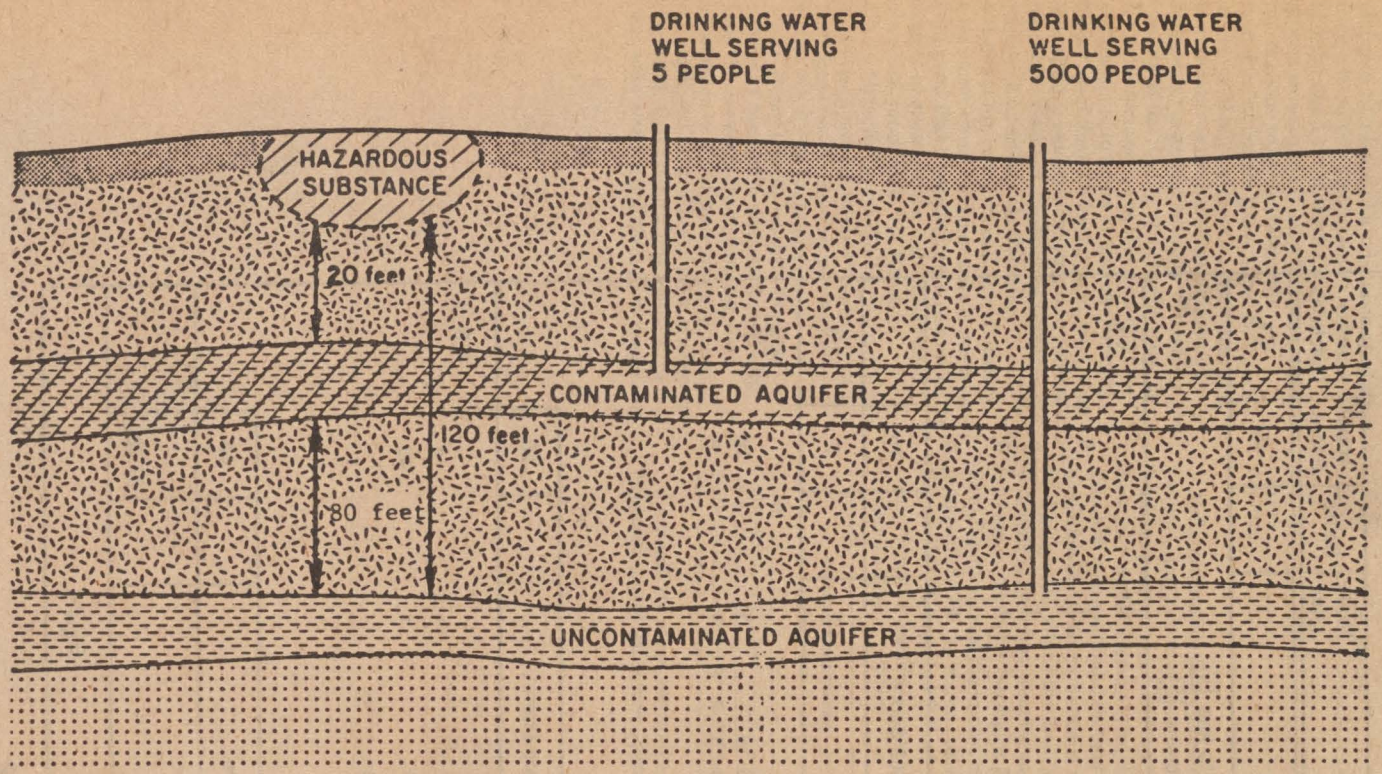
Ground Water Route Work Sheet					
Rating Factor	Assigned Value (Circle One)	Multi-plier	Score	Max. Score	Ref. (Section)
[1] Observed Release	0 45	1		45	3.1
If observed release is given a score of 45, proceed to line [4]. If observed release is given a score of 0, proceed to line [2].					
[2] Route Characteristics					3.2
Depth to Aquifer of Concern	0 1 2 3	2		6	
Net Precipitation	0 1 2 3	1		3	
Permeability of the Unsaturated Zone	0 1 2 3	1		3	
Physical State	0 1 2 3	1		3	
Total Route Characteristics Score				15	
[3] Containment	0 1 2 3	1		3	3.3
[4] Waste Characteristics					3.4
Toxicity/Persistence	0 3 6 9 12 15 18	1		18	
Hazardous Waste Quantity	0 1 2 3 4 5 6 7 8	1		8	
Total Waste Characteristics Score				26	
[5] Targets					3.5
Ground Water Use	0 1 2 3	3		9	
Distance to Nearest Well/Population Served	0 4 6 8 10 12 16 18 20 24 30 32 35 40	1		40	
Total Targets Score				49	
[6] If line [1] is 45, multiply [1] x [4] x [5] If line [1] is 0, multiply [2] x [3] x [4] x [5]				57,330	
[7] Divide line [6] by 57,330 and multiply by 100		S_{gw} =			

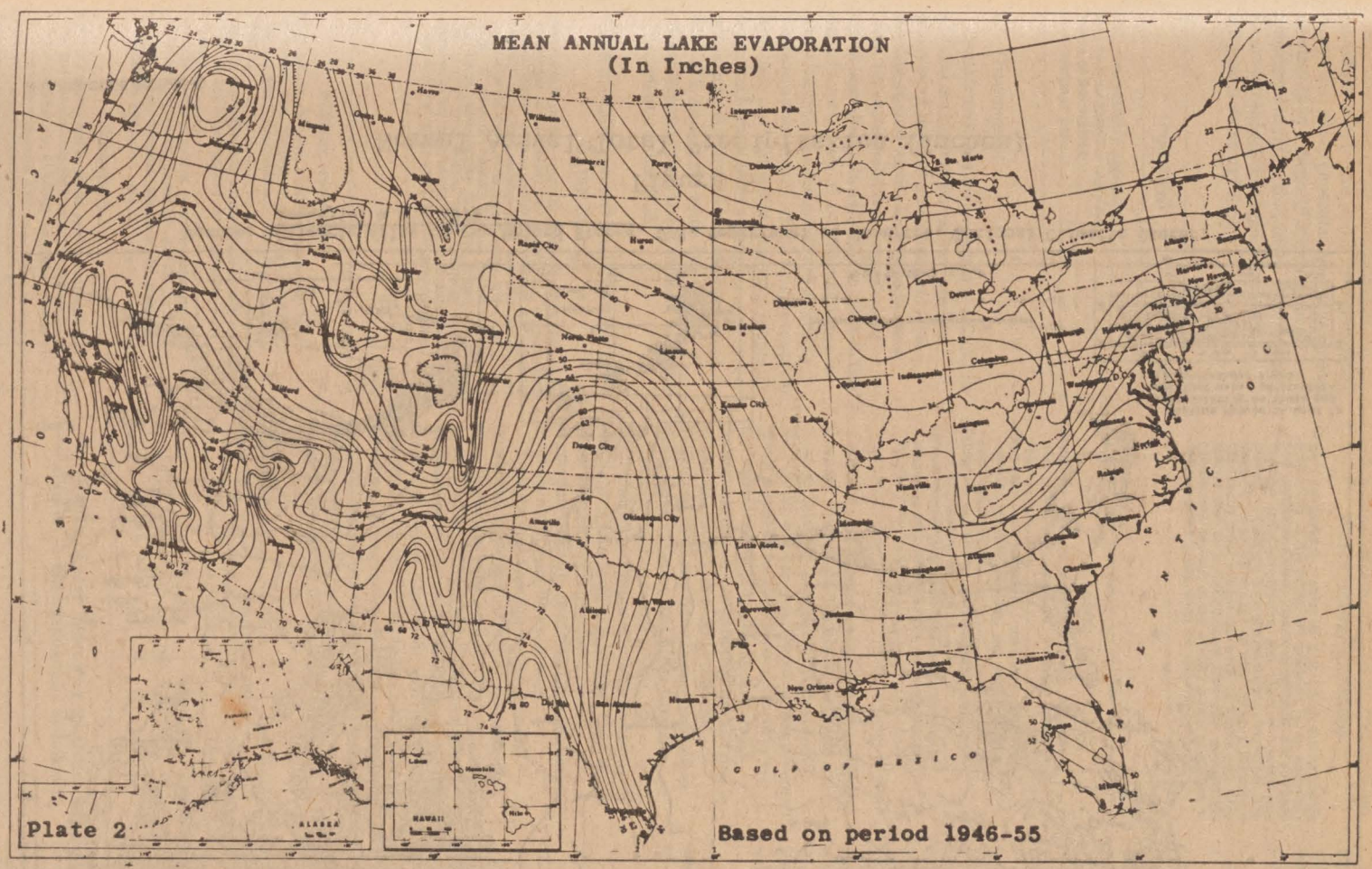
FIGURE 2
GROUND WATER ROUTE WORK SHEET



*Treat target and route characteristics factors consistently. For example, if the upper aquifer is the aquifer of concern, then the "depth to aquifer of concern" is 20 feet and the "population served" is 5 persons. If the lower aquifer is "of concern", the "depth" is 120 feet (assuming no known contamination below the indicated "hazardous substance") and the "population" is 5000 persons. If the upper aquifer is contaminated and the lower aquifer is "of concern", the "depth" would be 80 feet (vertical distance between hazardous substance and aquifer of concern) and the population would be 5000 persons.

FIGURE 3

Depth to Aquifer of Concern



Source: Climatic Atlas of the United States, U.S. Department of Commerce, National Climatic Center, Ashville, N.C., 1979.

Figure 4

Mean Annual Lake Evaporation (In Inches)

Source: Climatic Atlas of the United States, U.S. Department of Commerce, National Climatic Center, Asheville, N.C., 1979.

Figure 5

Normal Annual Total Precipitation (inches)

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Physical state refers to the state of the hazardous substances at the time of disposal, except that gases generated by the hazardous substances in a disposal area should be considered in rating this factor. Each of the hazardous substances being evaluated is assigned a value as follows:

Physical state	Assigned value
Solid, consolidated or stabilized	0
Solid, unconsolidated or unstabilized	1
Powder or fine material	2
Liquid, sludge or gas	3

3.3 *Containment*

Containment is a measure of the natural or artificial means that have been used to minimize or prevent a contaminant from entering ground water. Examples include liners, leachate collection systems, and sealed containers. In assigning a value to this rating factor (Table 3), consider all ways in which hazardous substances are stored or disposed at the facility. If the facility involves more than one method of storage or disposal, assign the highest from among all applicable values (e.g., if a landfill has a containment value of 1, and, at the same location, a surface impoundment has a value of 2, assign containment a value of 2).

TABLE 3.—CONTAINMENT VALUE FOR GROUND WATER ROUTE

Assign containment a value of 0 if: (1) all the hazardous substances at the facility are underlain by an essentially non permeable surface (natural or artificial) and adequate leachate collection systems and diversion systems are present; or (2) there is no ground water in the vicinity. The value "0" does not indicate no risk. Rather, it indicates a significantly lower relative risk when compared with more serious sites on a national level. Otherwise, evaluate the containment for each of the different means of storage or disposal at the facility, using the following guidance.

	Assigned value
A. Surface Impoundment	
Sound run-on diversion structure, essentially non permeable liner (natural or artificial) compatible with the waste, and adequate leachate collection system	0
Essentially non permeable compatible liner with no leachate collection system; or inadequate freeboard	1
Potentially unsound run-on diversion structure; or moderately permeable compatible liner	2
Unsound run-on diversion structure; no liner; or incompatible liner	3
B. Containers	
Containers sealed and in sound condition, adequate liner, and adequate leachate collection system	0
Containers sealed and in sound condition, no liner or moderately permeable liner	1
Containers leaking, moderately permeable liner	2
Containers leaking and no liner or incompatible liner	3
C. Piles	
Piles uncovered and waste stabilized; or piles covered, waste unstabilized, and essentially non permeable liner	0
Piles uncovered, waste unstabilized, moderately permeable liner, and leachate collection system	1
Piles uncovered, waste unstabilized, moderately permeable liner, and no leachate collection system	2
Piles uncovered, waste unstabilized, and no liner	3

TABLE 3.—CONTAINMENT VALUE FOR GROUND WATER ROUTE—Continued

Assign containment a value of 0 if: (1) all the hazardous substances at the facility are underlain by an essentially non permeable surface (natural or artificial) and adequate leachate collection systems and diversion systems are present; or (2) there is no ground water in the vicinity. The value "0" does not indicate no risk. Rather, it indicates a significantly lower relative risk when compared with more serious sites on a national level. Otherwise, evaluate the containment for each of the different means of storage or disposal at the facility, using the following guidance.

	Assigned value
D. Landfill	
Essentially non permeable liner, liner compatible with waste, and adequate leachate collection system	0
Essentially non permeable compatible liner, no leachate collection system, and landfill surface precludes ponding	1
Moderately permeable, compatible liner, and landfill surface precludes ponding	2
No liner or incompatible liner; moderately permeable compatible liner; landfill surface encourages ponding; no run-on control	3

3.4 *Waste Characteristics.* In determining a waste characteristics score, evaluate the most hazardous substances at the facility that could migrate (i.e., if scored, containment is not equal to zero) to ground water. Take the substance with the highest score as representative of the potential hazard due to waste characteristics. Note that the substance that may have been observed in the release category can differ from the substance used in rating waste characteristics. Where the total inventory of substances in a facility is known, only those present in amounts greater than the reportable quantity (see CERCLA Section 102 for definition) may be evaluated.

Toxicity and Persistence have been combined in the matrix below because of their important relationship. To determine the overall value for this combined factor, evaluate each factor individually as discussed below. Match the individual values assigned with the values in the matrix for the combined rating factor. Evaluate several of the most hazardous substances at the facility independently and enter only the highest score in the matrix on the work sheet.

Value for toxicity	Value for persistence			
	0	1	2	3
0	0	0	0	0
1	3	6	9	12
2	6	9	12	15
3	9	12	15	18

Persistence of each hazardous substance is evaluated on its biodegradability as follows:

Substance	Assigned value
Easily biodegradable compounds	0
Straight chain hydrocarbons	1
Substituted and other ring compounds	2
Metals, polycyclic compounds and halogenated hydrocarbons	3

More specific information is given in Tables 4 and 5.

Toxicity of each hazardous substance being evaluated is given a value using the rating scheme of Sax (Table 6) or the National Fire Protection Association (NFPA) (Table 7) and the following guidance:

Toxicity	Assigned value
Sax level 0 or NFPA level 0	0
Sax level 1 or NFPA level 1	1
Sax level 2 or NFPA level 2	2
Sax level 3 or NFPA level 3 or 4	3

Table 4 presents values for some common compounds.

Hazardous waste quantity includes all hazardous substances at a facility (as received) except that with a containment value of 0. Do not include amounts of contaminated soil or water; in such cases, the amount of contaminating hazardous substance may be estimated.

