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Friday
August 20, 1982

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Forest Service

Air Carriers
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Animal Drugs
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Communications Equipment
Federal Communications Commission

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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

Memorandum of August 17, 1982

Determination Under Section 301 of the Trade Act of 1974

Memorandum for the United States Trade Representative

Pursuant to Section 301(a)(2) of the Trade Act of 1974 (19 U.S.C. 2411(a)(2)), I have determined that the action described below is an appropriate and feasible response to subsidy practices of the European Economic Community (EEC) with respect to production of certain canned fruits and raisins, which nullify and impair benefits accruing to the United States under the General Agreement on Tariffs and Trade (GATT). With a view towards eliminating or reducing the harmful effects of the EEC subsidies on U.S. exports of those products to the EEC, I am directing the United States Trade Representative (USTR) to pursue diligently and complete expeditiously the dispute settlement procedures already initiated under Article XXIII of the GATT.

Statement of Reasons

The United States Trade Representative initiated an investigation under Section 301 on December 10, 1981 (46 FR 61358) on the basis of a petition filed by the California Cling Peach Advisory Board and others. The petitioners' principal allegation, that the EEC production subsidies on canned peaches, canned pears and raisins nullify and impair tariff concessions granted by the EEC on those products and on canned fruit mixtures, is well founded. U.S. exports of those products to the EEC have been adversely affected by the EEC subsidies, and the EEC market for imports of those products has been unreasonably distorted by the EEC measures.

In an effort to resolve this problem, the U.S. held consultations with the EEC on February 25, 1982, but no mutually acceptable solution was reached. Therefore, on March 31, 1982, the U.S. referred this matter to the CONTRACTING PARTIES of the GATT for review. Additional consultations were held at the EEC's request on April 29, but the matter remained unresolved. A three-member dispute settlement panel was therefore established to review the U.S. complaint. This panel is expected to hold its first meeting on September 29, 1982.

Now that the dispute settlement process has begun, we believe that U.S. interests would be best served by following that process to its conclusion. It is our hope that the panel will act expeditiously on this matter.

This determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, August 17, 1982.

[FR Doc. 82-22941
Filed 8-18-82; 12:38 pm]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 417

[Amdt. No. 3]

Sugarcane Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Sugarcane Crop Insurance Regulations (7 CFR Part 417), effective with the 1983 and succeeding crop years by (1) adding a Section 11 to the Appendix to the Policy to prescribe FCIC's liability in cases of loss by fire when the insured has other insurance covering fire losses, (2) prescribing the interest to be charged when premium payments are not made within a certain time, and (3) adding a provision to require the insured to file a notice of probable loss when the crop is damaged to the extent that a loss is probable and leave intact a representative sample of the unharvested crop. The intended effect of this rule is to restore a provision in the regulations regarding losses by fire, improve the debt management practices of FCIC, and revise the system of reporting damage or loss to insured crops to make it more effective.

DATES: Effective Date: August 20, 1982.

Comment Date: Written comments, data, and opinions must be submitted not later than October 19, 1982, to be sure of consideration.

ADDRESS: Written comments on this rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

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

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 (June 11, 1981).

Information collection requirements contained in the regulations to which this amendment applies (7 CFR Part 417) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

Merritt W. Sprague, Manager, FCIC, has determined that (1) this action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action does not increase the Federal paperwork burden for individuals, small businesses, or other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

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

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

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

It has also been determined that this action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under the provisions of Secretary's Memorandum No. 1512–1 (June 11, 1981). That review will be completed prior to the sunset review date of June 21, 1984.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which warrants immediate implementation of this rule without allowing for the normal 60-day comment period because the Sugarcane Crop Insurance Regulations (7 CFR Part 417) provide that any amendments to the regulations must be placed on file 15 days prior to the cancellation date (July 31) in order to be effective for the crop year and to allow policyholders sufficient time to decide on their insurance plans. There would not be sufficient time to permit such a comment period and still conform to the provisions of the regulations with respect to placing the regulations on file by such time.

The changes involved in this rule, as approved by the Board of Directors, are (1) to amend the section dealing with premiums to provide that if the premium payment is not made within 30 days of the first premium billing date, an interest rate of 1½ percent simple interest per month will accrue to the unpaid premium balance (premium billing dates for crops have been established at or near the usual harvesttime to allow a period of 30 days in which to pay premiums before such interest attaches), (2) to add a provision which establishes the liability of FCIC in cases of loss by fire when the insured has other insurance against fire for the smaller of the indemnity determined under the contract with FCIC, or the amount by which the loss from fire exceeds the indemnity paid or payable under the other insurance contract, and (3) to add a provision that requires the insured to file a notice of probable loss if the crop is damaged to the extent that a loss is probable and require that a representative sample of the unharvested crop be left intact for FCIC inspection. The provision described in (3) is designed to aid in the loss reporting method, making an earlier determination of losses and thereby improving the loss adjustment system.

In addition, FCIC is amending 7 CFR Part 417 to the extent of minor corrections to language and format including amending the table of contents and redesignating the Appendix B as Appendix A.

Pursuant to the administrative provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this interim rule prior to implementation are impracticable and contrary to the public interest; however, comments are solicited for 60 days after publication of this rule, and this interim action will be scheduled for review so that a final document discussing comments received

and any amendments required can be published in the **Federal Register** as soon as possible.

All written comments made pursuant to this rule will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 417

Crop insurance, Sugarcane.

Interim Rule

PART 417—SUGARCANE CROP INSURANCE

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Sugarcane Crop Insurance Regulations (7 CFR Part 417) appearing at 44 FR 36161–36167 on Thursday, June 21, 1981, effective with the 1983 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR Part 417 is revised to read as follows:

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

2. The table of contents is revised to read as follows:

Sec.
417.1 Availability of sugarcane crop insurance.
417.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
417.3 Reserved.
417.4 Creditors.
417.5 Good faith reliance on misrepresentation.
417.6 The contract.
417.7 The application and policy.
Appendix A, Counties designated for Sugarcane Crop Insurance.

§ 417.3 [Removed and Reserved]

3. 7 CFR 417.3 is hereby removed and reserved.

§ 417.7 [Amended]

4. 7 CFR 417.7(d) is revised by removing the application found therein and substituting the following:

BILLING CODE 3410-08-M

FCI-12
Rev (9-81)

UNITED STATES DEPARTMENT OF AGRICULTURE
FEDERAL CROP INSURANCE CORPORATION

CROP INSURANCE APPLICATION

CONTINUOUS CONTRACT

1 Name of Applicant

6 State ☐☐ - County ☐☐☐ - 7 Contract Number ☐☐☐☐☐

2 Agent, Administrator, Executor, Etc.

8 County ☐☐☐☐☐☐☐☐☐

9 State ☐☐

3 Street or Mailing Address

10 Identification Number

11 SSN - TAX

4 City and State

5 ZIP Code

12 Type of Entity

13 Applicant is Over 18: Yes____ No____ If No, Date of Birth

A. The applicant, subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called "Corporation"), hereby applies to the Corporation for insurance on the applicant's share in the crop(s) shown below planted on insurable acreage as shown on the county actuarial table for the above-stated county. The applicant elects from the actuarial table the coverage level and, where applicable, a price election or plan of insurance. **THE PREMIUM RATE AND APPLICABLE PRODUCTION GUARANTEE OR AMOUNT OF INSURANCE PER ACRE SHALL BE THOSE SHOWN ON THE APPLICABLE COUNTY ACTUARIAL TABLE FILED IN THE OFFICE FOR THE COUNTY FOR EACH CROP YEAR.**

14 Effective Crop Year	15 Crop	16 Type, Class Plan of Ins.	17 Price Election	18 Level Election	19	20 For Agency Use Only (A)	21 (P)
					☐		
					☐		
					☐		
					☐		
					☐		
					☐		
					☐		
					☐		

22 Crop(s) **NOT** insured the first year:

B. This application is accepted by the Corporation unless the applicant is notified of rejection within 30 days of the date hereof. Rejection shall be accomplished by depositing notification thereof in the United States Mail, postage paid, to the above address. Rejection may be for any reason which would also serve as a basis for termination under the policy, the Federal Crop Insurance Act, or the regulations issued thereunder. Outstanding and delinquent indebtedness to any United States Government Agency may be grounds for rejection. The contract shall be in effect for the crop year specified above, unless the time for submitting applications has passed at the time this application is filed, **AND SHALL CONTINUE FOR EACH SUCCEEDING CROP YEAR UNTIL CANCELED OR TERMINATED** as provided in the contract. This accepted application, the insurance policy(ies), the attached appendix(es), and the provisions of the county actuarial table showing the insurable and uninsurable acreage, coverage levels, premium rates, and where applicable, the production guarantees, amounts of insurance, or plan of insurance shall constitute the contract. No term or condition of the contract shall be waived or changed except in writing by the Corporation. A material failure to include complete and accurate information on this application may invalidate the automatic acceptance provision hereof.

23 ☐ Applicant has received the policy(ies) and appendix(es) for the crop(s) shown above.

24 ☐ Previous Carrier 25 Policy Number

26 Applicant's Signature 27 Date 19__ 28 Code No. ☐☐☐☐☐ 29 Witness to Signature

30 Location of Farm Headquarters	31 Address of Your Service Office
Phone	Phone

SEE REVERSE SIDE OF FORM FOR STATEMENT REQUIRED BY PRIVACY ACT OF 1974

32 N S I O T - F U R

33 Page____ of ____ pages

BILLING CODE 3410-08-C

5. Paragraph 5(d) of the Terms and Conditions section of the policy as found in 7 CFR 417.7(d), is revised to read as follows:

* * * * *

Sugarcane Crop Insurance Policy

Terms and Conditions

* * * * *

5. *Annual premium.*

* * * * *

(d) Interest will accrue at the rate of one and a half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

* * * * *

6. Paragraph 7 of the Terms and Conditions section of the policy as found in 7 CFR 417.7(d), is amended by revising item 7(c), redesignating 7(d) and 7(e) as 7(e) and 7(f) respectively, and adding a new 7(d) as follows:

* * * * *

Terms and Conditions

* * * * *

7. *Notice of damage or loss.*

* * * * *

(c) Notice shall be given at least 15 days prior to the beginning of harvest if the sugarcane on any unit is damaged to the extent that a loss is probable. If probable loss is not determined until less than 15 days prior to the beginning of harvest on a unit, notice shall be given immediately and a representative sample of the unharvested sugarcane (at least 10 feet wide and the entire length of the field) shall remain intact for a period of 15 days from the date of the notice, unless the Corporation gives written consent to the insured to harvest the representative sample.

(d) In addition to the notices required in paragraphs (b) and (c) of this section, if a loss is to be claimed on any unit, the insured shall give written notice thereof to the Corporation at the service office not later than *30 DAYS* after the earliest of (1) the date the harvest is completed on the unit, (2) the calendar date for the insurance period, or (3) the date the entire sugarcane crop on the unit is destroyed, as determined by the Corporation. The Corporation reserves the right to provide additional time if there are extenuating circumstances.

* * * * *

7. Section 6 of the Appendix to 7 CFR 417.7 is revised to read as follows:

Appendix to § 417.7—Additional Terms and Conditions

* * * * *

6. *Subrogation.* The insured (including any assignee or transferee) assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment hereunder is made by the Corporation. The insured shall execute all required documents and take appropriate action as may be necessary to secure such rights.