On occasion, it may be necessary to convert data to a common unit to combine them. In such cases, 1 ton=1 cubic yard=4 drums and for the purposes of converting bulk storage, 1 drum=50 gallons. Assign a value as follows:

Tons in cubic yards	Number of drums	Assigned value
0	0	0
1–10	1–40	1
11–62	41–250	2
63–125	251–500	3
126–250	501–1,000	4
251–625	1,001–2,500	5
626–1,250	2,501–5,000	6
1,251–2,500	5,001–10,000	7
>2,500	>10,000	8

TABLE 4.—WASTE CHARACTERISTICS VALUES FOR SOME COMMON CHEMICALS

Chemical/Compound	Toxicity[1]	Persistence[2]	Ignitability[3]	Reactivity[3]
Acetaldehyde	3	0	3	2
Acetic Acid	3	0	2	1
Acetone	2	0	3	0
Aldrin	3	3	1	0
Ammonia, Anhydrous	3	0	1	0
Aniline	3	1	2	0
Benzene	3	1	3	0
Carbon Tetrachloride	3	3	0	0
Chlordane	3	3	*0	*0
Chlorobenzene	2	2	3	0
Chloroform	3	3	0	0
Cresol-O	3	1	2	0
Cresol-M&P	3	1	1	0
Cyclohexane	2	2	3	0
Endrin	3	3	1	0
Ethyl Benzene	2	1	3	0
Formaldehyde	3	0	2	0
Formic Acid	3	0	2	0
Hydrochloric Acid	3	0	0	0
Isopropyl Ether	3	1	3	1
Lindane	3	3	1	0
Methane	1	1	3	0
Methyl Ethyl Ketone	2	0	3	0
Methyl Parathion in Xylene Solution	3	Δ0	3	2
Naphthalene	2	1	2	0
Nitric Acid	3	0	0	0
Parathion	3	Δ0	1	2
PCB	3	3	Δ0	Δ0
Petroleum, Kerosene (Fuel Oil No. 1)	3	1	2	0
Phenol	3	1	2	0
Sulfuric Acid	3	0	0	2
Toluene	2	1	3	0

TABLE 4.—WASTE CHARACTERISTICS VALUES FOR SOME COMMON CHEMICALS—Continued

Chemical/Compound	Toxicity[1]	Persistence[2]	Ignitability[3]	Reactivity[3]
Trichlorobenzene	2	3	1	0
α-Trichloroethane	2	2	1	0
Xylene	2	1	3	0

[1] Sax, N. I., *Dangerous Properties of Industrial Materials*, Van Nostrand Rheinhold Co., New York, 4th ed., 1975. The highest rating listed under each chemical is used.
[2] JRB Associates, Inc., *Methodology for Rating the Hazard Potential of Waste Disposal Sites*, May 5, 1980.
[3] National Fire Protection Association, National Fire Codes, Vol 13, No. 49, 1977.
* Professional judgment based on information contained in the U.S. Coast Guard CHRIS Hazardous Chemical Data, 1978.
Δ Professional judgment based on existing literature.

TABLE 5.—PERSISTENCE (BIODEGRADABILITY) OF SOME ORGANIC COMPOUNDS*

Value=3 Highly Persistent Compounds

aldrin	heptachlor
benzopyrene	heptachlor epoxide
benzothiazole	1,2,3,4,5,7,7-heptachlorononorbornene
benzothiophene	hexachlorobenzene
benzyl butyl phythalate	hexachloro-1,3-butadiene
bromochlorobenzene	hexachlorocyclohexane
bromoform butanal	hexachloroethane
bromophenyl phyntyl ether	methyl benzothiazole
chlordane	pentachlorobiphenyl
chlorohydroxy benzephenone	pentachlorophenol
bis-chloroisoprophyl ether	1,1,3,3-tetrachloroacetone
m-chloronitrobenzene	tetrachlorophenyl
DDE	thiomethylbenzothiazole
DDT	trichlorobenzene
dibromobenzene	trichlorobiphenyl
dibutyl phthalate	trichlorofluromethane
1,4-dichlorobenzene	2,4,6-trichlorophenol
dichlorodifluoroethane	triphenyl phosphate
dieldrin	bromodichloromethane
diethyl phthalate	bromoform
di(2-ethythexyl)phthalate	carbon tetrachloride
dihexyl phthalate	chloroform
di-isobutyl phthalate	chloromochloromethane
dimethyl phthalate	dibromodichloroethane
4,6-dinitro-2-aminophenol	tetrachloroethane
dipropyl phythalate	1,1,2-trichloroethane
endrin	

Value=2 Persistent Compounds

acenaphthylene	cis-2-ethyl-4-methyl-1,3-dioxolane
atrazine	trans-2-ethyl-4-methyl-1,3-dioxolane
(diethyl) atrazine	guaiacol
barbital	2-hydroxyadiponitrile
borneol	isophorone
bromobenzene	indene
camphor	isoborneol
chlorobenzene	isoprophenyl-r-isopropyl benzene
1,2-bis-chloroethoxy ethane	2-methoxy biphenyl
b-chloroethyl methyl ether	methyl biphenyl
chloromethyl ether	methyl chloride
chloromethyl ethyl ether	methylindene
3-chloropyridine	methylene chloride
di-t-butyl-p-benzoquinone	nitroanisole
dichloroethyl ether	nitrobenzene
dihyrocarvone	1,1,2-trichloroethylene
dimethyl sulfoxide	trimethyl-trioxo-hexahydro-triazine iosmer
2,6-dinitrotoluene	

Value=1 Somewhat Persistent Compounds

acetylene dichloride	1,2-dimethoxy benzene
behenic acid, methyl ester	1,3-dimethyl naphthalene
benzene	1,4-dimethyl phenol
benzene sulfonic acid	dioctyl adipate
butyl benzene	n-decane
butyl bromide	ethyl benzene
e-caprolactam	2-ethyl-n-hexane
carbon-disulfide	o-ethyltoluene
o-cresol	isodecane
decane	isoprophyl benzene
1,2-dichloroethane	

TABLE 5.—PERSISTENCE (BIODEGRADABILITY) OF SOME ORGANIC COMPOUNDS*—Continued

limonene	octane
methyl ester of lignoceric acid	octyl chloride
methane	pentane
2-methyl-5-ethyl-pyridine	phenyl benzoate
methyl naphthalene	phthalic anhydride
methyl palmitate	propylbenzene
methyl phenyl carbinol	1-terpineol
methyl stearate	toluene
naphthalene	vinyl benzene
nonane	xylene

Value=0 Nonpersistent Compounds

acetaldehyde	methyl benzoate
acetic acid	3-methyl butanol
acetone	methyl ethyl ketone
acetophenone	2-methylpropanol
benzoic acid	octadecane
di-isobutyl carbinol	pentadecane
docosane	pentanol
eicosane	propanol
ethanol	propylamine
ethylamine	tetradecane
hexadecane	n-tridecane
methanol	n-undecane

* JRB Associates, Inc., *Methodology for Rating the Hazard Potential for Waste Disposal Sites*, May 5, 1980.

TABLE 6.—SAX TOXICITY RATINGS

0=No Toxicity* (None)**

This designation is given to materials which fall into one of the following categories:
(a) Materials which cause no harm under any conditions of normal use.
(b) Materials which produce toxic effects on humans only under the most unusual conditions or by overwhelming dosage.

1=Slight Toxicity* (Low)**

(a) *Acute local.* Materials which on single exposures lasting seconds, minutes, or hours cause only slight effects on the skin or mucous membranes regardless of the extent of the exposure.
(b) *Acute systemic.* Materials which can be absorbed into the body by inhalation, ingestion, or through the skin and which produce only slight effects following single exposures lasting seconds, minutes, or hours, or following ingestion of a single dose regardless of the quantity absorbed or the extent of exposure.
(c) *Chronic local.* Materials which on continuous or repeated exposures extending over periods of days, months, or years cause only slight and usually reversible harm to the skin or mucous membranes. The extent of exposure may be great or small.
(d) *Chronic systemic.* Materials which can be absorbed into the body by inhalation, ingestion, or through the skin and which produce only slightly usually reversible effects extending over days, months, or years. The extent of the exposure may be great or small.
In general, those substances classified as having "slight toxicity" produce changes in the human body which are readily reversible and which will disappear following termination of exposure, either with or without medical treatment.

2=Moderate Toxicity* (Mod)**

(a) *Acute local.* Materials which on single exposure lasting seconds, minutes, or hours cause moderate effects on the skin or mucous membranes. These effects may be the result of intense exposure for a matter of seconds or moderate exposure for a matter of hours.
(b) *Acute systemic.* Materials which can be absorbed into the body by inhalation, ingestion, or through the skin and produce moderate effects following single exposures lasting seconds, minutes, or hours, or following ingestion of a single dose.

TABLE 6.—SAX TOXICITY RATINGS—Continued

(c) *Chronic local.* Materials which on continuous or repeated exposures extending over periods of days, months, or years cause moderate harm to the skin or mucous membranes.
(d) *Chronic systemic.* Materials which can be absorbed into the body by inhalation, ingestion, or through the skin and which produce moderate effects following continuous or repeated exposures extending over periods of days, months, or years.
Those substances classified as having "moderate toxicity" may produce irreversible as well as reversible changes in the human body. These changes are not of such severity as to threaten life or to produce serious physical impairment.

3=Severe Toxicity* (High)**

(a) *Acute local.* Materials which on single exposure lasting seconds or minutes cause injury to skin or mucous membranes of sufficient severity to threaten life or to cause permanent physical impairment or disfigurement.
(b) *Acute systemic.* Materials which can be absorbed into the body by inhalation, ingestion, or through the skin and which can cause injury of sufficient severity to threaten life following a single exposure lasting seconds, minutes, or hours, or following ingestion of a single dose.
(c) *Chronic local.* Materials which on continuous or repeated exposures extending over periods of days, months, or years can cause injury to skin or mucous membranes of sufficient severity to threaten life or cause permanent impairment, which disfigurement, or irreversible change.
(d) *Chronic systemic.* Materials which can be absorbed into the body by inhalation, ingestion or through the skin and which can cause death or serious physical impairment following continuous or repeated exposures to small amounts extending over periods of days, months, or years.

*Sax, N. I., Dangerous Properties of Industrial Materials, Van Nostrand Rheinhold Co., New York, New York, 4th edition, 1975.
**Sax, N. I., Dangerous Properties of Industrial Materials, Van Nostrand Rheinhold Co., New York, New York, 5th edition, 1979.

TABLE 7.—NFPA TOXICITY RATINGS*

0 Materials which on exposure under fire conditions would offer no health hazard beyond that of ordinary combustible material.
1 Materials only slightly hazardous to health. It may be desirable to wear self-contained breathing apparatus.
2 Materials hazardous to health, but areas may be entered freely with self-contained breathing apparatus.
3 Materials extremely hazardous to health, but areas may be entered with extreme care. Full protective clothing, including self-contained breathing apparatus, rubber gloves, boots and bands around legs, arms and waist should be provided. No skin surface should be exposed.
4 A few whiffs of the gas or vapor could cause death; or the gas, vapor, or liquid could be fatal on penetrating the fire fighters' normal full protective clothing which is designed for resistance to heat. For most chemicals having a Health 4 rating, the normal full protective clothing available to the average fire department will not provide adequate protection against skin contact with these materials. Only special protective clothing designed to protect against the specific hazard should be worn.

*National Fire Protection Association. *National Fire Codes*, Vol. 13, No. 49, 1977.

3.5 *Targets. Ground water use* indicates the nature of the use made of ground water drawn from the aquifer of concern within 3 miles of the hazardous substance, including the geographical extent of the measurable concentration in the aquifer. Assign a value using the following guidance:

Ground water use	Assigned value
Unusable (e.g., extremely saline aquifer, extremely low yield, etc.)	0
Commercial, industrial or irrigation and another water source presently available; not used, but usable	1
Drinking water with municipal water from alternate unthreatened sources presently available (i.e., minimal hookup requirements); or commercial, industrial or irrigation with no other water source presently available	2
Drinking water; no municipal water from alternate unthreatened sources presently available	3

Distance to nearest well and population served have been combined in the matrix below to better reflect the important relationship between the distance of a population from hazardous substances and the size of the population served by ground water that might be contaminated by those substances. To determine the overall value for this combined factor, score each individually as discussed below. Match the individual values assigned with the values in the matrix for the total score.

Value for population served	Value for distance to nearest well				
	0	1	2	3	4
0	0	0	0	0	0
1	0	4	6	8	10
2	0	8	12	16	20
3	0	12	18	24	30
4	0	16	24	32	35
5	0	20	30	35	40

Distance to nearest well is measured from the hazardous substance (not the facility boundary) to the nearest well that draws water from the aquifer of concern. If the actual distance to the nearest well is unknown, use the distance between the hazardous substance and the nearest occupied building not served by a public water supply (e.g., a farmhouse). If a discontinuity in the aquifer occurs between the hazardous substance and all wells, give this factor a score of 0, except where it can be shown that the contaminant is likely to migrate beyond the discontinuity. Figure 6 illustrates how the distance should be measured. Assign a value using the following guidance:

Distance	Assigned value
>3 miles	0
2 to 3 miles	1
1 to 2 miles	2
2001 feet to 1 mile	3
<2000 feet	4

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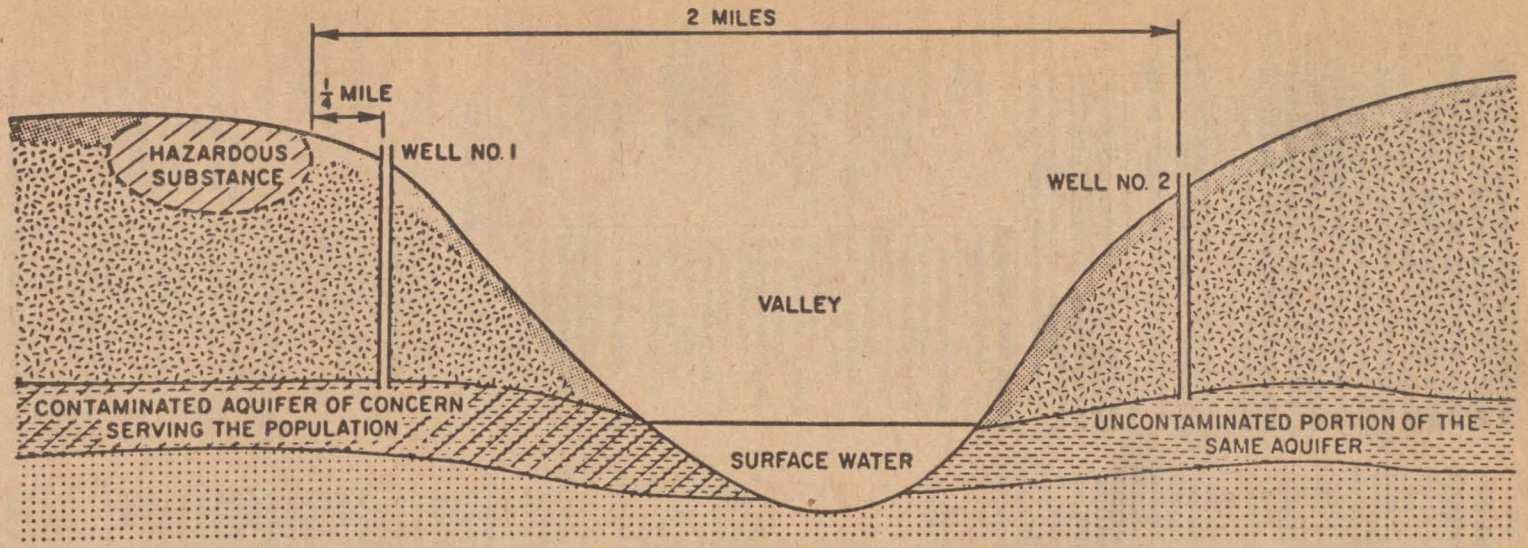

In the situation depicted above, the distance between the hazardous substance and the nearest well (No. 1) is ¼ mile. If well No. 1 did not exist, the distance to well No. 2 would be immaterial since there is a discontinuity in the aquifer (surface water) between it and the hazardous substance. Under such circumstances, the factor score would be "0". However, if it could be demonstrated that the contaminent had bridged the discontinuity, then the distance to the nearest well would be 2 miles (assuming well No. 1 does not exist).

FIGURE 6

Distance to Nearest Well

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Population served by ground water is an indicator of the population at risk, which includes residents as well as others who would regularly use the water such as workers in factories or offices and students. Include employees in restaurants, motels, or campgrounds but exclude customers and travelers passing through the area in autos, buses, or trains. If aerial photography is used, and residents are known to use ground water, assume each dwelling unit has 3.8 residents. Where ground water is used for irrigation, convert to population by assuming 1.5 persons per acre of irrigated land. The well or wells of concern must be within three miles of the hazardous substances, including the area of known aquifer contamination, but the "population served" need not be. Likewise, people within three miles who do not use water from the aquifer of concern are not to be counted. Assign a value as follows:

Population	Assigned value
0	0
1 to 100	1
101 to 1,000	2
1,001 to 3,000	3
3,001 to 10,000	4
>10,000	5

4.0 Surface Water Route

4.1 *Observed Release.* Direct evidence of release to surface water must be quantitative evidence that the facility is releasing contaminants into surface water. Quantitative evidence could be the measurement of levels of contaminants from a facility in surface water, either at the facility or downhill from it, that represents a significant (in terms of demonstrating that a release has occurred, not in terms of potential effects) increase over background levels. If direct evidence of release has been obtained (regardless of frequency), enter a value of 45 on line 1 of the work sheet (Figure 7) and omit the evaluation of the route characteristics and containment factors. If direct evidence of release is lacking, enter a value of 0 on line 1 and continue with the scoring procedure.

4.2. *Route Characteristics. Facility slope and intervening terrain* are indicators of the potential for contaminated runoff or spills at a facility to be transported to surface water. The facility slope is an indicator of the potential for runoff or spills to leave the facility. Intervening terrain refers to the average slope of the shortest path which would be followed by runoff between the facility boundary and the nearest downhill surface water. This rating factor can be assessed using topographic maps. Table 8 shows values assigned to various facility conditions.

One-year 24-hour rainfall (obtained from Figure 8) indicates the potential for area storms to cause surface water contamination as a result of runoff, erosion, or flow over dikes. Assign a value as follows:

Amount of rainfall (inches)	Assigned value
<1.0	0
1.0 to 2.0	1
2.1 to 3.0	2
>3.0	3

TABLE 8.—VALUES FOR FACILITY SLOPE AND INTERVENING TERRAIN

Facility slope	Intervening terrain				
	Terrain average slope				Site in surface water
	<3 pct[1]	3 to 5 pct	5 to 8 pct	>8 pct	
Facility is closed basin	0	0	0	0	3
Facility has average slope (<3 pct)	0	1	1	2	3
Average slope (3 to 5 pct)	0	1	2	2	3
Average slope (5 to 8 pct)	0	2	2	3	3
Average slope (> 8 pct)	0	2	3	3	3

[1] Terrain average slope <3 pct; or site separated from water body by areas of higher elevation.

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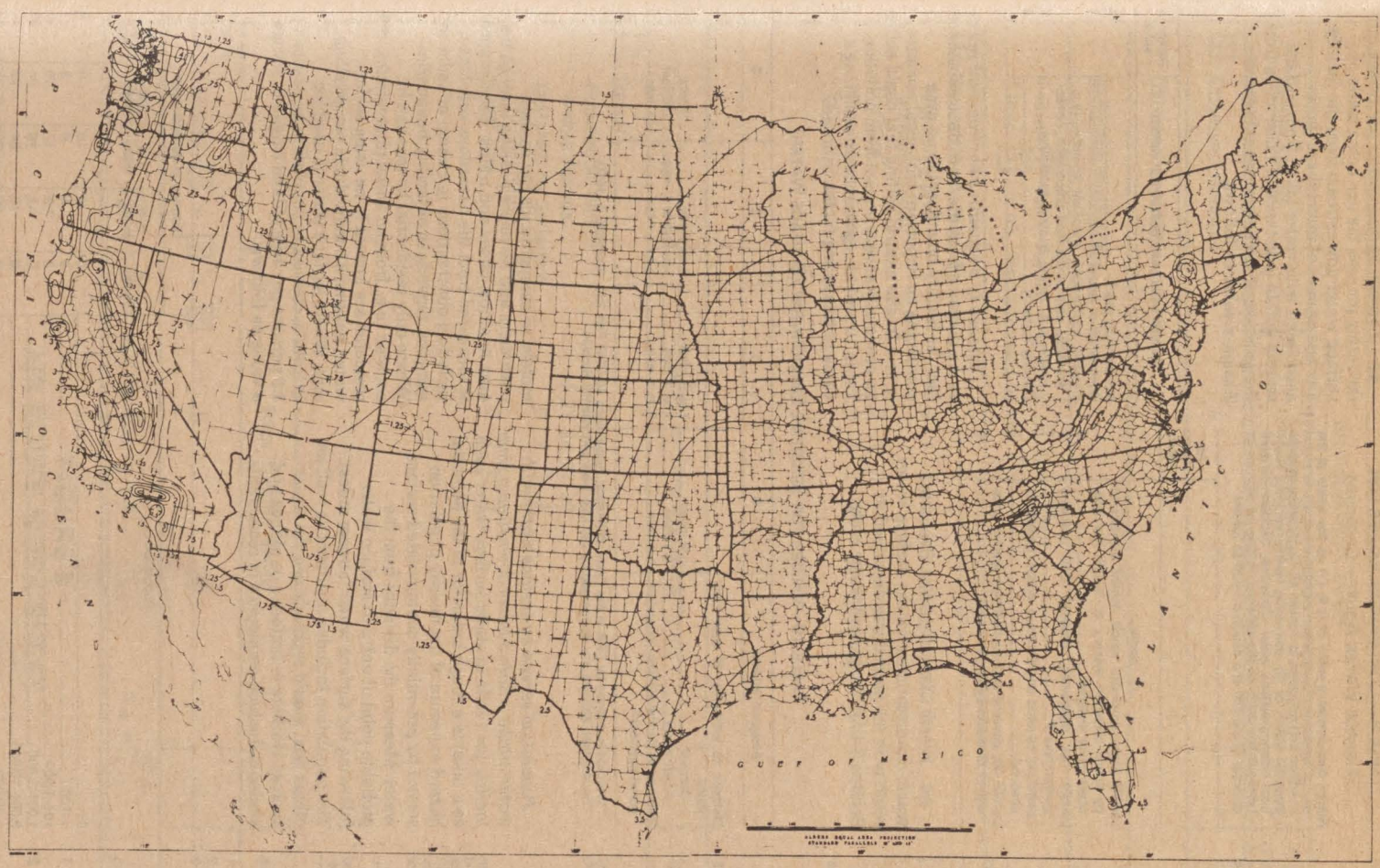
Surface Water Route Work Sheet					
Rating Factor	Assigned Value (Circle One)	Multiplier	Score	Max. Score	Ref. (Section)
1 Observed Release	0 45	1		45	4.1
If observed release is given a value of 45, proceed to line 4. If observed release is given a value of 0, proceed to line 2.					
2 Route Characteristics					4.2
Facility Slope and Intervening Terrain	0 1 2 3	1		3	
1-yr. 24-hr. Rainfall	0 1 2 3	1		3	
Distance to Nearest Surface Water	0 1 2 3	2		6	
Physical State	0 1 2 3	1		3	
Total Route Characteristics Score				15	
3 Containment	0 1 2 3	1		3	4.3
4 Waste Characteristics					4.4
Toxicity/Persistence	0 3 6 9 12 15 18	1		18	
Hazardous Waste Quantity	0 1 2 3 4 5 6 7 8	1		8	
Total Waste Characteristics Score				26	
5 Targets					4.5
Surface Water Use	0 1 2 3	3		9	
Distance to a Sensitive Environment	0 1 2 3	2		6	
Population Served/Distance to Water Intake Downstream	0 4 6 8 10 12 16 18 20 24 30 32 35 40	1		40	
Total Targets Score				55	
6 If line 1 is 45, multiply 1 x 4 x 5 If line 1 is 0, multiply 2 x 3 x 4 x 5				64,350	
7 Divide line 6 by 64,350 and multiply by 100		S_{sw} =			

FIGURE 7
SURFACE WATER ROUTE WORK SHEET



Source: Rainfall Frequency Atlas of the United States, Technical Paper No. 40, U.S. Department of Commerce, U.S. Government Printing Office, Washington, D.C., 1963.

Figure 8

1-Year 24-Hour Rainfall (Inches)

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Distance to the nearest surface water is the shortest distance from the hazardous substance, (not the facility or property boundary) to the nearest downhill body of surface water (e.g., lake or stream) that is on the course that runoff can be expected to follow and that at least occasionally contains water. Do not include man-made ditches which do not connect with other surface water bodies. In areas having less than 20 inches of normal annual precipitation (see Figure 5), consider intermittent streams. This factor indicates the potential for pollutants flowing overland and into surface water bodies. Assign a value as follows:

Distance	Assigned value
>2 miles	0
1 to 2 miles	1
1000 feet to 1 mile	2
<1000 feet	3

Physical state is assigned a value using the procedures in Section 3.2.

4.3 *Containment. Containment* is a measure of the means that have been taken to minimize the likelihood of a contaminant entering surface water either at the facility or beyond the facility boundary. Examples of containment are diversion structures and the use of sealed containers. If more than one type of containment is used at a facility, evaluate each separately (Table 9) and assign the highest score.

TABLE 9.—CONTAINMENT VALUES FOR SURFACE WATER ROUTE

Assign containment a value of 0 if: (1) all the waste at the site is surrounded by diversion structures that are in sound condition and adequate to contain all runoff, spills, or leaks from the waste; or (2) intervening terrain precludes runoff from entering surface water. Otherwise, evaluate the containment for each of the different means of storage or disposal at the site and assign a value as follows:

	Assigned value
A. Surface Impoundment	
Sound diking or diversion structure, adequate freeboard, and no erosion evident	0
Sound diking or diversion structure, but inadequate freeboard	1
Diking not leaking, but potentially unsound	2
Diking unsound, leaking, or in danger of collapse	3
B. Containers	
Containers sealed, in sound condition, and surrounded by sound diversion or containment system	0
Containers sealed and in sound condition, but not surrounded by sound diversion or containment system	1
Containers leaking and diversion or containment structures potentially unsound	2
Containers leaking, and no diversion or containment structures or diversion structures leaking or in danger of collapse	3
C. Waste Piles	
Piles are covered and surrounded by sound diversion or containment system	0
Piles covered, wastes unconsolidated, diversion or containment system not adequate	1
Piles not covered, wastes unconsolidated, and diversion or containment system potentially unsound	2
Piles not covered, wastes unconsolidated, and no diversion or containment or diversion system leaking or in danger or collapse	3

TABLE 9.—CONTAINMENT VALUES FOR SURFACE WATER ROUTE—Continued

Assign containment a value of 0 if: (1) all the waste at the site is surrounded by diversion structures that are in sound condition and adequate to contain all runoff, spills, or leaks from the waste; or (2) intervening terrain precludes runoff from entering surface water. Otherwise, evaluate the containment for each of the different means of storage or disposal at the site and assign a value as follows:

	Assigned value
D. Landfill	
Landfill slope precludes runoff, landfill surrounded by sound diversion system, or landfill has adequate cover material	0
Landfill not adequately covered and diversion system sound	1
Landfill not covered and diversion system potentially unsound	2
Landfill not covered and no diversion system present, or diversion system unsound	3

4.4 *Waste Characteristics.* Evaluate waste characteristics for the surface water route with the procedures described in Section 3.4 for the ground water route.

4.5 *Targets. Surface water use* brings into the rating process the use being made of surface water downstream from the facility. The use or uses of interest are those associated with water taken from surface waters within a distance of three miles from the location of the hazardous substance. Assign a value as follows:

Surface water use (fresh or salt water)	Assigned value
Not currently used	0
Commercial or industrial	1
Irrigation, economically important resources (e.g., shellfish), commercial food preparation, or recreation (e.g., fishing, boating, swimming)	2
Drinking Water	3

Distance to a senstitive environment refers to the distance from the hazardous substance (not the facility boundary) to an area containing an important biological resource or to a fragile natural setting that could suffer an especially severe impact from pollution. Table 10 provides guidance on assigning a value to this rating factor.

TABLE 10—VALUES FOR SENSITIVE ENVIRONMENT (SURFACE WATER)

Assigned value=	0	1	2	3
Distance to Wetlands[1] (5 acre minimum)				
Coastal	>2 miles	1 to 2 miles	½ to 1 mile	<½ mile.
Fresh Water	>1 mile	¼ to 1 mile	100 feet to ¼ mile	<100 feet.
Distance to Critical Habitat (of endangered species)[2]	>1 mile	¼ to 1 mile	¼ to ½ mile	<¼ mile.

[1] Wetland is defined by EPA in the Code of Federal Regulations 40 CFR Part 230, Appendix A, 1980.
[2] Endangered species are designated by the U.S. Fish and Wildlife Service.

Population served by surface water with water intake within 3 miles downstream from facility (or 1 mile in static surface water such as a lake) is a rough indicator of the potential hazard exposure of the nearby population served by potentially contaminated surface water. Measure the distance from the probable point of entry to surface water following the surface water (stream miles). The population includes residents as well as others who would regularly use the water such as workers in factories or offices and students. Include employees in restaurants, motels, or campgrounds but exclude customers and travelers passing through the area in autos, buses and trains. The distance is measured from the hazardous substance, including observations in stream or sediment samples, regardless of facility boundaries. Where only residential houses can be counted (e.g., from an aerial photograph), and residents are known to be using surface water, assume 3.8 individuals per dwelling unit. Where surface water is used for irrigation, convert to population by assuming 1.5 persons per acre of land irrigated. Assign a value as follows:

Population	Distance to surface water				
	>3 miles	2-3 miles	1-2 miles	200'-1 mile	0-2,000 feet
0	0	0	0	0	0
1-100	0	4	6	8	10
101-1,000	0	8	12	16	20
1,001-3,000	0	12	18	24	30
3,001-10,000	0	16	24	32	35
>10,000	0	20	30	35	40

5.0 Air Route

5.1 *Observed Release.* The only acceptable evidence of release for the air route is data that show levels of a contaminant at or in the vicinity of the facility that significantly exceed background levels, regardless of the frequency of occurrence. If such evidence exists, enter a value of 45 on line 1 of the work sheet (Figure 9); if not, assign line 1 a 0 value and then S_a=0. Record the date, location, and the sampling protocol for monitoring data on the work sheet. Data based on transitory conditions due to facility disturbance by investigative personnel are not acceptable.

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Air Route Work Sheet					
Rating Factor	Assigned Value (Circle One)	Multiplier	Score	Max. Score	Ref. (Section)
[1] Observed Release	0 45	1		45	5.1
Date and Location:					
Sampling Protocol:					
If line [1] is 0, the S_a = 0. Enter on line [5]. If line [1] is 45, then proceed to line [2].					
[2] Waste Characteristics					5.2
Reactivity and Incompatibility	0 1 2 3	1		3	
Toxicity	0 1 2 3	3		9	
Hazardous Waste Quantity	0 1 2 3 4 5 6 7 8	1		8	
	Total Waste Characteristics Score			20	
[3] Targets					5.3
Population Within 4-Mile Radius	0 9 12 15 18 21 24 27 30	1		30	
Distance to Sensitive Environment	0 1 2 3	2		6	
Land Use	0 1 2 3	1		3	
	Total Targets Score			39	
[4] Multiply [1] x [2] x [3]				35,100	
[5] Divide line [4] by 35,100 and multiply by 100		S_a =			

FIGURE 9
AIR ROUTE WORK SHEET

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5.2 *Waste Characteristics.* The hazardous substance that was observed for scoring the release category may be different from the substance used to score waste characteristics.

Reactivity and incompatibility, measures of the potential for sudden releases of concentrated air pollutants, are evaluated independently, and the highest value for either is recorded on the work sheet.