8. The Appendix to the Sugarcane Crop Insurance Policy (Additional Terms and Conditions) as found in the Appendix to 7 CFR 417.7 is hereby amended by adding Section 11 to read as follows:

* * * * *

11. *Other Insurance Against Fire.* If the insured has other insurance against damage by fire during the insurance period, the Corporation shall be liable for loss due to fire only for the smaller of (a) the amount of indemnity determined by the Corporation under the policy with the Corporation, or (b) the amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire shall be the difference between the fair market value of the production on the unit before the fire and after the fire, as determined by the Corporation from appraisals made by the Corporation.

Appendix B Redesignated as Appendix A

9. Appendix B to 7 CFR Part 417 is redesignated as Appendix A in the title thereof.

Done in Washington, D.C., on August 9, 1982.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: August 9, 1982.

Robert H. Sindt,

Deputy Manager.

[FR Doc. 82-22509 Filed 8-19-82; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 373]

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 August 22–28, 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: August 22, 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 6, 1982. The committee met again publicly on August 17, 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 similar to last week.

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.

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Section 910.673 is added as follows:

§ 910.673 Lemon Regulation 373.

The quantity of lemons grown in California and Arizona which may be handled during the period August 22, 1982, through August 28, 1982, is established at 225,250 cartons.

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

Dated: August 18, 1982

D. S. Kuryloski,

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

[FR Doc. 82–23025 Filed 8–19–82; 11:24 am]

BILLING CODE 3410–02–M

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7 CFR Part 1030

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rule.

SUMMARY: This action relaxes the shipping requirements for pool supply plants under the Chicago Regional milk order for the months of September, October and November 1982. The action will prevent uneconomic shipments of milk to the market and will help maintain the pool status of producers who regularly supply the market. The revisions are made in response to requests of cooperative associations of producers supplying the market.

EFFECTIVE DATE: September 1, 1982.

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

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of proposed temporary revision of shipping standards: Issued July 13, 1982; published July 16, 1982 (47 FR 31003).

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 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 the 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 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.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1030.7(b)(5) of the Chicago Regional milk order.

Notice of proposed rulemaking was published in the **Federal Register** (47 FR 31003) concerning a proposed decrease in the shipping requirements for pool supply plants for the months of September, October, November, and December 1982. The public was afforded the opportunity to comment on the proposal by submitting written data, views and arguments. Two comments were received in favor of the proposed reduction.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, data, views, and arguments filed, and other available information, it is hereby found and determined that for the months of September, October and November 1982 the supply plant shipping percentages should be as follows:

Month	Temporary percentage
September	20
October	22
November	22

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.

Currently, the minimum shipping percentage of total producer receipts for pool supply plants and units of supply plants (§ 1030.7(b)) is 30 percent for September, 35 percent for October and November, and 25 percent for December. Under order amendments that become effective on September 1, 1982, each of the above shipping percentages will be reduced by 5 percentage points. The amendments are based on industry proposals considered at a public hearing held March 30, 1982, at Madison, Wisconsin. This temporary revision would further reduce the supply plant shipping percentages for the months of September, October, and November 1982.

The Central Milk Sales Agency (CMSA), representing six cooperative associations whose members provide the majority of producer milk associated with the market, requested that the supply plant shipping percentages be decreased by 10 percentage points during each of the months of September through December 1982. As proposed, the shipping percentages would be 15 percent for September, 20 percent for October and November, and 10 percent for December. The request was based on the projection of continued high levels of producer receipts and decreased sales to fluid milk handlers by member cooperatives of CMSA and by proprietary supply plant operations qualifying with CMSA.

The Agency estimated that its milk receipts during September through December 1982 will be 508 million, 504 million, 482 million and 514 million pounds, respectively. During the same months in 1981, the Agency's producer receipts were 507 million, 503 million, 478 million and 511 million pounds, respectively.

The Agency estimated that the qualifying shipments to fluid milk handlers during September through December 1982 will be 94 million, 104 million, 103 million and 101 million pounds, respectively. During the same months in 1981, the Agency indicated that shipments to fluid milk handlers were 123 million, 131 million, 130 million and 128 million pounds, respectively. The Agency estimated that during September through December 1982 the qualifying shipments would represent 18.5 percent, 20.6 percent, 21.3 percent and 19.6 percent, respectively, of its producer receipts.

The Agency concluded that with increased supplies and decreased sales, a reduction in the shipping percentages for pool supply plants is warranted to prevent uneconomic movements of milk.

For the first six months of 1982, producer milk receipts for the market were 6.0 percent greater than for the same months last year while the pounds of pooled Class I milk were 0.9 percent less than for the comparable period last year. From the market data available, it

is estimated that for the months of September through November producer milk will be about 3.6 percent greater than for the same period last year and the volume of pooled Class I milk for the market will average 0.6 percent above last year.

The projected total receipts of milk from producers for September, October and November 1982 are expected to be 1053 million, 1045 million and 1002 million pounds, respectively. Of the total producer milk receipts in the market, 1017 million, 1011 million and 968 million pounds, respectively, are projected to be received at supply plants. The remaining projected amounts—36 million pounds in September, 34 million pounds in October and 34 million pounds in November—will be received at pool distributing plants directly from producers. The projected volume of pooled Class I sales during these three months is anticipated to be 252 million, 264 million and 245 million pounds, respectively.

Under the newly adopted 25 percent shipping percentage for September, the qualifying shipments from supply plants would be 254 million pounds. At the 30 percent shipping percentage for October and November, the qualifying shipments from supply plants would be 303 million and 290 million pounds, respectively. At the stated shipping percentages, the volume of unneeded shipments from supply plants would approach 38 million pounds in September, 73 million pounds in October and 79 million pounds in November.

Reducing the supply plant shipping percentage for September by the requested 10 percentage points to 15 percent would require qualifying shipments from supply plants of about 153 million pounds. With projected Class I use at 252 million pounds, the difference is substantially greater than the 36 million pounds of expected direct-shipped milk. Thus, a 15 percent shipping standard for September would be too low to assure that distributing plants would have adequate supplies of milk for fluid use.

Similarly for October and November, if the supply plant shipping percentage were reduced to 20 percent each month, the required amount of supply plant milk would be 202 million and 194 million pounds, respectively. With projected Class I sales at 264 million and 245 million pounds, respectively, the balance each month could not be made up from direct-shipped milk. Thus, a 20 percent shipping standard for October and November would be too low.

At a 20 percent shipping percentage for September, qualifying shipments from supply plants would be about 203 million pounds. At a 22 percent shipping percentage for each of the months of October and November, qualifying shipments from supply plants would be 222 million and 213 million pounds, respectively. At these levels of shipments, distributing plants should be adequately supplied for these months because most of the difference between the shipments from supply plants and anticipated Class I use could be made up from direct-shipped milk.

The revised minimum shipping percentages are based essentially on projections of the marketing trends for the entire Chicago Regional market. The proponents' projections for their own operations vary somewhat from the projections for the entire market. Because the proponent cooperatives provide the majority of the producer milk associated with the market, additional weight has been given to their projections in certain cases in setting the revised minimum shipping percentages.

On the basis of available information, it is concluded that the supply plant shipping percentages should be reduced to 20 percent for September and to 22 percent for each of the months of October and November 1982.

The supply plant shipping percentage should not be lowered for the month of December. The estimated total producer receipts are expected to be 1068 million pounds. Supply plants are expected to receive 1030 million pounds and 38 million pounds are expected to be received at pool distributing plants directly from producers. At a 20 percent shipping percentage for December, the qualifying shipments from supply plants would be 206 million pounds. With projected Class I sales at 261 million pounds, it appears that the balance will not be made up from direct-shipped milk. There is no basis in this case to lower the shipping standard.

The proposed reduction as requested by the Agency was supported through comments by a trade association of 28 proprietary milk supply plants regulated by the order, and by an individual proprietary handler regulated by the order.

The shipping percentage reductions are aimed at facilitating the delivery of milk to the market from supply plants for Class I use without requiring uneconomic shipments. It is concluded from these data that producer milk supplies for the market, currently and prospectively, are increasing substantially more than Class I sales and that lowering the supply plant shipping percentages temporarily is warranted for the months of September, October and November 1982.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of September, October and November 1982;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this temporary revision. No comments in opposition to the proposed temporary revision were received.

Therefore, good cause exists for making this temporary revision effective September 1, 1982.

List of Subjects in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of the order are hereby revised for the months of September, October and November 1982.

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

Effective Date: September 1, 1982.

Signed at Washington, D.C., on: August 17, 1982.

Joel L. Blum,

Acting Director, Dairy Division.

[FR Doc. 82-22807 Filed 8-19-82; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1823, 1902, 1933, 1941, 1942, 1943, 1944, 1945, 1948, and 1980

Cancellation of U.S. Treasury Checks and/or Obligations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding the cancellation of U.S. Treasury Checks and/or Obligations. The intended effect of this action is to allow FmHA field offices to return undeliverable U.S. Treasury checks directly to the FmHA Finance Office in St. Louis, Missouri for cancellation. Currently, FmHA field offices send undeliverable Treasury checks to the Kansas City Treasury

Disbursing Office prior to cancellation by the FmHA Finance Office. By sending undeliverable Treasury checks directly to the Finance Office in St. Louis for cancellation, FmHA will be able to update a payee's or borrower's account and receive credit to the Agency's account in a more timely manner. This action is being taken to provide more accurate and reliable reports on status of accounts and to effect interest savings on availability of funds to FmHA.

EFFECTIVE DATE: August 20, 1982.

FOR FURTHER INFORMATION CONTACT: Phil Carter, Staff Accountant, Farmers Home Administration, USDA, Room 4118, South Agriculture Building, 14th and Independence Avenue, Southwest, Washington, DC 20250, Telephone 202–382–8307.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1512–1 which implements Executive Order 12291, and has been determined to be exempt from these requirements. It is the policy of this Department that rules relating to public property, loans, grant, benefits or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since the purpose of the changes involves internal agency management and publication for comment is unnecessary.

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmenal Impact Statement is not required.

This regulation does not directly affect any FmHA programs or projects which are subject to A–95 clearinghouse review.

The Catalog of Federal Domestic Assistance numbers and titles are:

No.	Program Title
10.404	Emergency Loans.
10.405	Farm Labor Housing Loans and Grants.
10.406	Farm Operating Loans.
10.407	Farm Ownership Loans.
10.408	Grazing Association Loans.
10.409	Irrigation, Drainage and other Soil and Water Conservation Loans.
10.410	Low to Moderate Income Housing Loans (Rural Housing Loans—Section 502—Insured).
10.411	Rural Housing Site Loans (Site 523 and 524 Site Loans).
10.413	Recreation Facility Loans.
10.414	Resource Conservation and Development Loans.
10.415	Rural Rental Housing Loans.
10.416	Soil and Water Loans (SW Loans).
10.417	Very Low-Income Housing Repair Loans and Grants.
10.418	Water and Waste Disposal Systems for Rural Communities.
10.419	Watershed Protection and Flood Prevention Loans.
10.420	Rural Self-Help Housing Technical Assistance (Section 523 Technical Assistance).
10.421	Indian Tribes and Tribal Corporation Loans.
10.422	Business and Industrial Loans.
10.423	Community Facilities Loans.
10.424	Industrial Development Grants.
10.425	Emergency Livestock Loans.
10.426	Area Development Assistance Planning Grants (Section 111).
10.427	Rural Rental Assistance Payments.
10.428	Economic Emergency Loans.
10.429	Above-Moderate Income Housing Loans (Guaranteed Rural Housing Loans).
10.430	Energy Impacted Area Development Assistance Program.
10.431	Technical and Supervisory Assistance Grants.
10.432	Biomass Energy and Alcohol Fuels Loans and Loan Guarantees.

A comparison of the current method and the proposed method and the expected effects of these two alternatives are as follows:

(I) *Current Method*—Currently, FmHA field offices send Treasury checks to be cancelled to the Kansas City Disbursing Office. The disbursing office sends a copy of the check to the Finance Office which, in turn, prepares a cancellation document and sends it back to the disbursing office. The disbursing office then credits the Agency account. This method results in a delay in updating a payee's or borrower's account and does not allow undeliverable funds to be credited to FmHA's accounts in a timely manner.

(II) *Proposed Method*—Under the proposed method, approved by Treasury on July 1, 1981, the field offices will send the Treasury check to be cancelled to the Finance Office. After verifications are made, the Finance Office will deposit the check to the Agency's account in the Federal Reserve Bank in St. Louis and will on the same day, update the payee's account. By allowing checks to be forwarded directly to the Finance Office for processing as a negative disbursement, it is estimated that the period of time needed to complete the cancellation procedure will be shortened by about 12 calendar days. As a result of the procedural changes, FmHA will realize an estimated annual interest savings of $2,136,000.

List of Subjects

7 CFR Part 1823

Community facilities, Credit, Forest and forest products, Grant programs—Housing and community development, Grazing lands, Indians, Loan programs—Agriculture, Loan programs—Housing and community development, Rural areas, Soil conservation, Waste treatment and disposal, Water resources, Water supply.

7 CFR Part 1902

Accounting, Banks, banking, Grant programs—Housing and community development, Loan fund disbursement, Loan programs—Agriculture, Loan programs—Housing and community development.

7 CFR Part 1933

Grant programs—Housing and community development, Indians, Low and moderate income housing, Nonprofit organizations, Rural housing.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1942

Business and industry, Community development, Community facilities, Grant programs—Housing and community development, Industrial park, Loan programs—Housing and community development, Loan programs—Natural resources, Loan security, Rural areas, Soil conservation, Waste treatment and disposal—Domestic, Water supply—Domestic.

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

7 CFR Part 1944

Administrative practice and procedure, Aged, Farm labor housing, Grant programs—Housing and community development, Handicapped, Loan Programs—Housing and community development, Low and moderate income housing—Rental, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting requirements, Rural areas, Rural housing.

7 CFR Part 1945

Agriculture, Disaster assistance, Intergovernmental relations, Livestock, Loan programs—Agriculture.

7 CFR Part 1948

Business and industry, Coal, Community development, Community facilities, Energy, Grant programs—Housing and community development, Housing, Nuclear energy, Planning, Rural areas, Transportation.

7 CFR Part 1980

Agriculture, Business and industry, Home improvement, Livestock, Loan

programs—Agriculture, Loan programs—Business and industry—Rural development assistance, Loan programs—Housing and community development, Mortgage insurance, Mortgages, Rural areas.

Therefore, Chapter XVIII is amended as follows:

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION UTILIZATION

Subpart F—Loans to Timber Development Organizations

1. Section 1823.174 is amended by revising paragraph (e)(5) to read as follows:

§ 1823.174 Processing TD loans.

* * * * *

(e) * * *

(5) *Loan rejection or cancellation.* When favorable action is not taken on a TD loan application, the State Director will notify the applicant in writing and, if possible, send a representative to explain such action to the applicant. TD loans will be cancelled by use of Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation."

Subpart I—Processing Loans to Associations—(Except Domestic Water and Waste Disposal)

2. Section 1823.275 is amended by revising paragraphs (b)(1), (b)(1)(ii), and (b)(2) to read as follows:

§ 1823.275 Applications not receiving favorable consideration and loan cancellations.

* * * * *

(b) *Cancellation of loans.* * * *

(1) The County Supervisor or State Director may prepare and execute Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," in accordance with the Forms Manual Insert (FMI).

(I) * * *

(ii) In a direct loan or a loan made from the ACIF, if the check has been received or is received subsequently in the County Office, the County Supervisor will return it to the Finance Office with an original and one copy of Form FmHA 1940–10.

(2) If the docket previously has been forwarded to the OGC, that office will be notified of the cancellation by a copy of Form FmHA 1940–10.

* * * * *

PART 1902—SUPERVISED BANK ACCOUNTS

Subpart A—Loan and Grant Disbursement

3. In § 1902.2, paragraph (e) is revised to read as follows:

§ 1902.2 Policies concerning disbursement of funds.

* * * * *

(e) When a check cannot be negotiated within 20 working days from the date of the check, the District Director or County Supervisor will return the check(s) with Form(s) FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," in accordance with FmHA Instruction 102.1 (available in any FmHA office.)

* * * * *

PART 1933—LOAN AND GRANT PROGRAM (GROUP)

Subpart I—Self-Help Technical Assistance Grants

4. Section 1933.416 is amended by revising paragraphs (d)(2) (i), (ii), and (iii) to read as follows:

§ 1933.416 Approval and closing.

* * * * *

(d) * * *

(2) * * *

(i) The County Supervisor will prepare Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," in an original and two copies (three copies if the technical assistance (TA) check has been received in the County Office from the Disbursing Office.) Form FmHA 1940–10 will be sent to the State Director (original and a copy with the check if the Treasury check is being canceled) with the reasons for requesting cancellation.

(ii) If the State Director approves the request for cancellation, he/she will forward the original request for cancellation (original and a copy with the check if the Treasury check is being cancelled) to the Finance Office.

(iii) The County Supervisor will notify the applicant and all other interested parties of the cancellation and the right to appeal, as provided in § 1933.419(b)(3).

* * * * *

PART 1941—OPERATING LOANS

Subpart A—Operating Loan Policies, Procedures, and Authorizations

5. Section 1941.35 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1941.35 Actions after loan approval.

* * * * *

(b) *Cancellation of loan check and/or obligation.* The County Supervisor will notify the State Office and the Finance Office of loan cancellation by using Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation." If a check received in the County Office is to be canceled, the check will be returned to the Finance Office with an original and one copy of Form FmHA 1940–10. (See FmHA Instruction 102.1, a copy of which may be obtained from any FmHA office.)

(c) *Cancellation of advances.* When an advance is to be canceled, the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 1940–10.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not necessary to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440–57 the revised amount of the loan and the revised repayment schedule.

* * * * *

PART 1942—ASSOCIATIONS

Subpart A—Community Facility Loans

6. Section 1942.12 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1942.12 Loan cancellation.

Loans which have been approved and obligations which have been established may be canceled before closing as follows:

(a) *Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation."* The District Director or State Director may prepare and execute Form FmHA 1940–10 in accordance with the Forms Manual Insert (FMI). For a loan made from the RDIF, if the check has been received or is received subsequently in the District Office, the District Director will return it to the Finance Office with an original and one copy of Form FmHA 1940–10.

(b) *Notice of cancellation.* If the docket has been forwarded to OGC, that office will be notified of the cancellation by a copy of Form FmHA 1940–10. Any application for title insurance, if ordered, will be canceled. The borrower's attorney and engineer, if any, should be notified of the cancellation. The District Director may provide the borrower's attorney and engineer with a copy of the notification to the applicant.

The State Director will notify the Director of Legislative Affairs and Public Information by telephone or electronic mail and give the reasons for such cancellation.

* * * * *

Subpart G—Industrial Development Grants

7. Section 1942.316 is amended by revising paragraph (c) to read as follows:

§ 1942.316 Grant approval, fund obligation, approval, announcement, and cancellation.

* * * * *

(c) *Cancellation.* Grants may be canceled by the grant approval official by use of Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation." The State Director will notify the applicant by letter that the grant has been canceled. A copy of the letter will be sent to the applicant's attorney and engineer and to the Regional Attorney, OGC, if the Regional Attorney has been involved.

* * * * *

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

8. Section 1942.366 is revised to read as follows:

§ 1942.366 Grant cancellation.

The District Director or State Director may prepare and execute Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," in accordance with the Forms Manual Insert (FMI). If the docket has been forwarded to OGC, that office will be notified of the cancellation by a copy of Form FmHA 1940–10. The borrower's attorney and engineer, if any, should be notified of the cancellation. The borrower's attorney and engineer may be provided with a copy of the notification to the applicant.

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

Subpart A—Insured Farm Ownership Loan Policies, Procedures, and Authorizations

9. Section 1943.35 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1943.35 Action after loan approval.

* * * * *

(c) *Cancellation of loan.* Loans may be canceled before loan closing as follows:

(1) The County Supervisor will notify the State Office and the Finance Office of loan cancellation, by using Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation." The County Office will send a copy of Form FmHA 1940–10 to the designated attorney, Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate that the loan has been canceled. If a check received in the County Office is to be canceled, the check will be returned to the Finance Office with an original and one copy of Form FmHA 1940–10.

(2) Interested parties will be notified of the cancellation, as provided in Part 1807 of this Chapter (FmHA Instruction 427.1).

(d) *Cancellation of advances.* When an advance is to be canceled the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 1940–10 in accordance with the FMI.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not possible to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440–57 the revised amount of the loan and the revised repayment schedule.

* * * * *

Subpart B—Insured Soil and Water Policies, Procedures, and Authorizations

10. Section 1943.85 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1943.85 Action after loan approval.

* * * * *

(c) *Cancellation of loan.* Loans may be canceled before loan closing as follows:

(1) The County Supervisor will notify the State Office and the Finance Office of loan cancellation by using Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation." The County Office will send a copy of Form FmHA 1940–10 to the designated attorney, Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate the loan has been canceled. If a check received in the County Office is to be canceled, the check will be returned to the Finance Office with an original and one copy of Form FmHA 1940–10.

(2) Interested parties will be notified of the cancellation, as provided in Part 1807 of this Chapter (FmHA Instruction 427.1).

(d) *Cancellation of advances.* Where an advance is to be canceled, the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 1940–10 in accordance with the FMI.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not possible to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440–57 the revised amount of the loan and the revised repayment schedule.

* * * * *

Subpart C—Insured Recreation Loan Policies, Procedures, and Authorizations

11. Section 1943.135 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1943.135 Action after loan approval.

* * * * *

(c) *Cancellation of loan.* Loans may be canceled before loan closing as follows:

(1) The County Supervisor will notify the State Office and the Finance Office of loan cancellation by using Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation." The County Office will send a copy of Form FmHA 1940–10 to the designated attorney, Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate that the loan has been canceled. If a check received in the County Office is to be canceled, the check will be returned to the Finance Office with an original and one copy of Form FmHA 1940–10.

(2) Interested parties will be notified of the cancellation, as provided in Part 1807 of this Chapter (FmHA Instruction 427.1).

(d) *Cancellation of advances.* When an advance is to be canceled, the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 1940–10 in accordance with the FMI.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not possible to obtain a substitute promissory note, the County Supervisor will show on Form FmHA

440–57 the revised amount of the loan and the revised repayment schedule.

* * * * *

PART 1944—HOUSING

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

12. Section 1944.32 is amended by revising paragraph (c) to read as follows:

§ 1944.32 Actions subsequent to loan approval.

* * * * *

(c) *Cancellation of loan.* Loans may be canceled before loan closing by the use of Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," prepared in accordance with the FMI.