Reactivity provides a measure of the fire/explosion threat at a facility. Assign a value based on the reactivity classification used by NFPA (see Table 11). Reactivity ratings for a number of common compounds are given in Table 4.

TABLE 11.—NFPA REACTIVITY RATINGS

NFPA level	Assigned value
0 Materials which are normally stable even under fire exposure conditions and which are not reactive with water	0
1 Materials which in themselves are normally stable but which may become unstable at elevated temperatures and pressures or which may react with water with some release of energy but not violently	1
2 Materials which in themselves are normally unstable and readily undergo violent chemical change but do not detonate. Includes materials which can undergo chemical change with rapid release of energy at normal temperatures and pressures or which can undergo violent chemical change at elevated temperatures and pressures. Also includes those materials which may react violently with water or which may form potentially explosive mixtures with water	2
3 Materials which in themselves are capable of detonation or of explosive decomposition or of explosive reaction but which requires a strong initiating source or which must be heated under confinement before initiation. Includes materials which are sensitive to thermal or mechanical shock at elevated temperatures and pressures or which react explosively with water without requiring heat or confinement	3
4 Materials which in themselves are readily capable of detonation or of explosive decomposition or explosive reaction at normal temperatures and pressures. Includes materials which are sensitive to mechanical or localized thermal shock	3

TABLE 12.—INCOMPATIBLE MATERIALS

In the lists below, the mixing of a Group A material with a Group B material may have the potential consequence as noted.

Group 1–A	Group 1–B
Acetylene sludge	Acid sludge.
Alkaline caustic liquids	Acid and water.
Alkaline cleaner	Battery acid.
Alkaline corrosive liquids	Chemical cleaners.
Alkaline corrosive battery fluid.	Electrolyte acid.
Caustic wastewater	Etching acid liquid or solvent.
Lime sludge and other corrosive alkalies.	Pickling liquor and other corrosive acids.
Lime wastewater	Spent acid.
Lime and water	Spent mixed acid.
Spent caustic	Spent sulfuric acid.

Potential consequences: Heat generation; violent reaction.

Group 2–A	Group 2–B
Aluminum	Any waste in Group 1–A or 1–B.
Beryllium	
Calcium	
Lithium	
Potassium	

TABLE 12.—INCOMPATIBLE MATERIALS—Continued

In the lists below, the mixing of a Group A material with a Group B material may have the potential consequence as noted.

Sodium	
Zinc powder	
Other reactive metals and metal hydrides.	

Potential consequences: Fire or explosion; generation of flammable hydrogen gas.

Group 3–A	Group 3–B
Alcohols	Any concentrated waste in Groups 1–A or 1–B.
Water	Calcium.
	Lithium.
	Metal hydrides.
	Potassium.
	SO_2Cl_2, $SOCl_2$, PCl_3, CH_3SiCl_3.
	Other water-reactive waste.

Potential consequences: Fire, explosion, or heat generation; generation of flammable or toxic gases.

Group 4–A	Group 4–B
Alcohols	Concentrated Group 1–A or 1–B wastes.
Aldehydes	Group 2–A wastes.
Halogenated hydrocarbons	
Nitrated hydrocarbons	
Unsaturated hydrocarbons	
Other reactive organic compounds and solvents.	

Potential consequences: Fire, explosion, or violent reaction.

Group 5–A	Group 5–B
Spent cyanide and sulfide solutions.	Group 1–B wastes.

Potential consequences: Generation of toxic hydrogen cyanide or hydrogen sulfide gas.

Group 6–A	Group 6–B
Chlorates	Acetic acid and other organic acids.
Chlorine	Concentrated mineral acids.
Chlorites	Group 2–A wastes.
Chromic acid	Group 4–A wastes.
Hyphochlorites	Other flammable and combustible wastes.
Nitrates	
Nitric acid, fuming	
Perchlorates	
Permanganates	
Peroxides	
Other strong oxidizers	

Potential consequences: Fire, explosion, or violent reaction.

Source: Hazardous Waste Management Law, Regulations, and Guidelines for the Handling of Hazardous Waste. California Department of Health, Sacramento, California, February 1975.

Incompatibility provides a measure of the increased hazard when hazardous substances are mixed under uncontrolled conditions, leading to production of heat, pressure, fire, explosion, violent reaction, toxic dusts, mists, fumes or gases, or flammable fumes or gases. Table 12 provides examples of incompatible combinations of materials.

Land use indicates the nature and level of human activity in the vicinity of a facility. Assign highest applicable value from Table 13.

6.0 Computing the Migration Hazard Mode Score, S_M

To compute S_M, complete the work sheet (Figure 10) using the values of S_{gw}, S_{sw} and S_a obtained from the previous sections.

7.0 Fire and Explosion

Compute a score for the fire and explosion hazard mode, S_{FE}, when either a state or local fire marshal has certified that the facility presents a significant fire or explosion threat to the public or to sensitive environments or there is a demonstrated fire and explosion threat based on field observations (e.g., combustable gas indicator readings). Document the threat.

7.1 *Containment. Containment* is an indicator of the measures that have been taken to minimize or prevent hazardous substances at the facility from catching fire or exploding. Normally it will be given a value of 3 on the work sheet (Figure 11). If no hazardous substances that are individually ignitable or explosive are present and those that may be hazardous in combination are segregated and isolated so that they cannot come together to form incompatible mixtures, assign this factor a value of 1.

7.2 *Waste Characteristics. Direct evidence* of ignitability or explosion potential may exist in the form of measurements with appropriate instruments. If so, assign this factor a value of 3; if not, assign a value of 0.

Additional information can be obtained from *A Method for Determining the Compatibility of Hazardous Wastes,* H. K. Hatayama, *et al.,* EPA–600/2–80–076 (1980). Assign a value using the following guidance:

Incompatibility	Assigned value
No incompatible substances are present	0
Present but do not pose a hazard	1
Present and may pose a future hazard	2
Present and posing an immediate hazard	3

Toxicity should be rated for the most toxic of the substances that can reasonably be expected to be transported away from the facility via the air route. Using the information given in Tables 4, 6, and 7, assign values as follows:

Toxicity	Assigned value
Sax level 0 or NFPA level 0	0
Sax level 1 or NFPA level 1	1
Sax level 2 or NFPA level 2	2
Sax level 3 or NFPA levels 3 or 4	3

Hazardous Waste Quantity

Assign hazardous waste quantity a value as described in Section 3.4.

5.3 *Targets. Population within a four-mile radius* is an indicator of the population which may be harmed should hazardous substances be released to the air.

The distance is measured from the location of the hazardous substances, not from the facility boundary. The population to be counted includes persons residing within the

four-mile radius as well as transients such as workers in factories, offices, restaurants, motels, or students. It excludes travelers passing through the area. If aerial photography is used in making the count, assume 3.8 individuals per dwelling unit. Select the highest value for this rating factor as follows:

DISTANCE TO POPULATION FROM HAZARDOUS SUBSTANCE

Population	0–4 miles	0–1 mile	0–½ mile	0–¼ mile
0	0	0	0	0
1 to 100	9	12	15	18
101 to 1,000	12	15	18	21
1,001 to 3,000	15	18	21	24
3,001 to 10,000	18	21	24	27
More than 10,000	21	24	27	30

Distance to sensitive environment is an indicator of the likelihood that a region that contains important biological resources or that is a fragile natural setting would suffer serious damage if hazardous substances were to be released from the facility. Assign a value from Table 10.

Land use indicates the nature and level of human activity in the vicinity of a facility. Assign highest applicable value from Table 13.

6.0 Computing the Migration Hazard Mode Score, S_M

To compute S_M, complete the work sheet (Figure 10) using the values of S_{gw}, S_{sw} and S_a obtained from the previous sections.

7.0 Fire and Explosion

Compute a score for the fire and explosion hazard mode, S_{FE}, when either a state or local fire marshall has certified that the facility presents a significant fire or explosion threat to the public or to sensitive environments or there is a demonstrated fire and explosion threat based on field observations (e.g., combustible gas indicator readings). Document the threat.

7.1 Containment. Containment is an indicator of the measures that have been taken to minimize or prevent hazardous substances at the facility from catching fire or exploding. Normally it will be given a value of 3 on the work sheet (Figure 11). If no hazardous substances that are individually ignitable or explosive are present and those that may be hazardous in combination are segregated and isolated so that they cannot come together to form incompatible mixtures, assign this factor a value of 1.

7.2 Waste Characteristics. Direct evidence of ignitability or explosion potential may exist in the form of measurements with appropriate instruments. If so, assign this factor a value of 3; if not, assign a value of 0.

TABLE 13.—VALUES FOR LAND USE (AIR ROUTE)

Assigned value =	0	1	2	3
Distance to Commercial-Industrial	>1mile	½ to 1 mile	¼ to ½ mile	<¼ mile.
Distance to National/State Parks, Forests, Wildlife Reserves, and Residential Areas.	>2 miles	1 to 2 miles	¼ to 1 mile	<¼ mile.
Distance to Agricultural Lands (in Production within 5 years):				
Ag land	>1 mile	½ to 1 mile	¼ to ½ mile	<¼ mile.
Prime Ag Land [1]	>2 miles	1 to 2 miles	½ to 1 mile	<½ mile.
Distance to Historic/Landmark Sites (National Register of Historic Places and National Natural Landmarks).				Within view of site or if site is subject to significant impacts.

[1] Defined in the Code of Federal Regulations, 7 CFR 657.5, 1981.

	S	S^2
Groundwater Route Score (S_{gw})		
Surface Water Route Score (S_{sw})		
Air Route Score (S_a)		
$S_{gw}^2 + S_{sw}^2 + S_a^2$		
$\sqrt{S_{gw}^2 + S_{sw}^2 + S_a^2}$		
$\sqrt{S_{gw}^2 + S_{sw}^2 + S_a^2} / 1.73 = S_M =$		

FIGURE 10
WORKSHEET FOR COMPUTING S_M

Fire and Explosion Work Sheet					
Rating Factor	Assigned Value (Circle One)	Multiplier	Score	Max. Score	Ref. (Section)
1 Containment	1 3	1		3	7.1
2 Waste Characteristics					7.2
Direct Evidence	0 3	1		3	
Ignitability	0 1 2 3	1		3	
Reactivity	0 1 2 3	1		3	
Incompatibility	0 1 2 3	1		3	
Hazardous Waste Quantity	0 1 2 3 4 5 6 7 8	1		8	
Total Waste Characteristics Score				20	
3 Targets					7.3
Distance to Nearest Population	0 1 2 3 4 5	1		5	
Distance to Nearest Building	0 1 2 3	1		3	
Distance to Sensitive Environment	0 1 2 3	1		3	
Land Use	0 1 2 3	1		3	
Population Within 2-Mile Radius	0 1 2 3 4 5	1		5	
Buildings Within 2-Mile Radius	0 1 2 3 4 5	1		5	
Total Targets Score				24	
4 Multiply 1 x 2 x 3				1,440	
5 Divide line 4 by 1,440 and multiply by 100		S_{FE} =			

FIGURE 11
FIRE AND EXPLOSION WORK SHEET

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Ignitability is an indicator of the threat of fire at a facility and the accompanying potential for release of air contaminants. Assign this rating factor a value based on the NFPA classification scheme (Table 14). Table 4 gives values for a number of common compounds. Assign values as follows:

Ignitability	Assigned value
Flashpoint > 200°F, or NFPA level 0	0
Flashpoint 140°F to 200°F or NFPA level 1	1
Flashpoint 80°F to 140°F or NFPA level 2	2
Flashpoint < 80°F or NFPA levels 3 or 4	3

Reactivity. Assign values as in Section 5.2.

Incompatibility. Assign values as in Section 5.2.

Hazardous Waste Quantity. Assign values as in Section 3.4.

TABLE 14.—NFPA IGNITABILITY LEVELS AND ASSIGNED VALUES

NFPA level	Assigned value
4 Very flammable gases, very volatile flammable liquids, and materials that in the form of dusts or mists readily form explosive mixtures when dispersed in air	3
3 Liquids which can be ignited under all normal temperature conditions. Any materials that ignites spontaneously at normal temperatures in air	
2 Liquids which must be moderately heated before ignition will occur and solids that readily give off flammable vapors	2
1 Materials that must be preheated before ignition can occur. Most combustible solids have a flammability rating of 1	1
0 Materials that will not burn	0

7.3 *Targets. Distance to nearest population* is the distance from the hazardous substance to the nearest building or area in which one or more persons are likely to be located either for residential, educational, business, occupational, or recreational purposes. It is an indicator of the potential for harm to humans from fire and explosion. The building or area need not be off-site. Assign values as follows:

Distance	Assigned value
>2 miles	0
1 mile to 2 mile	1
½ mile to 1 miles	2
201 feet to ½ mile	3
51 feet to 200 feet	4
0 to 50 feet	5

Distance to nearest building is an indicator of the potential for property damage as a result of fire or explosion. Assign a value as follows:

Distance	Assigned value
> ½ mile	0
201 feet to ½ mile	1
51 feet to 200 feet	2
0 to 50 feet	3

Distance to nearest sensitive environment is measured from the hazardous substances, not from the facility boundary. It is an indicator of potential harm to a sensitive environment from fire or explosion at the facility. Select the highest value using the guidance provided in Table 15 *except* assign a value of 3 where fire could be expected to spread to a sensitive environment even though that environment is more than 100 feet from the hazardous substance.

TABLE 15.—VALUES FOR SENSITIVE ENVIRONMENTS (FIRE AND EXPLOSION)

Assigned value =	0	1	2	3
Distance to Wetlands[1]	>100 feet			<100 feet.
Distance to Critical Habitat[2]	> ½ mile	1000 feet to ½ mile	100 to 1000 feet	<100 feet.

[1] Wetland is defined by EPA in the Code of Federal Regulations 40 CFR Part 230, Appendix A, 1980.
[2] Designated by the U.S. Fish and Wildlife Service.

Land Use. Assign values as in Section 5.3.

Population within two-mile radius (measured from the location of the hazardous substance, not from the facility boundary) is a rough indicator of the population at risk in the event of fire or explosion at a facility. The population to be counted includes those residing within the two mile radius as well as people regularly in the vicinity such as workers in factories, offices, or students. It does not include travelers passing through the area. If aerial photography is used in making the count, assume 3.8 individuals per dwelling. Assign values as follows:

Population	Assigned value
0	0
1 to 100	1
101 to 1,000	2
1,001 to 3,000	3
3,001 to 10,000	4
>10,000	5

Number of buildings within two mile radius (measured from the hazardous substance, not from the facility boundary) is a rough indicator of the property damage that could result from fire and explosion at a facility. Assign values to this factor as follows:

Number of buildings	Assigned value
0	0
1 to 26	1
27 to 260	2
261 to 790	3
791 to 2600	4
>2600	5

8.0 Direct Contact. The direct contact hazard mode refers to the potential for injury by direct contact with hazardous substances at the facility.

8.1 *Observed Incident.* If there is a confirmed instance in which contact with hazardous substances at a facility has caused injury, illness, or death to humans or domestic or wild animals, enter a value of 45 on line 1 of the work sheet (Figure 12) and proceed to line 4 (toxicity). Document the incident giving the date, location and pertinent details. If no such instance is known, enter "0" on line 1 and proceed to line 2.