(1) When a check is received in the County Office, the County Supervisor will return it with an original and one copy of Form FmHA 1940–10 to the Finance Office.

(2) Interested parties will be notified of the cancellation, as provided in Part 1807 of this Chapter (FmHA Instruction 427.1). If the cancellation is not a voluntary action by the applicant, the applicant will be notified in accordance with § 1910.6(b) of this chapter.

* * * * *

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

13. Section 1944.171 is amended by revising paragraph (g) to read as follows:

§ 1944.171 Preparation of completed loan and/or grant docket.

* * * * *

(g) *Announcement.* When it is determined that a loan and/or grant can be approved, project information will be prepared in accordance with FmHA Instruction 2015–C which is available in the FmHA State and National Offices.

14. Section 1944.173 is amended by revising paragraph (b)(6) as follows:

§ 1944.173 Loan and grant approval-delegation of authority.

* * * * *

(b) * * *

(6) After notification by the Finance Office that the funds have been reserved, the original only of Form FmHA 444–5 accompanied by a copy of any National Office memorandum authorizing approval will be mailed to the Finance Office and a copy to the National Office. Forms FmHA 1940–1 for those obligations requested by telephone *will not* be mailed to the Finance Office. *Immediately* after notification by telephone of the reservation of funds for not-for-profit organizations and public bodies, the State Director will *call* the Legislative Affairs and Public Information Staff (LAPIS) in the National Office as required by FmHA Instruction 2015–C. Notice of approval to the applicant will be accomplished by mailing the applicant's signed copy of Form FmHA 1940–1 on the obligation date. The State Director or a designee will record the actual date of applicant notification on the original of Form FmHA 1940–1 and include the original of the form as a permanent part of the District Office project file with a copy in the State Office file.

* * * * *

15. Section 1944.175 is amended by revising paragraph (e) to read as follows:

§ 1944.175 Actions subsequent to loan and/or grant approval.

* * * * *

(e) *Cancellation of loan.* Loans and/or grants may be canceled after approval and before loan closing as follows:

(1) The District Director will prepare Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," in an original and two copies (three copies if the check is received in the District Office from the Regional Attorney Office). The original and copies of Form FmHA 1940–10 will be sent to the State Director with the check and the reasons for requesting cancellation. If the State Director approves the request for cancellation, the State Director will forward the original request (original and one copy of Form FmHA 1940–10 with the check if the Treasury check is being canceled) to the Finance Office after making appropriate adjustments in the records to control loan allocations. A copy of Form FmHA 1940–10 will be sent to the National Office and the District Office.

(2) If the loan or grant check is received in the State Office, the State Director will return it to the Finance Office with an original and one copy of Form FmHA 1940–10.

(3) All interested parties will be notified of the cancellation, as provided in Part 1807 of this Chapter (FmHA Instruction 427.1).

* * * * *

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

16. Section 1944.232 is amended by revising paragraph (g) to read as follows:

§ 1944.232 Preparation of completed loan docket.

* * * * *

(g) *Announcement.* When it is determined that the loan can be approved, project information will be prepared in accordance with Subpart C to Part 2015 (FmHA Instruction 2015–C), available from any FmHA State Office.

17. Section 1944.233 is amended by revising paragraph (b)(2)(i)(F) to read as follows:

§ 1944.233 Loan approval.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(F) After notification by the Finance Office that the funds have been reserved, the original only of Form FmHA 444–5 will be mailed to the Finance Office. Forms FmHA 1940–1 for those obligations requested by telephone *will not* be mailed to the Finance Office. *Immediately* after notification by telephone of the reservation of funds, the State Director will call the Legislative Affairs and Public Information Staff (LAPIS) in the National Office as required by Subpart C of Part 2015 (FmHA Instruction 2015–C). Notice of approval to the applicant will be accomplished by mailing the applicant's signed copy of Form FmHA 1940–1 on the obligation date. The State Director or the State Director's designee will record the actual date of application notification on the original of the form as a permanent part of the District Office project file, with a copy in the State Office file.

* * * * *

18. Section 1944.235 is amended by revising paragraph (e) to read as follows:

§ 1944.235 Actions subsequent to loan approval.

* * * * *

(e) *Cancellation of loan.* Loans may be canceled after approval and before loan closing, as follows:

(1) The District Director will prepare Form 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," in an original and two copies (three copies if the check is received in the District Office from the Regional Disbursing Office). The original and copies will be sent to the State Director with the reasons for requesting cancellation. If the State Director approves the request for cancellation, the original request will be forward to the Finance Office in accordance with the Forms Manual Insert (FMI) for Form FmHA 1940–10 after making appropriate adjustments in

the records to control loan allocations. A copy or copies of Form FmHA 1940–10 will be returned to the District Office.

(2) If the loan check is received in the District Office, the District Director will return it to the Finance Office with an original and one copy of Form FmHA 1940–10.

(3) All interested parties will be notified of the cancellation, as provided in Part 1807 of this Chapter (FmHA Instruction 427.1). Unless the cancellation of the loan is by mutual agreement, the applicant will be notified that the decision may be appealed in accordance with Subpart B to Part 1900 (FmHA Instruction 1900–B).

* * * * *

Subpart K—Technical and Supervisory Assistance Grants

19. Section 1944.533 is amended by revising paragraph (f)(5) to read as follows:

§ 1944.533 Grant approval and announcement.

* * * * *

(f) * * *

(5) If it is determined that a project will not be funded or if major changes in the scope of the project are made after release of the approval announcement, the State Director will notify the Administrator and the Director, Legislative Affairs and Public Information Staff (LAPIS) by telephone or electronic mail, giving the reasons for such action. The Director, LAPIS, will inform all parties who were notified by the project announcement if the project will not be funded or of major changes in the project using the procedure similar to the announcement process. Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," will not be submitted to the Finance Office until five working days after notifying the Administrator and the Director, LAPIS.

* * * * *

20. Section 1944.535 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1944.535 Cancellation of an approved grant.

(a) The District Director will prepare Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," in an original and two copies (three copies if the technical and supervisory assistance (TSA) check has been received in the District Office from the Disbursing Office). Form FmHA 1940–10 will be sent to the State Director (original and two copies with the check if the Treasury check is being canceled) with the reasons for requesting cancellation.

(b) If the State Director approves the request for cancellation, he/she will forward the original request for cancellation (original and one copy of Form FmHA 1940–10 with the check if the Treasury check is being canceled) to the Finance Office. If the TSA check is received in the District Office, the District Director will return it to the Finance Office with an original and one copy of Form FmHA 1940–10.

* * * * *

PART 1945—EMERGENCY

Subpart B—Emergency Loan Policies, Procedures, and Authorizations for Those Applications Associated With Disaster Designations Having a Beginning Incidence Period Date Prior to May 26, 1981

21. Section 1945.85 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1945.85 Actions after loan approval.

(a) *Cancellation of loan check and/or obligation.* The County Supervisor will notify the State Office and the Finance Office of loan cancellation by using Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation." If the check received in the County Office is to be canceled, the check will be returned to the Finance Office with an original and one copy of Form FmHA 1940–10. (See FmHA Instruction 102.1, a copy of which may be obtained from any FmHA office.)

(b) *Cancellation of advances.* When an advance is to be canceled, the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 1940–10.

(2) When necessary, obtain a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not necessary to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request," the revised amount of the loan and the revised repayment schedule.

* * * * *

Subpart C—Economic Emergency Loans

22. Section 1945.126 is revised to read as follows:

§ 1945.126 Cancellation of loan checks and advances.

(a) If a loan check is to be canceled, the County Supervisor should follow FmHA Instruction 102.1, paragraph IV C (a copy of which is available in any FmHA office.)

(b) When an advance is to be canceled, the County Supervisor must take the following actions:

(1) Complete Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," in accordance with the Forms Manual Insert (FMI).

(2) When necessary, obtain a substitute promissory note reflecting the revised total of the loan and the revised schedule. When it is not possible to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request," the revised amount of the loan and the revised repayment schedule.

(3) Transmit to the Finance Office an original and one copy of Form FmHA 1940–10 and Form FmHA 440–57 reflecting the revised repayment schedule.

Subpart D—Emergency Loan Policies, Procedures, and Authorizations for Applications Associated With FmHA Disaster Designations Having a Beginning Incidence Period Date on or After May 26, 1981

23. Section 1945.185 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1945.185 Actions after loan approval.

(a) *Cancellation of loan check and/or obligation.* The County Supervisor will notify the State Office and the Finance Office of loan cancellation by using Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation." If a check received in the County Office is to be canceled, the check will be returned to the Finance Office with an original and one copy of Form FmHA 1940–10. (See FmHA Instruction 102.1, a copy of which is available in any FmHA office.)

(b) *Cancellation of advances.* When an advance is to be canceled, the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 1940–10.

(2) When necessary, obtain a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not necessary to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440–57 the

revised amount of the loan and the revised repayment schedule.

* * * * * *

PART 1948—RURAL DEVELOPMENT

Subpart A—Area Development Assistance Planning Grants

24. Section 1948.35 is amended by revising paragraph (f)(5) to read as follows:

§ 1948.35 Grant approval and announcement.

* * * * *

(f) * * *

(5) If it is determined that a project will not be funded or if major changes in the scope of the project are made after release of the approval announcement, the Administrator will notify the Director, Legislative Affairs and Public Information Staff (LAPIS) by telephone or electronic mail, giving the reasons for such action. The Director, LAPIS, will inform all parties who were notified by the project announcement if the project will not be funded or of major changes in the project using a procedure similar to the announcement process. Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," will not be submittted to the Finance Office until five working days after notifiying the Director, LAPIS.

* * * * *

Subpart B—Section 601—Energy Impact Area Development Assistance Program

25. Section 1948.92 is amended by revising paragraph (g)(11) to read as follows:

§ 1948.92 Grant approval and fund obligation.

* * * * *

(g) * * *

(11) If it is determined that a project will not be funded or if major changes in the scope of the project are made after release of the approval announcement, the FmHA State Director will notify the Director, Legislative Affairs and Public Information Staff (LAPIS) by telephone or electronic mail giving the reasons for such action. The Director, LAPIS, will inform all parties who were notified by the project announcement that the project will not be funded or of major changes in the project using a procedure similar to the announcement process. Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," will not be submitted to the Finance Office until five working days after notifying the Director, LAPIS.

* * * * *

PART 1980—GENERAL

Subpart A—General

26. Section 1980.61 is amended by revising paragraph (e) to read as follows:

§ 1980.61 Issuance of lender's agreement, loan note guarantee and assignment guarantee agreement.

* * * * *

(e) *Cancellation of obligations.* If the conditions for the loan are rejected or cannot be met after completion of any appeal, FmHA will prepare and submit to the Finance Office, Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation."

* * * * *

Subpart C—Emergency Livestock Loans

27. Section 1980.251 is amended by revising paragraph (b)(4) to read as follows:

§ 1980.251 Issuance of guarantee instruments.

* * * * *

(b) *Contract of guarantee cases.* * * *

(4) If the conditions for the loan are rejected or cannot be met after completion of any appeal, FmHA will prepare and submit Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," to the Finance Office.

* * * * *

Subpart E—Business and Industrial Loan Programs

28. Section 1980.452 is amended by revising "Administrative" paragraph D.5. (e) to read as follows:

§ 1980.452 FmHA evaluation of application.

* * * * *

Administrative

* * * * *

D. * * *

5. * * *

(e) See FmHA Instruction 2015–C (available in any FmHA office) for notification procedures.