8.2 *Accessibility. Accessibility to hazardous substance* refers to the measures taken to limit access by humans or animals to hazardous substances. Assign a value using the following guidance:

Barrier	Assigned value
A 24-hour surveillance system (e.g., television monitoring or surveillance by guards or facility personnel) which continuously monitors and controls entry onto the facility; or an artificial or natural barrier (e.g., a fence combined with a cliff), which completely surrounds the facility; and a means to control entry, at all times, through the gates or other entrances to the facility (e.g., an attendant, television monitors, locked entrances, or controlled roadway access to the facility)	0
Security guard, but no barrier	1
A barrier, but no separate means to control entry	2
Barriers do not completely surround the facility	3

BILLING CODE 6560-50-M

Direct Contact Work Sheet					
Rating Factor	Assigned Value (Circle One)	Multiplier	Score	Max. Score	Ref. (Section)
[1] Observed Incident	0 45	1		45	8.1
If line [1] is 45, proceed to line [4] If line [1] is 0, proceed to line [2]					
[2] Accessibility	0 1 2 3	1		3	8.2
[3] Containment	0 15	1		15	8.3
[4] Waste Characteristics Toxicity	0 1 2 3	5		15	8.4
[5] Targets					8.5
Population Within a 1-Mile Radius	0 1 2 3 4 5	4		20	
Distance to a Critical Habitat	0 1 2 3	4		12	
Total Targets Score				32	
[6] If line [1] is 45, multiply [1] x [4] x [5] If line [1] is 0, multiply [2] x [3] x [4] x [5]				21,600	
[7] Divide line [6] by 21,600 and multiply by 100		S_{DC} =			

FIGURE 12
DIRECT CONTACT WORK SHEET

BILLING CODE 6560-50-C

8.3 *Containment. Containment* indicates whether the hazardous substance itself is accessible to direct contact. For example, if the hazardous substance at the facility is in surface impoundments, containers (sealed or unsealed), piles, tanks, or landfills with a cover depth of less than 2 feet, or has been spilled on the ground or other surfaces easily contacted (e.g., the bottom of shallow pond or creek), assign this rating factor a value of 15. Otherwise, assign a value of 0.

8.4 *Waste Characteristics. Toxicity.* Assign a value as in Section 3.4.

8.5 *Targets. Population within one-mile radius* is a rough indicator of the population that could be involved in direct contact incidents at an uncontrolled facility. Assign a value as follows:

Population	Assigned value
0	0
1 to 100	1
101 to 1,000	2
1,001 to 3,000	3
3,001 to 10,000	4
>10,000	5

Distance to a critical habitat (of an endangered species) is a rough measure of the probability of harm to members of an endangered species by direct contact with hazardous substance. Assign a value as follows:

Distance	Assigned value
<1 mile	0
⅛ to 1 mile	1
¼ to ½ mile	2
>¼ mile	3

[FR Doc. 82-19141 Filed 7-15-82; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
July 16, 1982

Part VI

Department of Justice

Bureau of Prisons

Control, Custody, Care Treatment, and Instruction of Inmates; Final and Proposed Rules

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 503 and 524

Control, Custody, Care, Treatment and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: This document contains Bureau of Prisons rules relating to the control, custody, care, treatment, and instruction of inmates. Included is the final rule on Youth Corrections Act (YCA) Institutions and Programs. This document also updates the list of Bureau of Prisons institutions, redesignating two existing institutions and designating one new institution

The rule on YCA institutions establishes procedures to ensure that offenders committed under provisions of the Youth Corrections Act are housed separate from other inmates. The rule also establishes procedures to ensure that the YCA inmate is afforded treatment, as required by 18 U.S.C. 5011.

EFFECTIVE DATE: The effective dates for the amendments to list of Bureau of Prisons Institutions are (1) Federal Correctional Institution, Seagoville, Texas—December 7, 1981 and (2) Metropolitan Correctional Center, Miami, Florida and Metropolitan Correctional Center, Tucson, Arizona—February 18, 1982. The effective date for the rule on Youth Corrections Act (YCA) Institutions and Programs is July 16, 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 Youth Corrections Act (YCA) institutions under the revised title of Youth Corrections Act (YCA) Institutions and Programs. This subject was published in the **Federal Register** as a proposed rule January 26, 1982 (at 47 FR 3752 et seq.). Interested persons were invited to submit comments on the proposed rule. Members of the public may submit further comments concerning the final rule on YCA institutions by writing the previously cited address. These comments will be considered but will receive no further response in the **Federal Register.**

Recent Federal court rulings have held that persons committed under the provisions of the Youth Corrections Act are to be housed separate from other inmates. These rulings did not consider the Bureau of Prisons previously established "YCA Units" to meet the statutory requirements of the Youth Corrections Act. Accordingly, the Bureau of Prisons developed a plan for separating YCA offenders from other inmates. This plan has been subject to the review of, and approval by, several federal courts. The plan calls for the establishment of "all-YCA" institutions and the development of an individualized treatment program for each YCA inmate housed within the YCA institution.

At this time, three institutions—FCI, Morgantown; FCI, Petersburg; and FCI, Englewood—have been designated to house YCA inmates. The final rule on YCA institutions establishes the necessary framework for each of these institutions to operate its YCA program. For this reason, the Bureau of Prisons finds good cause under 5 U.S.C. 553(d)(3) of the Administrative Procedure Act to implement this rule on YCA institutions without a 30-day delay in its effective date.

Amendments to the list of Bureau of Prisons institutions, published in the **Federal Register** May 1, 1981 (at 46 FR 24898), and amended in the **Federal Register** December 4, 1981 (at 46 FR 59507) reflect the redesignation of the Federal Prison Camp, Seagoville, Texas as the Federal Correctional Institution, Seagoville, Texas, the redesignation of the Federal Correctional Institution, Miami, Florida, as the Metropolitan Correctional Center, Miami, Florida, and the designation of a new Metropolitan Correctional Center at Tucson, Arizona. A consolidated list of all Bureau of Prisons institutions and their designation was published as a Notice in the **Federal Register** March 5, 1982 (at 47 FR 9754).

The list of Bureau of Prison institutions, to which this present document makes amendments, is included in Title 28 CFR for informational purposes. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date as pertains to this information has been determined inapplicable.

The Bureau of Prisons has determined that these rules are not major rules for the purpose of E.O. 12291. The Bureau of Prisons has determined that E.O. 12291 does not apply to these rules since the rules involve agency management. After review of the law and the regulations, the Director, Bureau of Prisons has certified that these rules, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), do not have a significant impact on a substantial number of small entities.

Summary of Changes

Part 503—Bureau of Prisons Central Office, Regional Offices, Institutions, and Staff Training Centers

1. *Section 503.3*—Section 503.3(h) is revised to read "MCC, 15801 S.W. 137th Avenue, Miami, Florida 33177."

2. *Section 503.5*—Section 503.5(f) is revised to read "FCI, Seagoville, Texas 75159."

3. *Section 503.6*—A new § 503.6(i) is added to read "MCC, P.O. Box 22080, Tucson, Arizona 85734."

The amendments to Part 503 provide the Bureau of Prisons with the necessary facilities in both Arizona and Florida to detain unsentenced prisoners, as well as to confine those individuals with only a short sentence to serve. The redesignation of the institution at Seagoville, Texas is made to reflect the type of inmate population that the Seagoville institution is intended to serve.

Part 524—Subpart C—Youth Corrections Act (YCA) Institutions and Programs

1. *Section 524.20*—The word "only" is deleted from § 524.20 as the reference to 18 U.S.C. 5011 clearly expresses the Bureau's intent.

2. *Section 524.21*—The proposed rule's definition of YCA inmate did not sufficiently address the status of an inmate with both a YCA and an adult sentence. Therefore, the Bureau of Prisons, in § 524.21(a)–(f), has expanded its definition of a YCA inmate. The final rule meets the intent of a comment that it is the sentencing court which determines when a person is to be treated as a YCA inmate. As revised, the final rule is consistent with the action of the U.S. Supreme Court in *Ralston v. Robinson* (70 L Ed. 2d 345). The final rule states that an inmate sentenced under the provisions of the Youth Corrections Act who also has a concurrent or consecutive adult sentence, whether state or federal, is ordinarily considered a YCA inmate, absent a court determination to the contrary. An exception to this provision is the inmate who has a concurrent adult federal sentence that exceeds the release date on the inmate's YCA sentence. When this occurs, the inmate is considered an adult offender. The final rule now includes as a YCA inmate the person confined under the provisions of 18 U.S.C. 3401(g).

Because of the expanded YCA definitions, proposed § 524.21(c)–(d) becomes final § 524.21(g)–(h). Final § 524.21(g) now states that upon the authorization of the court imposing the § 5010(e) study, that study can be conducted in a non-YCA setting. This provision allows the study to be done within a closer proximity to the court and, possibly, to the inmate's area of residence. The last sentence of proposed § 524.21(d) was extraneous and is deleted from the final rule.

3. *Section 524.22*—§ 524.22 has been reworded. Its intent is unchanged.

4. *Section 524.23*—The first sentence of § 524.23 is reworded to state that the Warden is to ensure that each committed YCA inmate is "scheduled for" (rather than "involved in") the three phases of the inmate's YCA program.

5. *Section 524.24*—The clarifying phrase "(subject to modifications or suggestions by the court)" is added to the first paragraph of § 524.24. In § 524.24(a), the phrase "newly committed offender" is substituted for "new arrival". In § 524.24(c), the qualifying phrase, "Absent exceptional circumstances," is added. This section also states that the inmate is "ordinarily" notified of the initial classification meeting 48 hours prior to the inmate's scheduled appearance before the unit team. In § 524.24(d), the extraneous phrase "and a recommendation to the Parole Commission" is deleted. The Bureau of Prisons' report sent to the U.S. Parole Commission does not ordinarily recommend when an inmate should be released, but does estimate the amount of time required for the inmate to achieve program goals.

We do not agree with a commenter to § 524.24 who states "there is nothing new here", that the "provisions outlined here are merely a rehashing of the usual program and regime that federal prisoners, both YCA and adult, are presently subjected." Nor do we consider it necessary for this entire provision to be "rewritten to take into account the Bureau's obligation under the statute * * * to provide specialized treatment for youthful offenders". Section 524.24(d) clearly recognizes the need for specialized treatment with its language "specify the inmate's individualized correctional goals, the programs in which the inmate will participate to attain these goals, and an estimation of the time needed to reach these goals." These aspects, particularly within the structure of an all-YCA institution do not constitute a "rehashing of the usual program." Obviously there will be a similarity of program offerings, because education, vocational training, counseling needs, etc. are not limited solely to either adult or youth offenders.

6. *Section 524.25*—Revised § 524.25 states that each YCA inmate is ordinarily to be exposed to unit-based, institution-based, and community-based programs. The Warden's approval is required for any exceptions to the requirements of the treatment phase. A written record of the reasons for exception is to be placed in the inmate central file. While it should seldom be necessary to use this provision, the Warden should have the authority to exclude participation where warranted, for example, where a YCA inmate has encountered significant disciplinary infractions, the nature of which militate against that inmate's participation in scheduled community trips. Section 524.25(b)(1) is reworded to recognize that unit-based activities are designed to promote self-improvement. Section 524.25(c) states that the inmate is "ordinarily" notified of the 90-day review at least 48 hours prior to the inmate's scheduled appearance before the unit team. Section 524.25(d) is revised to require the establishment of incentives to motivate YCA inmates and to encourage program completion. A commenter correctly states that the phrase "community-based programs" in § 524.25(b)(3) includes temporary release programs (for example, furloughs). In respect to the commenter's reference to 18 U.S.C. 5011, and the "essential varieties of treatment" to which that section refers, the Bureau addresses 18 U.S.C. 5011 in § 524.24(d) as part of the initial assessment of the inmate, as well as in the Bureau's internal staff instructions on establishment of a treatment program.

7. *Section 524.26*—Section 524.26(a) is revised to read that an inmate within 6 months of a release date is ordinarily assigned to a pre-release program. Section 524.26(b) deletes the extraneous word "expected". Placements in a halfway house are made pursuant to current Bureau policy and, as suggested in the proposed rule, at the Warden's discretion.

8. *Section 524.27*—Section 524.27(a)(2) substitutes "General Educational Development (GED)" for "Adult Secondary Education (ASE)". The GED program can assist the inmate in obtaining a high school equivalency certificate and/or a high school diploma. We do not consider it appropriate for § 524.27 to include a commenter's suggestion that the final rule include specific mention of (1) tele-communication instruction as an acceptable delivery system and (2) the Bureau of Prisons accepting pilot programs for schools of education to become involved in institutional instruction below the post-secondary level. The Bureau of Prisons has previously, and continues at the present time, to accept student interns. Entities wishing to establish an internship program or to propose specific educational programs are invited to submit their proposal to the Bureau of Prisons.

A commenter objects to reference in § 524.27(b) that the Bureau provide apprenticeship programs such as "baking, cooking, painting and stationery engineering". The commenter's "hope" was that these examples will not become the norm, as they "seem to focus solely on vocations that can assist staff in maintaining and operating the facilities and not on teaching skills that are marketable upon release." We strongly disagree with this comment. Apprenticeship programs must be approved by the Department of Labor's Bureau of Apprenticeship and Training. The existence of a specific apprenticeship program and its training requirements are not predicated on institutional need, but rather on the job market. While the list provided in § 524.27(b)(2) was not intended to be inclusive (the Bureau of Prisons presently offers over 270 apprenticeship programs in 76 different trades), skills such as baking, cooking, painting, and stationery engineering are considered fully marketable upon release.

Section 524.27(c) is reworded to state that UNICOR is expected to operate apprenticeship training programs.

9. *Section 524.28*—In response to comment, revised § 524.28 recognizes that the Bureau of Prisons may forward a progress report to the U.S. Parole Commission upon a determination by the inmate's unit team and concurrence of the Warden that that inmate has made significant progress (ordinarily indicated by completion of the program plan). In response to another aspect of this comment, the Bureau of Prisons does consult with the U.S. Parole Commission in the implementation of the YCA.

10. *Section 524.30*—The final rule substitutes the more appropriate phrase "non-YCA setting" for "non-YCA institution". The term "halfway house" is deleted from § 524.30(a) as this setting is included within the term "community treatment center". Section 524.30(b) substitutes the phrase "assigned YCA institution" for "present YCA institution". Section 524.30(c) is new and allows for a YCA inmate to be confined in a Bureau of Prisons hospital or in any other hospital as necessary for

emergency medical (including psychiatric) treatment. Proposed § 524.30(c)–(d) becomes final § 524.30(d)–(e). Section 524.30(d) deletes the overly broad phrase "at all times". The Bureau of Prisons expects, however, YCA inmates on "holdover" status ordinarily to be kept physically separated from non-YCA inmates.

A commenter suggests that § 524.30(b) will allow YCA prisoners to be "comingled" with adult prisoners for long periods, and suggests, at a minimum, that separate YCA housing units be established at those facilities specified in subsection (b). Establishment of YCA Units is not practicable, as recent court rulings have held that such units do not meet the intent of the YCA statute. In respect to the commenter's concern that § 524.30(b) will result in the mixing of YCA and adult offenders for long periods, internal staff instructions clearly state that such treatment is "temporary". The Director will seek the concurrence of the sentencing judge when the YCA inmate is considered a "chronic" medical case, requiring placement in a non-YCA setting throughout the YCA sentence.

We disagree with a comment to § 524.30(d) that the phrase "compelling reasons" is a catch-all provision that leaves "staff and director totally free to make exceptions despite the statute and the cases". Except as specifically provided in the rule on YCA inmates, only the Director, Bureau of Prisons may authorize a YCA inmate's placement in a non-YCA setting. Prior to giving approval, the Director will contact the sentencing judge and request the judge's concurrence on the transfer. The Bureau considers these provisions to clearly meet the intent of the Youth Corrections Act.

List of Subjects

28 CFR Part 503

Organization and functions.

List of Subjects

28 CFR Part 524

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.

Dated: July 12, 1982.

Gerald M. Farkas,

Acting Director, Bureau of Prisons.

A. Subchapter A—General Management and Administration

In Subchapter A, Part 503 is amended as follows:

PART 503—BUREAU OF PRISONS CENTRAL OFFICE, REGIONAL OFFICES, INSTITUTIONS, AND STAFF TRAINING CENTERS

The authority citation for Part 503 reads as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4003, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99; Bureau of Prisons Notice published on March 5, 1982 (47 FR 9754).

1. In § 503.3, paragraph (h) is revised to read as follows:

§ 503.3 Bureau of Prisons Southeast Regional Office.

* * * * *

(h) MCC, 15801 S.W. 137th Avenue, Miami, Florida 33177.

* * * * *

2. In § 503.5, paragraph (f) is revised to read as follows:

§ 503.5 Bureau of Prisons South Central Regional Office.

* * * * *

(f) FCI, Seagoville, Texas 75159.

* * * * *

3. In § 503.6, a new paragraph (i) is added to read as follows:

§ 503.6 Bureau of Prisons Western Regional Office.

* * * * *

(i) MCC, P.O. Box 22080 Tucson, Arizona 85734.

B. Subchapter B—Inmate Admission, Classification, and Transfer

In Part 524, Subpart C is added to read as follows:

PART 524—CLASSIFICATION OF INMATES

Subpart C—Youth Corrections Act (YCA) Institutions and Programs

Sec.

524.20 Purpose and scope.
524.21 Definitions.
524.22 Designation of a YCA institution.
524.23 YCA program.
524.24 Classification.
524.25 Treatment.
524.26 Pre-release.
524.27 Educational and work-oriented programs.
524.28 Conditional release (parole).
524.29 Parole violators.
524.30 Exceptions.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5005–5026, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart C—Youth Corrections Act (YCA) Institutions and Programs

§ 524.20 Purpose and scope.

The Director, Bureau of Prisons has designated selected federal institutions to house those persons committed under the provisions of the Federal Youth Corrections Act (YCA). 18 U.S.C. 5011 of this Act states "Insofar as practical, such institutions * * * shall be used only for treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders * * *." The Warden at each YCA institution shall ensure that a three-phase program, comprised of a classification, a treatment, and a pre-release phase, is developed for every YCA commitment. Designated Bureau of Prisons staff (ordinarily the Warden) may authorize an inmate committed under the Youth Corrections Act to be housed with non-YCA inmates only under conditions specified in this rule. Further exceptions to the requirements of this rule for commitment of YCA inmates shall be made only upon written approval of the Director, Bureau of Prisons.

§ 524.21 Definitions.

(a) For purpose of this rule, an inmate confined under the provisions of 18 U.S.C. 5010(b), (c), or (e), or 18 U.S.C. 3401(g), who is not also sentenced to a concurrent or consecutive adult term, whether state or federal, shall be considered a YCA inmate.

(b) For purposes of this rule, an inmate confined under the provisions of 18 U.S.C. 5010(b) who also has a state or federal sentence, either concurrent or consecutive, shall be considered a YCA inmate, if the offense (or offenses) on which the 5010(b) commitment is based carries maximum penalties for adults of less than 6 years.

(c) For purposes of this rule, an inmate confined under the provisions of 18 U.S.C. 5010(b), (c), or (e), who also has a concurrent or consecutive state sentence, shall be considered a YCA inmate, provided the Bureau of Prisons considers the inmate a good candidate for treatment under the provisions of the Youth Corrections Act. Where the Bureau of Prisons believes that the inmate is not a good candidate for treatment under the provisions of the Youth Corrections Act, the Warden shall forward Bureau of Prisons justification for its position to the sentencing YCA court and request that court's

determination on the inmate's YCA status.

(d) For purposes of this rule, an inmate confined under the provisions of 18 U.S.C. 5010(b), (c), or (e), who also has a concurrent or consecutive sentence under the provisions of 18 U.S.C. 3401, shall be considered a YCA inmate. Where the Bureau of Prisons believes that the inmate is not a good candidate for treatment under the provisions of the Youth Corrections Act, the Warden shall forward Bureau of Prisons justification for its position to the sentencing YCA court and request that court's determination on the inmate's YCA status.

(e) For purposes of this rule, an inmate confined under the provisions of 18 U.S.C. 5010(b), (c), or (e), who also has a concurrent adult federal sentence, shall be considered an adult offender when the concurrent adult sentence exceeds the release date on the inmate's YCA sentence. Except as specified in paragraph (b) of this section, where the inmate has a concurrent adult sentence shorter than the release date on the inmate's YCA sentence, the Warden shall contact the sentencing judge for a determination on the inmate's YCA status.

(f) For purposes of this rule, an inmate confined under the provisions of 18 U.S.C. 5010(b), (c), or (e) shall be considered an adult offender when that inmate has a consecutive adult federal sentence, provided the court that imposes the consecutive adult sentence states that, in the court's opinion, YCA treatment will not be of further benefit to the inmate, or provides a statement of similar import. Absent this determination by the court, the inmate is to be considered a YCA inmate.

(g) Study Cases—YCA inmates who are committed for a period of study, under 18 U.S.C. 5010(e). With the authorization of the court imposing the section 5010(e) study, the section 5010(e) study can be conducted in a non-YCA setting.

(h) Committed Youth Offenders—YCA inmates who are sentenced under 18 U.S.C. 5010(b) or (c).

§ 524.22 Designation of a YCA institution.

Appropriate staff in the Regional Office shall designate a YCA inmate to a YCA institution at the time of the YCA inmate's initial commitment.

§ 524.23 YCA program.

Each Warden of a YCA institution is to ensure that each committed youth offender is scheduled for a three-phase program, to include a classification, a treatment, and a pre-release phase (See §§ 524.24–26). The program is to incorporate a graduated release concept to specifically address the return to the inmate of increasing levels of liberty and personal responsibility. In accordance with policy guidelines, the inmate is to be advised of the earliest possible date when consideration may be given to possible reductions in custody level. The graduated release concept is also to focus on the earliest date when the inmate's Unit Team will consider the inmate for town trips (for purpose of attending a neaby social or sports event), work and/or study release, and furloughs. The inmate is to be advised that for these steps toward release to occur, the inmate will be required to maintain a level of behavior which complies with Bureau of Prisons rules and institution guidelines.

§ 524.24 Classification.

This phase shall include an inmate orientation period, a system for unit assignment, and the development of an individualized program plan incorporating the graduated release concept. Except for those inmates returned as committed youth offenders subsequent to a section 5010(e) study, YCA inmates are to participate in a classification procedure prior to the development of their individualized program plans. YCA inmates who were returned by the court as committed youth offenders subsequent to a section 5010(e) study may be placed immediately into their assigned units and begin the individualized program outlined in the report submitted to the court (subject to modifications or suggestions by the court).

(a) *Orioentation*—During the classification period, an inmate is expected to participate in general orientation activities to become familiar with the overall operations of the institution and the types of programs available. Staff shall schedule the inmate for a variety of other activities, including medical and dental examination, and psychological, educational and vocational screening. In addition, each unit shall develop its own orientation program to introduce the newly committed offender to the specific programs within the inmate's assigned unit.

(b) *Unit Assignment*—The Warden shall develop procedures to systematically assign newly admitted inmates to unit living quarters.

(c) *Initial Classification*—Absent exceptional circumstances, within four weeks of the committed inmate's arrival at the designated YCA institution, the Unit Team shall meet with that inmate for purpose of initial classification and program assignment. Staff shall ordinarily notify the inmate of this meeting at least 48 hours prior to the inmate's scheduled appearance before the Unit Team. An inmate may waive in writing the requirement of 48 hours notice. The inmate is expected to attend, and to participate in, the initial classification meeting. If the inmate refuses to appear, staff shall document in the record of the meeting the inmate's refusal to appear and, if known, the reasons for refusal.

(d) *Program Plan*—The Unit Team shall prepare a staff evaluation which summarizes the inmate's needs and outlines the program plan developed jointly with the inmate. The program plan shall specify the inmate's individualized correctional goals, the programs in which the inmate will participate to attain these goals, and an estimation of the time needed to reach these goals. The Unit Team in their evaluation shall explicitly address and document their decision as to whether the YCA inmates' needs can best be met in the presently assigned institution, in another YCA institution, in a community program, or in some other setting as specified in 18 U.S.C. 5011.

§ 524.25 Treatment.

Each YCA inmate is ordinarily to be exposed to unit-based, institution-based, and community-based programs. Each YCA inmate shall be provided periodic reviews during this phase. The treatment phase begins when the inmate attends the programs and activities described in the program plan and ends approximately six months prior to the inmate's anticipated release date. Exceptions to the requirements of the treatment phase must be approved by the Warden, with a written record of the reasons for exclusion placed in the inmate central file.

(a) *Program Structure*—Each inmate in a YCA institution shall be assigned program involvement in accordance with the inmate's needs. The "program day" shall consist of morning, afternoon, and evening time periods, during which the inmate shall be scheduled for self-improvement, work, and leisure-time activities. The inmate shall be expected to comply with the program plan. The inmate's refusal to participate may result in disciplinary action.

(b) *Programs*—Program activities consist of those conducted within the unit, those conducted at centralized locations within the institution, and those conducted within the community. Eacy YCA institution shall offer programs in each of these three areas.

(1) *Unit-Based Programs*—This includes those activities designed to

promote self-improvement and to enhance staff/inmate and inmate-to-inmate relationships, as well as ensure the orderly running of the unit. Examples of unit-based programs include unit business and information sharing meetings, individual and group counseling sessions, leisure-time and recreation activities, daily sanitation details, periodic drug surveillance, and group and individual psychotherapy.

(2) *Institution-Based Programs*—This includes activities conducted at a centralized location within the institution and includes self-improvement, educational and work-oriented programs (see § 524.27), physical recreation and other leisure-time activities. Examples of institution-based programs include religious services and related study groups, community volunteer programs, music and drama clubs, and ethnic groups.

(3) *Community-Based Programs*—This includes those activities designed to help re-orient the inmate to a successful return to free society living. The activities may be similar to institutional activities, with the primary difference being the community location. Examples of specific activities which may be found only in the community include enrollment in a community vocational training program, an institutional choir that sings at churches, lectures by selected inmates to school groups and community organizations concerning crime, drugs, etc.

(c) *Reclassification*—Staff shall conduct periodic reviews of the inmate's program plan and shall modify the plan in accord with the level of progress shown. Each YCA inmate shall be afforded a review at least once each 90 days and shall have a formal progress report prepared at least yearly summarizing the inmate's level of achievement. Staff shall ordinarily notify the inmate of the 90-day review at least 48 hours prior to the inmate's scheduled appearance before the Unit Team. An inmate may waive in writing the requirement of 48 hours notice. The inmate is expected to attend and to participate in the review. If the inmate refuses to appear, staff shall document in the record of the meeting the inmate's refusal to appear and, if known, the reasons for refusal. Each review shall be documented and the results placed in the inmate central file.

(d) *Incentives*—Staff shall establish incentives to motivate YCA inmates and to encourage program completion. Examples of such incentives which may be used are special recognition, ceremonies, awards, and "vacation days".

§ 524.26 Pre-release.

The YCA inmate shall enter the pre-release phase approximately six months prior to release. The pre-release phase is ordinarily divided into two portions: A pre-release program in the institution and a stay at a halfway house.

(a) Each YCA institution shall develop a formal pre-release program. Inmates who are within six months of a release date shall ordinarily be assigned to this program. The pre-release program shall focus on the types of problems the inmate may face upon return to the community, such as re-establishing family relationships, managing a household, finding and keeping a job, and developing a successful life style. In addition, the pre-release program may include visits from prospective employers who describe what they look for in a job applicant and from former inmates who have demonstrated a successful post-release community adjustment for at least one year.

(b) Halfway House—A YCA inmate released from a YCA institution is ordinarily placed in a halfway house, to ease community transition. Such placements are pursuant to current Bureau guidelines, and at the Warden's discretion. Exceptions to halfway house placement are approved by the Warden, with a written record of the reasons for exclusion placed in the inmate central file.

§ 524.27 Educational and work-oriented programs

Each YCA institution shall offer the following types of educational and work-oriented programs:

(a) *Academic Education*—Programs in this area are to include the following.

(1) *Adult Basic Education (ABE)*—designed to assist the inmate whose academic skills are below the sixth grade level.

(2) *General Educational Development (GED)*—designed to assist the inmate in preparation for obtaining a high school equivalency certificate and/or a high school diploma.

(3) *Adult Continuing Education (ACE)*—designed to assist the inmate who wishes to continue to expand or to "brush up" in a specific educational area, such as English as a second language.

(4) *Postsecondary Education (PSE)*—designed to assist the inmate who desires to take accredited courses above the high school level. These courses may be in either the educational or vocational area.

(5) *Social Education (SE)*—designed to assist the inmate in the inmate's adjustment. These programs concern personal growth, increased ability to cope with problems such as stress, self-image, alcoholism, and responsibilities as a parent.

(b) *Occupational Education*—Programs in this area are to focus on helping the inmate acquire or improve upon marketable skills. Each YCA institution shall offer at least three training areas, in such skills as automotive repair, computer programming, welding, heating, and air conditioning. Within the occupational education area, each YCA institution shall also offer at least two approved apprenticeship programs, such as baking, cooking, painting, and stationary engineering.

(c) *Work-Oriented Programs*—Programs in this area include Federal Prison Industries (UNICOR) and institutional maintenance and service details. UNICOR is expected to operate apprenticeship training programs. Eligibility for an industrial placement requires the recommendation of the Unit Team and an indication that the inmate is either functioning at least at a 6.0 grade level (as shown by the Stanford Achievement Test), or is presently participating in an ABE program with progress towards attaining a 6.0 grade level. The inmate who works full time in an industrial assignment must possess at least a 6.0 grade level.

§ 524.28 Conditional release (parole).

The U.S. Parole Commission is the releasing authority for all YCA inmates. Upon request of the U.S. Parole Commission or upon a determination by the inmate's Unit Team and concurrence of the Warden that the inmate has made significant progress (ordinarily indicated by completion of the program plan), the Bureau of Prisons shall provide the U.S. Parole Commission with a progress report on the YCA inmate. When institutional staff wish to notify the Parole Commission of a special post-release need of the inmate, the Unit Team shall either make notation of this need in the progress report or may submit a separate report bringing the post-release need to the attention of the U.S. Parole Commission.

§ 524.29 Parole violators.

A YCA inmate whose conditional release is revoked by the U.S. Parole Commission shall ordinarily enter the Bureau of Prisons three-phase program for YCA inmates as described in this rule.

§ 524.30 Exceptions.

A YCA inmate may be considered for transfer to a non-YCA setting under the following conditions.

(a) A YCA inmate may be housed within the general population of a community treatment center or work release facility, and may work with non-YCA's at a factory, office, or other workplace in the community during the pre-release phase of treatment.

(b) A YCA inmate may be confined at the Medical Center for Federal Prisoners, Springfield, Missouri, or at the Federal Correctional Institution, Butner, North Carolina, or at the Federal Correctional Institution, Lexington, Kentucky, as necessary for the duration of special medical or mental health treatment not available within the inmate's assigned YCA institution.

(c) A YCA inmate may be confined in a Bureau of Prisons hospital or in any other hospital as necessary for emergency medical (including psychiatric) treatment.

(d) A YCA inmate may be confined temporarily in a non-YCA setting on "holdover" status (en route to another institution). The YCA inmate who is confined temporarily on "holdover" status is to be physically separated from non-YCA inmates.

(e) A YCA inmate, upon approval of the Director, Bureau of Prisons, may be confined in a non-YCA setting for other compelling reasons.

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: The Bureau of Prisons is proposing to amend its final rule on Education Tests: Minimum Standards for the Administration, Interpretation, and Use at all Bureau of Prisons Institutions. The proposed amendments are primarily intended to help implement the Bureau of Prisons final rule on Adult Basic Education (ABE) Program, published in the **Federal Register** May 20, 1982 (at 47 FR 22006–07).