* * * * *

Subpart F—Economic Emergency Loans

29. Section 1980.549 is amended by revising paragraph (b)(4) to read as follows:

§ 1980.549 Issuance of guarantee instruments.

* * * * *

(b) *Contract of guarantee cases.* * * *

(4) If the conditions for the loan are rejected or cannot be met after completion of any appeal, FmHA will prepare and submit Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," to the Finance Office.

* * * * *

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; sec. 10 Pub. L. 93–357; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.70)

Dated: July 30, 1982.

Charles W. Shuman,

Administrator, Farmers Home Administration.

[FR Doc. 82–22787 Filed 8–19–82; 8:45 am]

BILLING CODE 3410–07–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C–2513]

Hammermill Paper Co.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: This order reopens the proceeding in the matter of Hammermill Paper Co. and modifies the Commission's order issued on April 24, 1974 (39 FR 17434), by modifying subparagraph 1(a) so as to allow the company to impose conditions on the kind of customers its distributors can serve, so long as such conditions do not unreasonably restrain competition.

DATES: Final order issued April 24, 1974. Modifying order issued Aug. 6, 1982.

FOR FURTHER INFORMATION CONTACT: FTC/C, Thomas J. Campbell, Washington, D.C. 20580. (202) 523–3601.

SUPPLEMENTARY INFORMATION: In the Matter of Hammermill Paper Company, a corporation. Codification, appearing at 39 FR 17434 remains unchanged.

List of Subjects in 16 CFR Part 13

Paper.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

The Order Modifying Decision and Order is as follows:

In the matter of Hammermill Paper Company, a corporation; order modifying decision and order.

Whereas, a "Request To Reopen And Modify Consent Order" was filed by

Respondent on April 8, 1982 pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and § 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, wherein Hammermill Paper Company seeks modification of the order that issued on April 24, 1974 to allow Hammermill to impose reasonable nonprice vertical restrictions; and

Whereas, the matter was thereafter placed on the public record pursuant to § 2.51(c) of the Commission's Rules of Practice, 16 CFR 2.51(c) during which time comments from the public were received; and

Whereas, the Commission thereafter considered the Petition presented by Hammermill Paper Company and all of the materials and information submitted as public comments on the petition and has determined that the request makes a staisfactory showing that changed conditions of fact and law and the public interest require that the order be reopened for the purpose of modification.

Accordingly, it is ordered that the matter is reopened and that subparagraph 1(a) be modified to read:

Limiting, allocating or restricting the persons or classes of persons to whom any dealer or distributor may resell his products, where such limitation, allocation or restriction unreasonably restrains competition.

Issued: August 6, 1982.

By the Commission.

James A. Tobin,

Acting Secretary.

[FR Doc. 82-22772 Filed 8-19-82; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change Of Sponsor Name; Fisons PLC

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fisons plc, Pharmaceutical Div., providing for a change of sponsor name.

EFFECTIVE DATE: August 20, 1982

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

SUPPLEMENTARY INFORMATION: Fisons plc, Pharmaceutical Division, 12 Derby Rd., Loughborough, Leicestershire, LE11 OBB, England, filed a supplemental NADA (110-399) to provide for the removal of the designation "Limited" from its name and to replace it with "plc". This change was required under the terms of the United Kingdom Companies Act of 1981.

This action, the change of sponsor name for an NADA, does not involve changes in manufacturing facilities, equipment, procedures, or personnel. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), this is a Category I supplemental approval which does not require reevaluation of the safety and effectiveness data in the original application.

The regulations are amended in 21 CFR 510.600(c) to reflect this change.

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

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

List of Subjects in 21 CFR Part 510

Animal drugs, Labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(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), Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

In Part 510, § 510.600 is amended in paragraph (c)(1) by revising the entry for "Fisons Limited" and in paragraph (c)(2) by revising the entry for "012525" to read as follows:

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

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Fisons plc, Pharmaceutical Division, 12 Derby Rd., Loughborough, Leicestershire, LE11 OBB, England	012525
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
012525	Fisons plc, Pharmaceutical Division, 12 Derby Rd., Loughborough, Leicestershire, LE11 OBB, England.
* * * * *	

Effective date. August 20, 1982.

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

Dated: August 13, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82-22627 Filed 8-19-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Oxibendazole Paste

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Norden Laboratories, Inc., providing that oxibendazole paste no longer requires the limitation "Do not use in stallions at stud."

EFFECTIVE DATE: August 20, 1982.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Bureau of Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Norden Laboratories, Inc., Lincoln, NE 68501, filed a supplemental NADA (121-042) providing that use of oxibendazole paste for horses for removal of certain large and small strongyles, large roundworms, threadworms, and pinworms no longer requires the limitation "Do not use in stallions at stud." The original approval did not contain information supporting use of the drug in breeding stallions. Based on data and information submitted by the firm supporting safe use of oxibendazole paste in breeding stallions, the supplement is 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), this is a Category II supplemental approval which does not require reevaluation of the safety and effectiveness data supporting the original approval.

In accordance with the freedom of information provisions of Part 20 (21

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

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

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

List of Subjects in 21 CFR Part 520

New animal drugs, Oral use.

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

§ 520.1638 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended in § 520.1638 *Oxibendazole paste* in paragraph (c)(3) by removing the phrase "Do not use in stallions at stud."

Effective date. August 20, 1982.

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

Dated: August 12, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82–22638 Filed 8–19–82; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Nalorphine Hydrochloride Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to indicate that a previously codified new animal drug application (NADA) which provides for use of nalorphine hydrochloride injection as a narcotic antagonist in dogs is limited to use by or on the order of a licensed veterinarian.

EFFECTIVE DATE: August 20, 1982.

FOR FURTHER INFORMATION CONTACT: Leonard D. Krinsky, Bureau of Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 2, 1979 (44 FR 6707), FDA amended the animal drug regulations to codify a previously approved NADA providing for use of nalorphine hydrochloride injection as a narcotic antagonist in dogs. At that time, the agency failed to indicate that the drug is limited to use by or on the order of a licensed veterinarian. This document revises the regulations in 21 CFR 522.1452 to state that the drug is for veterinary prescription use only.

List of Subjects in 21 CFR Part 522

Animal drugs, Injectable.

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

§ 522.1452 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 522.1452 *Nalorphine hydrochloride injection* is amended by adding at the end of paragraph (c)(3) the sentence "Federal law restricts this drug to use by or on the order of a licensed veterinarian."

Effective date. August 20, 1982.

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

Dated: August 13, 1982

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 82–22809 Filed 8–19–82; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bambermycins

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Adminstration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Cadco, Inc., providing for use of 0.4- and 2-gram-per-pound bambermycins premixes for making finished swine feeds used for increased rate of weight gain and improved feed efficiency in growing-finishing swine.

EFFECTIVE DATE: August 20, 1982.

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

SUPPLEMENTARY INFORMATION: Cadco, Inc., P.O. Box 3599, 10100 Douglas Ave., Des Moines, IA 50322, is sponsor of NADA 131–146 providing for safe and effective use of 0.4- and 2-gram-per-pound bambermycins premixes. The premixes are used to manufacture finished feed for growing-finishing swine for increased rate of weight gain and improved feed efficiency. On behalf of Cadco, Inc., American Hoechst Corp., Animal Health Division, filed the NADA.

Approval of this application is based on safety and effectiveness data contained in Hoechst's approved NADA 44–759. Hoechst authorized use of the data in NADA 44–759 to support this application. The NADA is approved and the regulations are amended to reflect the approval.

Approval of NADA 131–146 does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), this approval is equivalent to a Category II change which does not require reevaluation of the safety and effectiveness data in NADA 44–759.

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

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment

nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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), § 558.95 is amended by adding new paragraph (b)(3) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.95 Bambermycins.

* * * * *

(b) * * *

(3) Premix levels of 0.4 and 2 grams of bambermycins activity per pound granted to 011490 in § 510.600(c) of this chapter for use as in paragraph (e)(2) of this section

* * * * * *

Effective date. August 20, 1982.

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

Dated: August 13, 1982.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 82-22804 Filed 8-19-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bambermycins

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Growmark, Inc., providing for use of a 0.4-gram-per-pound bambermycins premix for making finished swine feeds used for increased rate of weight gain and improved feed efficiency in growing-finishing swine.

EFFECTIVE DATE: August 20, 1982.

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

SUPPLEMENTARY INFORMATION: Growmark, Inc., 1701 Towanda Ave., Bloomington, IL 61701, is sponsor of NADA 132-080 providing for safe and effective use of a 0.4-gram-per-pound bambermycins premix. The premix is used to manufacture finished feed for growing-finishing swine for increased rate of weight gain and improved feed efficiency. On behalf of Growmark, Inc., American Hoechst Corp., Animal Health Division, filed the NADA.

Approval of this application is based on safety and effectiveness data contained in Hoechst's approved NADA 44-759. Hoechst authorized use of the data in NADA 44-759 to support this application. The NADA is approved and the regulations are amended to reflect the approval.

Approval of NADA 132-080 does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977) this approval is equivalent to a Category II change which does not require reevaluation of the safety and effectiveness data in NADA 44-759.

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

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

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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), § 558.95 is amended by revising paragraph (b)(2) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.95 Bambermycins.

* * * * *

(b) * * *

(2) Premix level of 0.4 gram of bambermycins activity per pound granted to 012799 and 020275 in § 510.600(c) of this chapter for use as in paragraph (e)(2) of this section.

* * * * * *

Effective date. August 20, 1982.

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

Dated: August 13, 1982.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 82-22808 Filed 8-19-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3282

Manufactured Home Procedural and Enforcement Regulations; Monitoring Inspection Fee

Correction

In FR Doc. 82-20735 appearing on page 33264 in the issue for Monday, August 2, 1982, first column, under "EFFECTIVE DATE", second line, the date should read "January 1, 1982."

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-110; Reference Notice No. 406]

Establishment of Isle St. George Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This rule establishes a viticultural area located in the western part of Lake Erie, in the State of Ohio to be named "Isle St. George." This final rule is a result of a petition submitted by Meier's Wine Cellars, a bonded winery in Cincinnati, Ohio. The Bureau of Alcohol, Tobacco and Firearms believes the establishment of Isle St. George as a viticultural area and its subsequent use

as an appellation of origin in wine labeling and advertising will allow local wineries to better designate their specific grape-growing area and will enable consumers to better identify the wines they purchase.

EFFECTIVE DATE: September 20, 1982.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: 202–566–7626.

Background

ATF regulations in 27 CFR Part 4 allow the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Section 9.11, Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Under § 4.25a(e)(2), any interested person may petition ATF to establish a grape-growing region as an American viticultural area.

Petition

ATF was petitioned to establish a viticultural area in western Lake Erie in the State of Ohio. The proposed area is an island known as Isle St. George. This island is located entirely within Ottawa County, Ohio and is the northernmost of the Bass Islands. It is the farthest of the Bass Islands from the mainland, about 18 miles from Port Clinton, Ohio. Isle St. George is approximately one square mile in size, and is roughly 1 and ½ miles wide and slightly less than that in length. Approximately half of the island is devoted to vineyards.

The petitioner, Meier's Wine Cellars, is a bonded winery located in Silverton (Post Office Cincinnati), Ohio.

In response to this petition, ATF published a notice of proposed rulemaking, No. 406 in the **Federal Register** on February 3, 1982 (47 FR 5011), proposing the establishment of the "Isle St. George" viticultural area. No written comments were received in response to the notice, and ATF is adopting the "Isle St. George" viticultural area as proposed.

Historical and Current Evidence of the Name

The name Isle St. George was well documented in the petition as being long associated with the proposed area in Ohio.

This name has been associated with North Bass Island since at least 1903. The 1903 edition of the U.S.G.S. quadrangle map, "Put-in-Bay," identifies the community on North Bass Island as "Isle St. George."

A post office has existed on the island since 1874, and the "Isle St. George" cancellation is currently in use. The petitioner, Meier's Wine Cellars, has used the "Isle St. George" designation on its labels since 1943 to identify wines made from grapes grown on the island.

The island has a long history of grape-growing. The first grapes were planted on the island in 1853 by Peter and Simon Fox. By the turn of the century, there were two wineries on the island to process grapes.

Today there are approximately 350 acres of grapes on the island and grape-growing is the primary occupation of the inhabitants of the island. The petitioner stated that Catawba grapes have been cultivated continuously on Isle St. George for over 117 years, and that other grapes are also grown. All grapes grown on Isle St. George are sent to the Ohio mainland for processing since there are no wineries on the island.

ATF has concluded that the historical and current evidence supports the viticultural area as a distinct grape-growing area.

Geographic Evidence

The petition established Isle St. George viticultural area as a distinctive grape-growing region distinguished from surrounding areas on the basis of soils, topography, and climate.

Isle St. George is relatively flat and no point is more than 14 feet above the surface of Lake Erie (mean elevation 571 feet). The soil on the island is shallow, sandy loam and silt loam. The limestone bedrock in some areas is only 20 to 30 inches deep.

The climate of Isle St. George is significantly different than surrounding areas. Growing conditions on the island are affected by moderating thermodynamic effects of the waters of Lake Erie. During the spring and summer months the lake water absorbs heat. In the fall, as the air becomes cooler, lake water gives up accumulated heat to the surrounding air and land, thus warming the island. As a result, the first frost is delayed and the growing season is prolonged. Consequently, Isle St. George has a frost-free period of 206 days, longer than any other area in the State of Ohio. In the spring, frozen lake waters cool the air surrounding the island and retard the opening of the grape buds until all danger from frost and unseasonable cold spells has passed.

The average annual precipitation for Isle St. George is less than the average for adjacent areas. Isle St. George averages 26.7 inches of precipitation per year compared to 31.7 inches for nearby Kelley's Island, and 32.1 inches for Sandusky.

Based on the information contained in the petition pertaining to the geographical features, ATF has determined that this area is distinguishable from the surrounding area.

Boundaries

This viticultural area consists entirely of the island named North Bass Island on the "Put-in-Bay, Ohio" U.S.G.S. map. No comments were received in response to the notice of proposed rulemaking, and the area boundaries are adopted as proposed.

Miscellaneous

ATF is approving this area as being viticulturally distinct from surrounding areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained may only be substantiated by consumer acceptance of Isle St. George wines.

Regulatory Flexibility Act

The notice of proposed rulemaking which resulted in this final rule contained a certification under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that if promulgated as a final rule, it would not have a significant impact on a substantial number of small entities. Therefore, the requirement contained in the Regulatory Flexibility Act (5 U.S.C. 603, 604) for a final regulatory flexibility analysis does not apply to this final rule.

Compliance With Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it 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.

Drafting Information

The principal author of this final rule is Charles N. Bacon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Accordingly, under the authority contained in 27 U.S.C. 205, the Director is amending 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9 is amended to add § 9.51 as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.51 Isle St. George.

* * * * *

Par. 2. Subpart C is amended by adding § 9.51. As added, § 9.51 reads as follows:

§ 9.51 Isle St. George.

(a) *Name.* The name of the viticultural area described in this section is "Isle St. George."

(b) *Approved maps.* The approved map for determining the boundary of the Isle St. George viticultural area is the U.S.G.S. quadrangle map, "Put-in-Bay, Ohio", 7.5 minute series, edition of 1969.

(c) *Boundaries.* The Isle St. George viticultural area is located entirely within Ottawa County, Ohio. The boundary of the Isle St. George viticultural area is the shoreline of the island named "North Bass Island" on the "Put-in-Bay, Ohio" U.S.G.S. map, and the viticultural area comprises the entire island.

Signed: July 7, 1982.

W. T. Drake,

Acting Director.

Approved: July 30, 1982.

J. M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 82-22600 Filed 8-19-82; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[W-4-FRL 2191-1]

Standards of Performance for New Stationary Sources National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to Alabama, Georgia, and South Carolina

AGENCY: Environmental Protection Agency.

ACTION: Rule related notice.

SUMMARY: On March 4, 1982 the State of Alabama requested delegation of authority for the implementation and enforcement of the NSPS for fossil fuel steam generators, petroleum refineries, storage vessels for petroleum liquids, iron and steel plants, ferroalloy production facilities, kraft pulp mills, grain elevators, stationary gas turbines, automobile and light-duty truck surface coating operations, and ammonium sulfate manufacture. Alabama also requested delegation of authority to administer and implement NESHAPS for vinyl chlorides.

On March 8, 1982, the State of Georgia requested authority to implement and enforce the NSPS for fossil fuel steam generators, electric utility steam generating units, petroleum refineries, storage vessels for petroleum liquids, iron and steel plants, kraft pulp mills, glass manufacturing plants, grain elevators, stationary gas turbines, automobile and light duty surface coating operations, and ammonium sulfate manufacturing.

Also, on March 8, 1982 the State of South Carolina requested redelegation of authority to implement and enforce the NSPS for fossil fuel steam generators, petroleum refineries and iron and steel plants. The state also requested delegation of authority for the NSPS for storage vessels for petroleum liquids and the NESHAPS for vinyl chloride. Since EPA's review of pertinent state laws, rules and regulations showed them to be adequate for the implementation and enforcement of these Federal standards, the agency has made the delegations as requested.

EFFECTIVE DATES: The effective dates of the delegations of authority to Alabama, Georgia and South Carolina are March 29, 1982, April 15, 1982, and March 26, 1982, respectively.

ADDRESSES: Copies of the requests for delegation of authority and EPA's letters of delegation are available for public inspection at EPA's Region IV Office, 345 Courtland Street, NE., Atlanta, Georgia 30365. All reports required pursuant to the newly delegated standards should not be submitted to the EPA Region IV office, but should instead be submitted to the following addresses:

In Alabama the reports should be submitted to: Mr. Richard Grusnick, Director, Division of Air Pollution Control, Alabama Air Pollution Control Commission, 645 South McDonough Street, Montgomery, Alabama 36130.

In Georgia the reports should be submitted to: Mr. J. Leonard Ledbetter, Director, Environmental Protection Division, Department of Natural Resources, 270 Washington Street, SW., Atlanta, Georgia 30334.

In South Carolina the reports should be submitted to: Mr. Otto Pearson, Chief, Bureau of Air Quality Control, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Denise W. Pack, (404) 881-3286.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with Sections 101, 110, 111, and 112 of the Clean Air Act, authorizes the Administrator to delegate his authority to implement and enforce the National Standards of Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) regulations to any State which has submitted adequate implementation and enforcement procedures.

Alabama

On August 5, 1976, EPA delegated to Alabama the authority to implement and enforce the Standards of Performance for New Stationary Sources (NSPS) for the source categories that had been promulgated by EPA. On March 24, 1982 the Alabama Air Pollution Control Commission (AAPCC) requested delegation of authority to implement and enforce the NSPS for the following source categories:

- 40 CFR Part 60, Subpart D—Fossil Fuel-Fired Steam Generators
- 40 CFR Part 60, Subpart Da—Fossil Fuel-Fired Steam Generators (for those units for which construction is commenced after September 18, 1978)
- 40 CFR Part 60, Subpart J—Petroleum Refineries
- 40 CFR Part 60, Subpart Ka—Storage Vessels for Petroleum Liquids (constructed after May 1978)
- 40 CFR Part 60, Subpart N—Iron and Steel Plants
- 40 CFR Part 60, Subpart Z—Ferroalloy Production Facilities
- 40 CFR Part 60, Subpart BB—Kraft Pulp Mills
- 40 CFR Part 60, Subpart DD—Grain Elevators
- 40 CFR Part 60, Subpart GG—Stationary Gas Turbines

40 CFR Part 60, Subpart MM—Automobile & Light-Duty Truck Surface Coating Operations
49 CFR Part 60, Subpart PP—Ammonium Sulfate Manufacture

The March 4, 1982, letter also requested a delegation of authority to implement and enforce the NESHAPS for vinyl chloride (40 CFR Part 61, Subpart F). On September 22, 1976, EPA had initially delegated to Alabama the authority to implement and enforce the NESHAPS for the source categories that had been promulgated by EPA prior to that date. After review of the March 4, 1982, request and information submitted, the Regional Administrator determined that such delegation was appropriate for the requested source categories with the conditions set forth in the original delegation letters of August 5, 1976, and September 22, 1976. EPA granted the State's request in a letter dated March 29, 1982. Alabama sources which are subject to the requirements of the aforementioned categories will now be under the jurisdiction of the State of Alabama.

Georgia

On May 3, 1976, and August 8, 1977, EPA delegated to the State of Georgia the authority to implement and enforce the NSPS for the source categories that had been promulgated by EPA. On March 8, 1982, the Georgia Environmental Protection Division (EPD) requested a delegation of authority for the NSPS categories promulgated by EPA subsequent to the August 8, 1977 delegations. The source categories are as follows:

40 CFR Part 60, Subpart D—Fossil Fuel Fired Steam Generators
40 CFR Part 60, Subpart Da—Electric Utility Steam Generating Units
40 CFR Part 60, Subpart J—Petroleum Refineries
40 CFR Part 60, Subpart Ka—Storage Vessels for Petroleum Liquids Constructed After May 1978
40 CFR Part 60, Subpart N—Iron and Steel Plants
40 CFR Part 60, Subpart BB—Kraft Pulp Mills
40 CFR Part 60, Subpart CC—Glass Manufacturing Plants
40 CFR Part 60, Subpart DD—Grain Elevators
40 CFR Part 60, Subpart GG—Stationary Gas Turbines
40 CFR Part 60, Subpart MM—Automobile & Light-Duty Truck Surface Coating Operations
49 CFR Part 60, Subpart PP—Ammonium Sulfate Manufacture

On May 26, 1982, the Georgia EPD requested delegation of two categories of NSPS that had been promulgated by EPA after the State's request of March 8, 1982. These standards are as follows:

40 CFR Part 60, Subpart KK—Lead Acid Battery Manufacturing
40 CFR Part 60, Subpart NN—Phosphate Rock Plants

After a thorough review of the requests and the information submitted, the Regional Administrator determined that such delegation was appropriate for these source categories with the conditions set forth in the original delegation letter of May 3, 1976, and granted the State's two requests in letters dated April 15 and June 7, 1982. Georgia sources which are subject to the aforementioned categories will now be under the jurisdiction of the State of Georgia.

South Carolina

On October 19, 1976, EPA delegated to the State of South Carolina the authority to implement and enforce the Standards of Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) that had been promulgated by EPA as of January 15, 1976. On January 29, 1981, the South Carolina Department of Health and Environmental Control (SCDHEC) requested a delegation of authority for the NSPS that had been promulgated between January 15, 1976, and January 29, 1981. This delegation was made on March 17, 1981.