DATE: Comments must be received on or before August 16, 1982.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street NW., Washington, D.C. 20534. Comments received will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724–3062.

SUPPLEMENTARY INFORMATION: 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), notice is hereby given that the Bureau of Prisons intends to publish in the **Federal Register** a proposed amendment to its rule on Education Tests: Minimum Standards for the Administration, Interpretation, and Use at all Bureau of Prisons Institutions. The final rule on this subject was published in the **Federal Register** May 20, 1980 (at 45 FR 33939). The present amendment republishes this rule in its entirety. The primary intent of this revision is to more effectively implement the Bureau of Prisons final rule on its Adult Basic Education (ABE) Program, published in the **Federal Register** May 20, 1982 (at 47 FR 22006–07). The proposed amendment on minimum standards for education tests includes a provision that an inmate who has not taken the SAT within the last two years and whose previous SAT scores in the Reading, Mathematics, and Language subtests were below the 6.0 academic grade level shall be required to take the Stanford Achievement Test (SAT) or, if a non-English speaking inmate, other standardized academic test. The final rule on the ABE program requires that an inmate who cannot read, write, or do mathematics at the 6.0 academic grade level shall be required to attend an adult basic education program for a minimum of 90 calendar days. The SAT is the means ordinarily used to determine the inmate's academic grade level. The present revision to the rule on minimum standards for education tests is intended to recognize this fact. The proposed rule also states that an inmate who refuses to take the SAT (or other standardized test) will be required to attend an adult basic education program for a minimum of 90 calendar days.

The amended rule on minimum standards for education tests no longer specifically excludes Community Treatment Centers, Detention Centers, and Metropolitan Correctional Centers. The education tests are ordinarily to be given as specified in the rule, regardless of where the inmate is housed. The amended rule also deletes the phrase "within one month of arrival". The rule's intent, however, continues to be for the inmate to receive the specified tests as soon as practicable after arrival.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. The Bureau of Prisons has determined that E.O. 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.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 760, 320 1st Street, NW., Washington, DC. 20534. Comments received on or before August 16, 1982 will be considered before final action is taken. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 544

Prisoners, Education, Libraries, Recreation.

In consideration of the foregoing, it is proposed to amend 28 CFR, Chapter V as follows: In Subchapter C, remove existing Subpart B and add a new Subpart B to Part 544 to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

* * * * *

PART 544—EDUCATION

Subpart B—Minimum Standards for the Administration, Interpretation, and Use of Education Tests

Sec.

544.10 Purpose and scope.

544.11 Refusal to take the Stanford Achievement or other standardized test.

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 B—Minimum Standards for the Administration, Interpretation, and use of Education Tests.

§ 544.10 Purpose and scope.

The Bureau of Prisons administers appropriate educational tests to inmates confined within it institutions.

(a) Staff shall administer the Stanford Achievement Test (SAT) to an inmate who meets the following criteria.

(1) A newly committed inmate with a sentence of more than one year shall be required to take the SAT. For the non-English speaking inmate, another appropriate standardized test may be used to determine the inmate's current level of academic achievement. The Warden may also approve the administration of an SAT to a newly committed inmate who is serving a sentence of one year or less when test results are required for program placement and other purposes.

(2) An inmate who has not taken the SAT within the last two years (verified by the Supervisor of Education or designee) and whose previous SAT scores in the Reading, Mathematics, and Language subtest were below the 6.0 academic grade level shall be required to take the SAT or, for the non-English speaking inmate, other standardized test.

(b) Staff may administer other appropriate aptitude and achievement tests, as needed, to measure specific achievement or aptitude.

(c) Staff may not allow inmates to administer, score, or interpret tests which are the subject of this rule. Staff may not assign the clerical handling of such tests to an inmate.

§ 544.11 Refusal to take the Stanford Achievement or other standardized test.

An inmate who refuses to take the SAT test (or other standardized test) necessary to determine if the inmate has achieved a test score equivalent to the 6.0 academic grade level shall be required to attend an adult basic education program (ABE) for a minimum of 90 calendar days (see Part 544, Supbart H).

Dated: July 12, 1982.

Gerald M. Farkas,

Acting Director, Bureau of Prisons.

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federal register

Friday
July 16, 1982

Part VII

Department of Labor

Wage and Hour Division

Fair Labor Standards Act; Child Labor Regulation No. 3; Employment of 14- and 15-Year-Olds; Proposed Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 570

Fair Labor Standards Act; Child Labor Regulation No. 3; Employment of 14- and 15-Year-Olds

AGENCY: Wage and Hour Division, Labor.

ACTION: Proposed rule.

SUMMARY: The Administrator of the Wage and Hour Division is proposing revisions of Child Labor Regulation No. 3. Regulation 3, issued under the authority of section 3(1) of the Fair Labor Standards Act, provides for the permissible employment of minors 14 and 15 years of age in occupations other than manufacturing and mining during periods which will not interfere with their schooling and under conditions which will not interfere with their health or well-being. The proposed revisions are issued as the result of the experience of the Wage and Hour Division in administering and enforcing this regulation, requests received by the Administrator recommending these changes, and studies initiated by the Administrator concerning employment standards appropriate for 14 and 15-year-old employees. Some substantive revisions in the permissible occupations and the hours and time standards are proposed, and the entire regulation is presented in a new format to clarify how the regulation applies.

DATE: Written comments in triplicate must be received on or before August 16, 1982.

ADDRESS: Comments should be addressed to William M. Otter, Administrator, Wage and Hour Division, Attention: Gordon L. Claucherty, Room S–3030, Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Gordon L. Claucherty, Wage and Hour Division, Room S–3030, Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone 202–523–7478.

SUPPLEMENTARY INFORMATION: Section 3(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 203(1)) authorizes the Secretary of Labor to provide by regulation for the employment of young workers 14 and 15 years of age in suitable occupations other than manufacturing or mining and during periods and under conditions which will not interfere with their schooling or with their health and well-being. Under this authority, Child Labor Regulation No. 3 was first issued on October 21, 1938. Although there have been a number of revisions of this regulation since that time, this proposed revision is the most comprehensive.

Regulation No. 3 contains a provision under which interested person may recommend changes in the regulation. That provision, 29 CFR 570.38, provides that:

> Any person wishing a revision of any of the terms of this subpart may submit in writing to the Secretary of Labor a petition setting forth the changes desired and the reasons for proposing them. If, after consideration of the petition, the Secretary of Labor believes that reasonable cause for amendment of the subpart is set forth, he shall either schedule a hearing with due notice to interested parties, or shall make other provision for affording interested parties and opportunity to be heard.

The Administrator of the Wage and Hour Division, as the representative of the Secretary, has received many hundreds of petitions and recommendations for changes in this regulation. The Administrator has considered these recommendations, and believes that a reasonable cause for the revisions set forth in this proposal has been presented. The proposed revision restates the regulation, provides some substantive changes, and presents a new format to clarify the application of the regulation.

Manufacturing and Mining Occupations

The Fair Labor Standards Act specifically prohibits the employment of 14 and 15-year-old employees in manufacturing and mining occupations. The prohibitions against employment (such as food vending, message delivery and clean-up work) performed in work areas and work places where manufacturing or mining takes place would be retained in the proposed revision, in order to provide adequate protection against the hazards of equipment, environment and inadequate supervision.

Processing Occupations

The present regulation contains a general prohibition against employment in processing occupations but makes specific exceptions. The proposed revision would achieve the same effect within the new format, including permitting certain kinds of employment in workrooms and work places where processing takes place. For example, the regulation, as revised, would no longer prohibit messenger work that involves going into a food processing plant and would permit employment as a sales clerk in a shoe repair shop.

Laundering Occupations

Laundering occupations are presently prohibited as processing. However, some laundering jobs (such as folding and sorting) will be permitted provided they are performed on clean laundry in rooms where no laundry machinery is operated. Employment in self-service laundries will also be permitted. On the basis of the Department's experience with such employment, recommendations from a variety of sources that it be permitted, and resulting review and study, the Administrator has determined that this employment will not interfere with the health and well-being of 14 and 15-year-olds so employed. The requirement that the permitted duties be performed on clean laundry eliminates exposure to health hazards.

Cooking and Baking

The proposed revision would permit employment in occupations involving cooking and baking except those involving the handling of hot grease (140° F), working over an open flame, and cooking with containers under pressure which have no safety valves. These proposed standards are based on investigatory experience of the Department and supported by recommendations of interested persons with experience and knowledge in the field. The review and study by the Administrator included visits to many fast food service establishments and studies of the blueprint plans of the kitchens of such establishments. The temperature of 140° F. was selected since this has been established as the temperature at which a first degree burn can occur.

Impact of Hazardous Orders

Occupations which have been declared hazardous for 16 and 17-year-old youngsters are also prohibited for 14 and 15 year olds. In order to provide clarity, a sentence has been added explaining that the provisions in some of the hazardous orders which permit apprenticeship and student-learner exemptions for young persons 16 and 17 years of age do not apply to the 14 and 15-year-old group. Furthermore, the proposal deletes, as superfluous, the specific references in the present regulation prohibiting employment in occupations involving the operation or tending of hoisting apparatus and prohibiting the operation of motor vehicles. These occupations are already covered within Hazardous Occupations Orders Nos. 7 and 2, respectively.

Dry Cleaning Occupations

The proposed revision would continue the prohibition of employment in occupations in connection with dry cleaning. The revision would make an exception for employment in office and sales work in dry cleaning establishments, and would limit such employment to workplaces where no cleaning machinery is used. Thus, employment in areas where exposure to fumes might be harmful is prohibited for this age group.

Transportation Occupations

The basic prohibition of employment in connection with transportation of persons or property is continued. The trucking industry has recommended that the regulation which presently permits car cleaning, washing and polishing be extended to permit the exterior cleaning, washing, or polishing of trucks and buses and the interior cleaning of passenger vehicles, adding the proviso "while they are not in motion." On the basis of the Department's experience with such employment, the industry recommendation and resulting review and study, the Administrator has determined that employment limited to washing, etc., the exteriors of trucks and buses, while permitting washing, etc., the interior and exterior of passenger cars will not interfere with the health and well-being of 14- and 15-year-olds.

Warehousing and Storage

The proposed revision would eliminate the general prohibition against employment in occupations in connection with warehousing and storage. Employment would be permitted in many occupations in these establishments, including those warehousing and storage operations found in wholesale and mail order houses, such as sales and office work, tag and ticket work in tobacco warehouses (formerly permitted by interpretation), and stock clerk type hand operations such as order-filling, marking, packaging and shelving. Occupations in warehousing and storage which are considered harmful for 14- and 15-year-olds would be prohibited by other provisions of the regulation. For example, the processing provision would continue to prohibit the preparation of food products (such as barbecued chicken, pizza pies, etc.) in warehouses. The operation of power-driven woodworking machinery and meat processing machinery found in some warehouses would continue to be prohibited by Hazardous Occupations Orders Nos. 5 and 10 and the power-driven machinery prohibition in the regulation. Hazardous Occupations Order No. 7 and/or the power-driven machinery prohibition would continue to cover the operation of forklifts, electric hand jacks and conveyors.

Communications and Public Utilities

The proposed revision would omit the general prohibition against employment in occupations in connection with communications and public utilities. A review has indicated that employment in occupations such as switchboard operator work, teletype operator work, record turntable operator work, meter reader, and clean-up work in offices and salesrooms (presently prohibited) would not interfere with the health and well-being of 14- and 15-year-old minors. Other sections of the proposed regulation would provide adequate protection against those activities related to communications and public utilities which are unsuitable such as the installation of telephone lines or the connection of gas lines.

Construction and Demolition

The proposed revision would reword the general prohibition against employment in occupations in connection with construction or demolition to insure that construction activities related to communications and public utilities continue to be prohibited. A new exception would permit young workers to participate in surveying operations which take place prior to other activities at the construction site. Several sources urged that this activity be permitted for 14- and 15-year-old employees. The Department's experience indicates that surveying operations which take place prior to excavation would not expose youngsters in this age group to harm.

Boiler Rooms and Engine Rooms

The proposed revision would prohibit employment in occupations requiring the performance of any duties in boiler rooms or engine rooms, wherever located. Under the present regulation these occupations are prohibited only in retail, food service and gasoline service establishments.

Power-Driven Machinery Occupations

The proposed revision would extend the present prohibition of employment in occupations involving the operation of power-driven machinery to occupations involving setting-up, adjusting, cleaning, oiling and repairing such machinery (including loading and unloading goods to and from conveyors) wherever located. The proposed regulation would eliminate the present distinction with respect to employment in these occupations in retail and food service establishments. However, employment in occupations involving the operation or tending of specified power-driven machines would be permitted, including the operation of window-shade cutter machines, key cutting machines and self-service washing machines and dryers. Also permitted would be the operation of automatic data processing equipment.

Ladders and Scaffolds

The proposed regulation would provide more definite standards for employment involving window washing or the use of ladders or scaffolding, wherever located. Outside window cleaning would be prohibited above the grade-level floor whether or not it is done from window sills; and work requiring the performance of duties from ladders and like devices would be prohibited only at heights in excess of 6 feet. These changes, which are based on experience gained by the Department, have been made in order to achieve a more uniform application of the standards and to better define the prohibitions.

Messenger Work

The proposal would prohibit messenger work requiring the operation of a motorized vehicle, but permit errand and delivery work by foot, non-motorized bicyle, public transportation, or as a passenger in an enclosed passenger vehicle for employees of any place of business. This provision represents a clarification of the present standard and provides for consistent application.

Waiver Provision

A totally new provision in this proposal would permit individual applications for a waiver of the restrictions in the regulations concerning occupations and hours of employment. This would assure that the regulation would not be applied in unforeseeable situations so as to prohibit suitable employment. This proposed revision is based on the Department's experience with a similar provision in work experience and career exploration programs (WECEP). It is also based on the experience of State authorities under similar provisions. According to information reported to the Administrator, varying the State child labor requirements on an individual basis has not interfered with the health and well-being or opportunities for schooling of 14 and 15-year-old employees.

Hours of Work

Although the proposed regulation would continue the prohibition against employment during school hours and the limitations of 8 hours a day and 40 hours a week in any week when school is not in session, it would increase and extend the permissible periods of work during days and weeks when school is in session. The maximum daily hours of employment when school is in session would be increased from 3 hours to 4 hours and the maximum weekly hours when school is in session would be increased from 18 hours to 24 hours. The proposal would permit 14 and 15-year-old minors to work up to a maximum of 36 hours during any week when school is in session for only a portion of the week due to holidays and vacation periods. The proposal would also extend the closing hours from 7 p.m. to 9 p.m. generally, and to 10 p.m. on any day during the summer months or preceding a non-school day. The Department has received recommendations for these changes in the hours standards in hundreds of letters, and in conferences and meetings with employers, educators, and State child labor officials. The Department's study of the data received, including experience under similar standards established by many States, led to the conclusion that such changes would not interfere with the schooling or with the health and well-being of 14 and 15-year-old employees.

The WECEP provisions would be amended to delete, as no longer necessary, the variation for the employment of enrollees for a maximum of 23 hours a week during weeks when school is in session. The proposed 24 hours standard for all 14 and 15-year-olds would be applicable to such enrollees.

Classification

The proposed revision restates the regulation, provides some substantive changes, and presents a new format to clarify the application of the regulation. Therefore, this rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

The proposed revision must also consider the Regulatory Flexibility Act of 1980, Pub. L. 96–354, 91 Stat. 1164, 5 U.S.C. 601 *et seq.* This Act requires agencies to prepare regulatory flexibility analyses and to develop flexible alternatives whenever possible in drafting regulations that will have "a significant economic impact on a substantial number of small entities."