On March 8, 1982 the SCDHEC requested that EPA redelegate the authority for three NSPS that have been revised. The South Carolina laws do not allow the SCDHEC to incorporate revision to NSPS without processing them as State Implementation Plan Revisions.

The revised NSPS that South Carolina is requesting redelegation of are:

1. *Fossil Fuel Fired Steam Generators, 40 CFR Part 60, Subpart D,* revised on March 7, 1978, to include control of nitrogen oxide (NO_x) emissions from sources burning lignite coal.

2. *Petroleum Refineries, 40 CFR Part 60, Subpart J,* revised on March 15, 1978, to include control of sulfur dioxide (SO_2) emissions and total reduced sulfur emissions from sulfur recovery facilities.

3. *Iron and Steel Plants, 40 CFR Part 60, Subpart R,* revised on April 13, 1978, to include opacity limits.

South Carolina's letter of March 8, 1982 also requested delegation of authority for the NSPS for Storage Vessels for Petroleum Liquids and for the NESHAPS for Vinyl Chloride. After a thorough review of the request and information submitted the Regional Administrator determined that delegation of the following categories is appropriate.

40 CFR Part 60, Subpart D—Fossil fuel fired steam generators
40 CFR Part 60, Subpart J—Petroleum refineries
40 CFR Part 60, Subpart R—Iron and Steel Plants
40 CFR Part 60, Subpart Ka—Storage Vessels for Petroleum Liquids
40 CFR Part 60, Subpart—NESHAPS
40 CFR Part 60, Subpart F—Vinyl Chloride

These delegations were made on March 26, 1982, subject to the conditions set forth in the original delegation letter of August 5, 1976. South Carolina sources which are subject to the requirements of the aforementioned subparts will not be under the jurisdiction of the State of South Carolina.

Under 5 U.S.C. 605(b), I hereby certify that these delegations do not have a significant economic impact on a substantial number of small entities since the burden of complying with these standards will remain the same for affected sources.

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

(Secs. 101, 110, 111, 112 and 301 of the Clean Air Act, as amended (42 U.S.C. 401, 7410, 7411, 7412, and 7601))

Dated: July 29, 1982.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 82-22623 Filed 8-19-82; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Parts 60 and 61

[A-7-FRL 2191-4]

Standards of Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); Delegation of Authority to the State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule related notice.

SUMMARY: This notice announces an extension of a delegation of authority that was issued by the EPA to the State of Missouri regarding the standards set forth in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS), and in 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPS). The extension was requested by the State of Missouri. The delegation of authority now includes all requirements of the NSPS and NESHAPS regulations promulgated by the EPA as in effect on

July 1, 1981. Applications and reports required under these regulations for source categories affected by the delegation of authority should now be sent to the Missouri Department of Natural Resources rather than to the EPA regional office.

EFFECTIVE DATE: August 20, 1982.

ADDRESSES: Applications and reports required under the NSPS and/or the NESHAPS regulations (as in effect on July 1, 1981) should be addressed to the Missouri Department of Natural Resources, P.O. Box 1368, Jefferson City, Missouri 65101.

FOR FURTHER INFORMATION CONTACT: Charles W. Whitmore, U.S. Environmental Protection Agency, Region VII, 324 East 11th Street, Kansas City, Missouri 64106 (telephone 816/374–6525 or FTS 758–6525).

SUPPLEMENTARY INFORMATION: Sections 111(c) and 112(d) of the Clean Air Act allow the Administrator of the Environmental Protection Agency (EPA) to delegate to any State agency the authority to implement and enforce the standards set forth in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS), and in 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPS). On December 16, 1980, the EPA delegated to the State of Missouri the authority to implement and enforce the requirements of said regulations promulgated by the EPA as of December 1, 1979 (see 46 FR 27392, May 19, 1981). On November 6, 1981, the EPA extended the delegation to include all requirements of said regulations as in effect on July 1, 1980.

On May 17, 1982, the State of Missouri asked EPA to extend the original delegation of authority (and the above-mentioned supplemental extension of authority) to include all additional requirements of said regulations promulgated by the EPA between July 1, 1980 and July 1, 1981. The EPA granted the request in a letter dated June 17, 1982. The extension includes, but is not limited to, the following amendments to the NSPS regulations: the addition of Subpart Ka (Petroleum Liquid Storage Vessels constructed after May 18, 1978), Subpart CC (Glass Manufacturing Plants), Subpart PP (Ammonium Sulfate Plants), and Subpart MM (Automobile and Light-Duty Truck Surface Coating Operations); the addition of Reference Method 24 (re: determination of volatile organic compounds (VOC) content of coating materials) and Reference Method 25 (re: percentage reduction of VOC emissions achieved by emission control devices) to Appendix A of the NSPS regulations; and, miscellaneous revisions and clarifications made to Subpart J (Petroleum Refineries), Subpart Ka (Petroleum Liquid Storage Vessels), and Reference Methods 13A and 13B (re: determination of total fluoride emissions). No major changes to the NESHAPS regulations were promulgated by the agency between July 1, 1980, and July 1, 1981.

Effective immediately, all applications, reports, and other correspondence required under the NSPS regulations for petroleum liquid storage vessels, glass manufacturing plants, ammonium sulfate plants, and automobile and light-duty truck surface coating operations should be sent to the Missouri Department of Natural Resources (see address above) rather than to the EPA regional office.

A copy of each notification required pursuant to 40 CFR Part 60, Subpart A, and/or to 40 CFR Part 61, Subpart A, shall also be submitted to the Director, Air and Waste Management Division, at the EPA regional office mentioned above.

Copies of the documents and letters mentioned in this Notice are available for public inspection at the EPA regional office mentioned above.

(Secs. 111 and 112 of the Clean Air Act, as amended (42 U.S.C 7411 and 7412))

Dated: August 4, 1982.

David A. Wagoner,

Acting Regional Administrator.

[FR Doc. 82–22788 Filed 8–19–82; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA 6388]

Identification and Mapping of Special Flood Hazard Areas; Changes in Special Flood Hazard Areas Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Associate Director, State and Local Programs and Support reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table.

Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P. E., Chief, Engineering Branch, Office of State and Local Programs and Support, Federal Emergency Management Agency, Washington, D.C. 20472, 202–287–0220.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the Flood Insurance Rate Map(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968) (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change

any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community No.
California: Los Angeles	City of Torrance	*Daily Breeze*, July 6, 1982, July 13, 1982.	Hon. James R. Armstrong, Mayor, City of Torrance, 3031 Torrance Boulevard, Torrance, CA 90503.	June 11, 1982	060165B.
Connecticut: Tolland	Town of Coventry	*The Wilamic Chronicle*, June 4, 1982, June 11, 1982.	Mr. Charles F. McCarthy, Town Manager, P.O. Box 185, Coventry, Connecticut 06238.	June 11, 1982	090110D.
Illinois: Lake	Village of Lincolnshire	*The Vernon Review*, June 3, 1982, June 10, 1982.	Terri Lea Schroeder, Village Manager, Village of Lincolnshire, 45 Londonderry Lane, Lincolnshire, Illinois 60015.	June 11, 1982	170378C.
Winnebago	City of Rockford	*Rockford Register Star*, June 10, 1982, June 17, 1982.	Hon. John F. McNamara, City of Rockford, 425 East State Street, Rockford, Illinois 61104.	June 18, 1982	170723B.
Kentucky: Jefferson	City of St. Matthews	*The Voice*, June 16, 1982, June 23, 1982.	Hon. Bernard Bowling	June 25, 1982	210123B.
Mississippi: Leflore	City of Greenwood	*Greenwood Commonwealth*, June 18, 1982, June 25, 1982.	Hon. Lanier Harper	June 25, 1982	280102C.
Missouri: Newton	City of Seneca	*News-Dispatch*, June 24, 1982, July 1, 1982.	Hon. Warren Kohler, Mayor, City of Seneca, 1303 Cherokee Street, P.O. Box 485, Seneca, MO 64865.	June 29, 1982	290269C.
Ohio: Warren	City of Mason	*The Pulse Journal*, June 9, 1982, June 16, 1982.	Thomas Moeller, City Manager, City of Mason, 202 West Main Street, Mason, Ohio 45040.	June 18, 1982	390559C.
Tennessee: Williamson	City of Brentwood	*The Brentwood Journal*, June 2, 1982, June 9, 1982.	Mr. Robert Hoge, City Planner, P.O. Box 244, Brentwood, Tennessee 37027.	June 11, 1982	470205C.
Colorado: Weld	Town of Frederick	*Frederick Farmer and Miner*, July 8, 1982, July 15, 1982.	Hon. Edward Tagliente, Mayor, City of Frederick, P.O. Box 435, Frederick, CO 80530.	July 13, 1982	080244B.
Florida: Broward County	Coral Springs, city of	*Sun-Sentinel*, Sept. 15, 1981, Sept. 18, 1981.	Mr. Dodd A. Southern, City Manager	July 2, 1982	120033B.
Illinois: St. Clair	Village of Sauget	*The St. Louis Post Globe*, July 2, 1982, July 9, 1982.	Hon. Paul Sauget, Mayor Village of Sauget, 2897 Falling Spring Avenue, Sauget, Illinois 62206.	July 9, 1982	170635B.
Kansas: Pottawatomie	City of St. Marys	*St. Marys Star*, June 29, 1982, July 6, 1982.	Hon. Charles N. Sharp, Mayor, City of St. Marys, P.O. Box 146, St. Marys, KS 66536.	July 6, 1982	200275C.
Louisiana: Iberia Parish	City of New Iberia	*The Daily Iberian*, July 6, 1982, July 13, 1982.	Hon. J. Allen Daigre, Mayor, City of New Iberia, Civic Center, P.O. Box 397, New Iberia, LA 70560.	July 13, 1982	220082C.
New Hampshire: Grafton County.	Lebanon, city of	*The Valley News*, July 9, 1982, July 16, 1982.	Hon. Karen Wardsworth, Mayor, City of Lebanon, City Hall, 51 North Park Street, Lebanon, New Hampshire 03766.	July 16, 1982	330061B.
Pennsylvania: Lebanon	Township of North Cornwall	*Lebanon Daily News*, July 2, 1982, July 9, 1982.	Russell Bomberger, Chairman, North Cornwall Township Board of Supervisors, 320 South Eighteenth Street, Lebanon, PA 17042.	July 9, 1982	420576C.
York	Borough of North York	*The York Dispatch*, June 25, 1982, July 2, 1982.	Hon. Emerson D. Portner, Mayor, Borough of North York, 1135 North Duke Street, York, Pennsylvania 17404.	July 2, 1982	420933C.
South Carolina: Horry County	Conway, city of	*The Field and Herald*, June 23, 1982, June 30, 1982.	Hon. Kenneth Holt, Mayor, City of Conway, City Hall, P.O. Drawer 1075, Conway, South Carolina 29526.	July 2, 1982	450106C.
Texas: Brown	City of Brownwood	*Brownwood Bulletin*, June 29, 1982, July 6, 1982.	Hon. W. T. Harlow, Mayor, City of Brownwood, P.O. Box 1389, Brownwood, TX 76801.	July 6, 1982	480087D.
Wisconsin: Unincorporated area	Winnebago County	*Oshkosh Daily Northwestern*, July 15, 1962, July 22, 1982.	Leonard Leverence, Zoning Administrator, Winnebago County, Courthouse, 415 Jackson, Oshkosh, Wisconsin 54903.	July 23, 1982	550537C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support).

Issued: July 30, 1982.