Child Labor Regulation No. 3 issued under Section 3(1) of the Fair Labor Standards Act sets employment standards for young workers 14 and 15 years of age in suitable occupations other than manufacturing and mining. These include hourly limits on employment and requires conditions which will not interfere with their schooling or their health and well-being.

The current rule restricts the employment of 14 and 15 year olds to 18 hours a week during the school term and 40 hours weekly during the summer months. Today's proposal would raise the limit to 24 hours a week when school is in session, but retain the current maximum of 40 hours weekly during non-school weeks. The proposal would also permit a maximum of 36 hours during any week when school is in session for only a portion of the week due to holidays and vacation periods.

The proposed regulation would also revise those permissible occupations for minors to include, for example, cooking or baking under certain conditions; the operation or tending of specified power-driven machinery such as office machines, automatic data processing equipment, and self-service washing machines; clerk and sales jobs in dry cleaning establishments; and some public utility jobs such as switchboard operator work.

According to Bureau of Labor Statistics (BLS) reports, there were approximately 915,000 teenagers aged 14 and 15 working in 1981. Only about 6 percent of this age group worked full-time (presumably during the summer months); the rest held part-time employment (under 34 hours a week). The precise number of establishments employing these minors cannot be determined with available data; however, the BLS data show that 4.6 million employees under 20 years of age in 1980 worked in 989,000 establishments. This implies an average 4.65 teenagers (under 20 years of age) per establishment. Applying this proportion to the 915,000 employed minors aged 14 and 15 would result in an estimate of 197,000 establishments employing minors. This estimate represents about 7 percent of the 2.78 million establishments covered by FLSA requirements. The actual number of establishments may be higher to the extent that the distribution of minors among establishments is more uniform than that found for teenagers under 20 years of age.

While the industry distribution of these establishments is unknown, they are most likely concentrated in the retail and service trades. The interest shown by the fast food and amusement park industries in revision of the hours provision of the child labor regulations supports this view. These industries are comprised overwhelmingly of small businesses. Data from the 1979 *County Business Patterns* published by the Census Bureau show 92 percent of the eating establishments and 86 percent of the amusement parks with under 50 employees. The proposed revisions in permissible occupations likewise impact the food service industry as well as other small business industries like laundry and dry cleaning services, car washes, shoe repair stores, and computer and data processing services, among others. Overall, 66 percent of retail establishments and 44 percent of service establishments employ fewer than 50 workers. We may therefore conclude that many of the estimated 197,000 establishments employing minors are small firms.

While a substantial number of small entities would be affected by today's proposal, we do not believe the impact will be significant for several reasons. First, this age group in 1981 represented only a small proportion of total employment in private non-farm establishments (less than 1.5 percent). The proposed revisions in permissible occupations could increase the employment of part-time workers aged 14 and 15, but even a doubling of their employment would represent only a small fraction of the total workforce. Moreover, there be few savings in wages or other compensation by employing these employees, except those related to increased use of part-time employees to meet peak business loads. However, the employer's choice of the mix between part-time and full-time employees is largely influenced by business and market factors, rather than by child labor regulations. Of course, there will be savings in terms of improved work scheduling and other factors affecting firms' productivity. Second, with respect to the hours standards, BLS data indicate that minors were employed an average 12.11 hours per week in 1981, which is well below

the current limit. Assuming that all teenagers presently worked at the maximum hours allowed, average weekly hours would be 23.5 hours for this age group. Since weekly hours of employment for most minors are well under the current FLSA ceilings, the proposed rule should have only a small impact on hours of employment for most establishments. For these reasons, the Department believes that today's proposal will not have significant impact on a substantial number of small entities.

Drafting Information

This document was prepared under the direction and control of Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, U.S. Department of Labor.

List of Subjects in 29 CFR Part 570

Child labor, Government, Intergovernmental relations, Child labor occupations, Minimum age.

For the reasons set out in the preamble, Part 570 of Chapter V, Title 29 of the Code of Federal Regulations is proposed to be amended as follows:

PART 570—CHILD LABOR REGULATIONS, ORDERS, AND STATEMENTS OF INTERPRETATION

1. The Table of Contents for Part 570 is amended by substituting the following entry for Subpart C (§§ 570.31—570.38) in place of the current entry, to read as follows:

* * * * *

Subpart C—Employment of Minors 14 and 15 Years of Age (Child Labor Reg. 3)

Sec.

570.31 Determination and effect of this subpart.
570.32 [Reserved]
570.33 Occupations.
570.34 [Reserved]
570.35 Periods and conditions of employment.
570.35a Work experience and career exploration programs.
570.35b Variations of occupations and hours.
570.36 Certificates of age; effect.
570.37 Effect on other laws.
570.38 Revision of this subpart.

* * * * *

2. Sections 570.31 through 570.38, which constitute

Subpart C, are revised to read as follows:

Subpart C—Employment of Minors 14 and 15 Years of Age (Child Labor Reg. 3)

Authority: Sec. 3, 52 Stat. 1060, as amended (29 U.S.C. 203).

§ 570.31 Determination and effect of this subpart.

This regulation is issued under section 3(1) of the Fair Labor Standards Act and sets the standards for the employment of 14 and 15-year-old minors. It has been determined that employment in the occupations for the periods and under the conditions specified in this regulation does not interfere with the schooling or with the health and well-being of 14 and 15-year-old minors and, therefore, that it is not "oppressive child labor" within the meaning of the Act.

§ 570.32 [Reserved]

§ 570.33 Occupations.

Fourteen and 15-year-old workers may be employed in all occupations *other than* the following:

(a) Manufacturing, mining or processing occupations including occupations requiring the performance of duties in workrooms or workplaces where goods are manufactured or mined. (Processing is an operation during the course of which goods undergo a change in form or substance). This prohibition shall not extend to:

(1) Laundering occupations performed on clean laundry outside rooms where laundry machinery is operated;

(2) Employment in self-service laundries requiring the operation or tending of machines listed in paragraph (f)(5) of this section.

(3) Office and sales work in dry cleaning establishments which does not require the performance of duties in workplaces where cleaning machinery is used.

(4) Employment in retail stores; or

(5) Employment in food service establishments which does not require handling hot (140° F.) grease (before or after cooking but not including immersing foods in grease or tending cooking foods), working over an open flame (not contained in such way as to prevent the flame from igniting clothing), and cooking with containers under pressure which have no safety valve.

(b) Occupations which the Secretary of Labor, under section 3(1) of the Act, finds and declares to be particularly hazardous for the employment of minors 16 and 17 years of age or detrimental to their health or well-being. Apprenticeship and student-learner exemptions contained in various Hazardous Occupations Orders are not available to minor employees 14 and 15 years of age.

(c) Occupations in connection with transportation of persons or property by rail, air, water, pipeline, highway or other means. This prohibition shall not extend to employment in:

(1) Sales or office (including ticket office) work when not performed on transportation media; or

(2) Dispensing fuel or oil in cars and trucks; exterior cleaning, washing or polishing by hand of cars, trucks and buses, and interior cleaning of passenger vehicles while vehicle is not in motion; or courtesy services, such as checking oil level or washing windshields.

(d) Occupations in connection with construction activities including those construction activities related to communications and public utilities (including repair and structural maintenance) and demolition. This prohibition shall not extend to employment in:

(1) Sales or office work when not performed at the actual construction or demolition site; or

(2) Surveying occupations performed prior to commencement of any other activity at the construction site.

(e) Occupations requiring the performance of any duties in boiler rooms or engine rooms.

(f) Occupations which involve the operation, tending, setting-up, adjusting, cleaning, oiling or repair of power-driven machinery (including loading and unloading goods to and from conveyors). This prohibition shall not extend to the operation or tending of:

(1) Office machines; automatic data processing equipment;

(2) Dishwashers, dumb-waiters, household-type appliances such as but not limited to toasters, popcorn poppers, milk-shake blenders, and coffee grinders;

(3) Vacuum cleaners, waxers, buffers and polishers;

(4) Cash registers, ticketing machines, window-shade cutters and key cutting machines;

(5) Self-service washing machines (household type) and dryers.

(g) Outside window cleaning above the grade-level floor.

(h) Occupations requiring the performance of any duties from scaffolds, ladders or other similar devices at heights in excess of 6 feet.

(i) Messenger work requiring the operation of a motorized vehicle. This prohibition shall not extend to errand and delivery work by foot, non-motorized bicycle, public transportation, or as a passenger in an enclosed passenger vehicle.

§ 570.34 [Reserved]

§ 570.35 Periods and conditions of employment.

Employment in any of the occupations to which this subpart applies shall be confined to the following periods:

(a) Outside school hours;

(b) Not more than 40 hours in any one week when school is not in session;

(c) Not more than 24 hours in any one calendar week when school is in session for 5 days;

(d) Not more than 36 hours in any one calendar week when school is in session for only a portion of the week due to holidays or vacation periods, actual hours to be determined by subtracting from 40, four hours for each regular school day that school is in session;

(e) Not more than 8 hours in any one day when school is not in session;

(f) Not more than 4 hours in any one day when school is in session;

(g) Between 7 a.m. and 9 p.m. in any one day, except during the summer (June 1 through Labor Day) and on any day preceding a non-school day when the evening hour will be 10 p.m.

§ 570.35a Work experience and career exploration programs.

(a) This section varies some provisions of this subpart for the employment of minors 14 and 15 years of age who are enrolled in a school-supervised and school-administered work-experience and career exploration program (WECEP) which meets the requirements of paragraph (b) of this section. Employment under such program must be in the occupations permitted under paragraph (c) of this section and for the periods and under the conditions specified in paragraph (d) of this section. With these safeguards, this employment is found not to interfere with the schooling of the minors or with their health and well-being and therefore is not considered to be oppressive child labor.

(b) (1) A school-supervised and school-administered work-experience and career exploration program shall meet the educational standards established and approved by the State Educational Agency in the respective State.

(2) The State Educational Agency shall file with the Administrator a letter of application for approval of a State program as one not interfering with schooling or with the health and well-being of the minors involved and therefore not constituting oppressive child labor. The application must include information concerning the criteria listed in paragraph (b)(3) of this section. The Administrator shall approve the application, or give prompt notice of any denial and the reasons for denial.

(3) The following criteria shall be used to consider applications:

(i) *Eligibility.* Any student aged 14 or 15 years who authoritative local school personnel identify as being able to benefit from the program shall be eligible to participate.

(ii) *Credits.* Students shall receive school credits for both in-school related instruction and on-the-job experience.

(iii) *Size.* Each program unit shall be a reasonable size. A unit of 12 to 25 students to one teacher-coordinator would be generally considered reasonable. Whether other sizes are reasonable would depend upon individual facts and circumstances.

(iv) *Instructional schedule.* There shall be (a) allotted time for the required classroom instruction in those subjects necessary for graduation under the State's standards and (b) regularly scheduled classroom periods of instruction devoted to job-related and to employability skill instruction.

(v) *Teacher-coordinator.* Each program unit shall be under the supervision of a school official who will be designated for the purpose of the program as a teacher-coordinator. The teacher-coordinator will generally supervise the program, coordinate the work and education aspects of the program, and make regularly scheduled visits to the work stations.

(vi) *Written training agreement.* No student shall participate in the work aspect of the program until a written training agreement has been signed by the teacher-coordinator, the employer and the student. The agreement shall also be signed or otherwise consented to by the student's parent or guardian.

(vii) *Other provisions.* An applicant may also submit for the Administrator's consideration any other provisions of the program which ensure that the employment permitted under this section will not interfere with the schooling of the minors or with their health and well-being.

(4) Every State Educational Agency having students in a program approved under this section shall comply with the following:

(i) *Permissible occupations.* No student shall be assigned to work in any occupation other than one permitted under paragraph (c) of this section.

(ii) *Records and reports.* The names and addresses of enrollees in each unit shall be kept at the State Educational Agency office. A copy of the written training agreement for each student participating in the program shall be kept in the State Educational Agency office or in the local educational office. The records required by this paragraph shall be kept for a period of 3 years from the date of enrollment in the program and shall be made available for inspection or transcription to the representatives of the Administrator.

(c) Employment of minors enrolled in a program approved under this section shall be permitted in all occupations except the following:

(1) Manufacturing and mining.

(2) Occupations declared to be hazardous for the employment of minors between 16 and 18 years of age in Subpart E of this part (§§ 570.50–570.68), and occupations in agriculture declared to be hazardous for employment of minors below the age of 16 in Subpart E-1 of this part (§§ 570.70–570.72).

(3) Occupations other than those permitted under § 570.33, except after approval of a variation in individual cases or classes of cases by the Administrator after notice to interested persons and opportunity to be heard. No variation may be granted for (c)(1) or (2) above. Any variation which applies generally shall be published as an amendment to this subpart. Applications for approval of a variation may be included with the application for approval of the WECEP program, or filed specifically under § 570.38, but will be processed under § 570.38.

(d) Employment of minors enrolled in a program approved under this section shall be confined to the periods and conditions of employment set forth in § 570.35 of this subpart except that such employment, or any portion of it, may be performed during school hours. Insofar as this section is inconsistent with any provision of § 570.35, this section shall be controlling.

(e) The employment of a minor enrolled in a program under this section must not have the effect of displacing a worker employed in the establishment of the employer.

(f) Programs shall be in force and effect for a period of two (2) school years from the date of their approval by the Administrator. A new application for approval must be filed at the end of that period. Failure to meet the requirements of this section may result in withdrawal of approval.

§ 570.35b Variations of occupations and hours.

This section permits variations of some provisions of this subpart for the employment of minors 14 and 15 years of age. Employment in occupations not permitted under § 570.33 and for periods of time other than those permitted under § 570.35 may be permitted after approval

of a variation in individual cases or classes of cases by the Administrator after notice to interested persons and opportunity to be heard. Any variation which applies generally shall be published as an amendment to this subpart. Applications for approval may be filed specifically under § 570.38 and shall be processed under that section.

§ 570.36 Certificates of age; effect.

The employment of any minor in any of the occupations to which this subpart applies, if confined to the periods specified in § 570.35, will not be considered oppressive child labor within the meaning of the Act if the employer has on file an unexpired certificate certifying that the minor is at least 14 years of age. This certificate must be issued in substantially the same manner as provided in Subpart B of this part relating to certificates of age (§§ 570.5–570.12).

§ 570.37 Effect on other laws.

No provision of this subpart shall under any circumstances justify noncompliance with the wage and hour provisions of the Act or with the provisions of any other Federal or State law or municipal ordinance establishing more restrictive standards than those established under this subpart.

§ 570.38 Revision of this subpart.

Any person wishing a revision of any of the terms of this subpart may submit a written petition to the Secretary setting forth the changes desired and the reasons for proposing them. If, after consideration of the petition, the Secretary believes that reasonable cause for amendment of the subpart has been shown, the Secretary shall either schedule a hearing with proper notice to interested persons, or otherwise provide interested persons an opportunity to be heard.

Signed at Washington, D.C., this 12th day of July 1982.

William M. Otter,

Administrator, Wage and Hour Division.

Regulatory Flexibility Act Certification

I, Raymond J. Donovan, Secretary of Labor, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendment of 29 CFR 570, Subpart C, Employment of Minors 14 and 15 Years of Age, will not have significant economic impact on a substantial number of small business entities. This conclusion is based upon all information available to the Department.

Dated: July 12, 1982.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 19321 Filed 7–15–82; 8:45 a.m.]

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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
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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
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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 July 15, 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).

H.R. 6198/Pub. L. 97–215 Passed over veto—July 13, 1982 (Vetoed—message dated July 8, 1982, Vol. 18, No. 27 WCPD) To amend the manufacturing clause of the copyright law. (July 13, 1982; 96 Stat. 178) Price: $1.75.