Lee M. Thomas,

Associate Director,

State and Local Programs and Support.

[FR Doc. 82-22625 Filed 8-19-82; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

46 CFR Part 536

[General Order 13, Amdt. 12; Docket No. 80-54]

Time/Volume Rate Contracts; Tariff Filing Regulations Applicable to Carriers and Conferences in the Foreign Commerce of the United States

AGENCY: Federal Maritime Commission.

ACTION: Denial of petitions.

SUMMARY: This document denies requests for extension of time to file petitions for reconsideration and for delay of the effective date of the final rules governing the filing of time/volume rates, published in the **Federal Register** at 47 FR 29670, July 8, 1982. No valid basis for such relief has been shown.

DATE: Effective August 9, 1982.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: Final rules in the subject proceeding were published on July 8, 1982 to become effective August 9, 1982 (47 FR 29670).

Counsel for several conference/rate agreements have requested a postponement of the effective date of the rules for 90 days and concurrently have requested a 60-day extension of time within which to file petitions for reconsideration.

Counsel states that several questions exist regarding the meaning and intent of the rules and that the conferences will not have an opportunity to determine a course of action in regard thereto until their Executive Committees meet during the week of September 2, 1982. Of particular concern to the conferences is whether the Commission's order in this proceeding preserved the lawfulness of all existing time/volume *rates* for 12 months, inasmuch as the language of the order states that existing *contracts* shall be permitted to remain in effect for 12 months.

Petitioners have not persuasively demonstrated a need for delay of the rule or for additional time for filing of a further round of comments or petitions. As indicated above, the Commission's order allowed any existing *contracts* which would fall within the provisions of the rule to remain in effect for 12 months. It was the Commission's intention by this language that all time volume *rates* currently on file may remain in effect for up to 12 months and thereafter any extensions or renewals would have to comply with the rule. With this clarification no need exists for further delay of the rule.

Similarly, no additional time need be provided for filing additional petitions regarding the rule because Rule 51 (46 CFR 502.51) allows an interested party to petition for issuance, amendment or repeal of a rule at any time.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 82-22853 Filed 8-19-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[Docket No. 21371; FCC 82-359]

Commission's Rules To Require a Description of Measurement Facilities Used in the Equipment Authorization Program and Make Other Changes

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order terminates without substantive action a proceeding which contemplated expanded requirements for filing a description of measurement facilities used for radio frequency devices authorization testing. Adoption of mandatory requirements is considered unnecessary since voluntary standards are in the process of being prepared by national and international standards bodies. The Commission in this action avoids adoption of regulations which appear to be unnecessary. A bulletin providing guidelines for determining the characteristics of a suitable test site is appended to the Order. Minor changes to Part 15 have been made to reference the bulletin.

DATE: September 7, 1982.

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

FOR FURTHER INFORMATION CONTACT: Mr. Julius P. Knapp, Office of Science and Technology, RF Devices Branch, Washington, D.C. 20554, (202) 653-8247, Room 8302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 15

Communications equipment, Radio.

In the matter of amendment of Part 2 to require a description of measurement facilities used in the equipment authorization program and make other changes, Docket No. 21371.

Adopted: August 3, 1982.

Released: August 6, 1982.

1. A Notice of Proposed Rulemaking (NPRM) in this proceeding was adopted August 24, 1977.[1] The proposal sought to:

—Extend the requirement to file a description of test facilities used for equipment certification purposes to the type acceptance and type approval program.[2]

—Move this requirement from § 15.38 to Part 2 Subpart J.

—Expand the details of the required site description, chiefly by requiring measurements of open field site attenuation.

—Add a requirement that applicants file test data with applications for equipment type approval indicating compliance with the prescribed technical standards.

For the reasons given herein, the proceeding is being terminated.

2. The underlying objective of the proposal was to ensure the integrity of the equipment authorization program by setting standards for test sites in order to minimize differences in measurements when a device is measured at different sites. The equipment authorization program in large part depends on the validity of measurement results reported by manufacturers. For radiated emissions measurements, normally made on open field measurement sites, the characteristics of the test site can significantly affect the outcome of the measurements. This can give rise to different measurement results from one site to the next, so that compliance with FCC requirements may be indicated at one site but not at another. This is an obviously undesirable situation both for the Commission and equipment manufacturers.

3. We believe that the need to establish standards for test sites is no

[1] *NPRM* in Docket 21371 adopted August 24, 1977, issued September 6, 1977; 42 FR 45342, September 9, 1977.

[2] Certification, type approval and type acceptance are equipment authorization procedures set out in Part 2 of the rules. Certification and type acceptance call for submittal of measurement data and other documentation to the FCC for review. Type approval calls for submittal of a sample device for testing by the FCC Laboratory. In each case, once it is determined that the equipment satisfies all the requirements, a grant of equipment authorization is issued, which is a prerequisite for legal marketing of the device, pursuant to Part 2 Subpart I.

less important now than it was when this proceeding began. In fact, the increased attention which the subject has received in the last few years has heightened our awareness of the need for a standard. Many manufacturers have expressed concern that in the absence of a standard they may invest substantial funds in test sites that do not perform satisfactorily.

4. Nevertheless, it would be inappropriate for the Commission to adopt a standard at this time for two basic reasons. First, there are some technical issues which are not resolvable from the information filed in the comments. Details are given in paragraph 5, below. Second, several standards bodies are studying the problem and at this time it appears that at least one, American National Standards Institute (ANSI) committee C63, will eventually publish a standard on test sites.[3] Paragraphs 6 and 7, below provide further information.

5. At the heart of the Commission's proposal was a new requirement to determine the suitability of a site by measuring open field test site attenuation. Site attenuation, in simple terms, is a measure of how much a radio signal decreases (attenuates) as it travels from the input of an antenna near one end of the site to the output of an antenna near the opposite end of the site. There has been some disagreement with the Commission's theoretical model of site attenuation, which was to be used as the "yardstick" to judge the site's performance, for close antenna spacings at frequencies below about 80 MHz. A number of parties have been working on alternative theoretical models, and we understand that the results of their analyses are soon to be published or have just recently been released. The Commission's Office of Science and Technology is currently conducting a study to validate a new theoretical model of site attenuation (antenna coupling model) by comparing it with measured data. The results of this study should be available at the end of this year. Clearly, some additional time is needed for further development of the subject and for discussion to take place in the technical community before any theoretical model over the entire frequency range of interest should be considered acceptable. Other, less critical, but still important issues also need further consideration by experts in the field. These include test site size, the necessity for a metal ground screen, whether to require site attenuation measurements in vertical polarization, what tolerance to set on site attenuation results, as well as other points.

6. ANSI C63 Subcommittee 1 has established a task group to draft a standard for test sites. Considerable progress has been made towards this end. Standards for test sites are also being contemplated by the International Special Committee on Radio Interference (CISPR). Specifically CISPR Subcommittees A, D & E are investigating the problem.[4] The outcome of these studies may take the form of a CISPR Recommendation. ANSI and CISPR are addressing and attempting to resolve the remaining questions concerning test sites, such as those mentioned in paragraph 5. The status of work in these groups affirms our belief that it would be inappropriate and premature to adopt mandatory standards at this time.

7. The FCC participates in various CISPR and ANSI activities. However, the pendency of the rulemaking in Docket 21371 encumbers free and open exchange of views and information with the Commission staff, due to the procedural requirements imposed by Part 1 of the FCC Rules and Regulations.[5] The Commission staff possesses much expertise and experience relative to open field test sites, and it would be beneficial to all parties concerned to remove any restrictions to full participation by the FCC in the development of national or international standards for test sites. Under the circumstances, the appropriate measure is to terminate the proceeding. It is our view that a standard developed by consensus would be preferable to one mandated by regulation and we trust that the current efforts in this direction will vigorously continue. At a later time, if appropriate, we may propose that an industry standard be incorporated by reference in the FCC Rules, or take such other actions as may fit the circumstances.

8. The current requirement of § 15.38 that a site description be filed for equipment tested for certification will remain in place. Section 15.38 is essentially a one-time filing requirement which has already been fulfilled by most test facilities, so there is minimal burden associated with retention of this requirement. For most equipment subject to certification, the primary technical requirement is measurement of field strength on an open field site, hence the need for an open field site description is of heightened importance to the certification program. Although we are not adopting specific standards for sites at this time, sites which are not in accordance with good engineering practice, or which exhibit clear deficiencies may not be considered acceptable for performing FCC compliance testing. The site must conform to the requirements of any equipment measurement standard or procedure that will be used for performing tests at that site.

9. There presently is no professional or industry standard which comprehensively addresses the subject of open field test sites. (Information on test sites can be found in some equipment test standards but it is generally limited to specific test arrangements and the information provided is usually minimal.) Until such time as an industry standard on test sites may be adopted, there will be a void as to what to use for guidance in constructing a test site. To fill that void we are making available a Bulletin OST 55, *Characteristics of Open Field Test Sites*, attached hereto as Appendix B. Although the Bulletin sets out general principles for construction of a good test site, sites may be at variance with the Bulletin and still be considered acceptable, within, of course, the bounds of good engineering practice.

10. With regard to the proposed requirement for filing measurement data when applying for type approval, we see no need to pursue this, at least for the present. The problem which existed at the time of the proposal that a high proportion of equipment failed type approval tests, is currently less severe.

11. There currently are several statements in the rules which advise of

[3] ANSI/C63 is the Committee on Radio Electrical Coordination, C-63, of the American National Standards Institute. It is charged with developing methods of measurement in the general areas of electromagnetic compatibility. Members of the committee are technical experts from government and industry.

[4] CISPR has adopted a number of recommendations for controlling interference from several types of electrical and electronic products. Recommendations adopted by CISPR are not mandatory by themselves, but a number of administrations have adopted the CISPR recommendations as their national law, particularly members of the European Economic Community.

[5] See Part 1 Subpart H, the requirements pertaining to ex parte presentations.

the pending rulemaking in Docket 21371. We are deleting these references and adding a note to § 15.38 to mention the availability of Bulletin OST 55. The rule amendments are set out in attached Appendix A. The amendments are purely administrative in nature and have no impact.

12. In view of the foregoing, it is ordered, pursuant to the authority contained in Sections 4(i), 302 and 303 of the Communications Act of 1934, as amended, that effective September 7, 1982, Part 15 of the Commission's Rules and Regulations is amended as set forth in the attached Appendix A. It is further ordered that this proceeding is terminated without substantive action.

13. For further information about this Order, contact Mr. Julius P. Knapp, Office of Science and Technology, Federal Communications Commission, Washington, DC 20554, telephone (202) 653-8247.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 15—RADIO FREQUENCY DEVICES

Appendix A

Title 47 of the Code of Federal Regulations, Part 15, is amended as follows:

1. Section 15.38 is amended by adding a Note to read as follows:

§ 15.38 Description of measurement facilities.

* * * * *

Note.—FCC Bulletin OST 55 *Characteristics of Open Field Test Sites* provides further guidance on open field test sites.

§ 15.783 [Amended]

2. Section 15.783 is amended by removing the *Note* in its entirety.

Appendix A [Amended]

3. Part 15, Appendix A, Section 4.1 is amended by removing the *Note* in its entirety.

4. Part 15, Appendix A, Section 4.8, is revised to read as follows:

Section 4.8 *Ground plane*

A ground screen is desirable, but not mandatory. It is pointed out, however, that open field sites are likely to need a ground screen when any of the following conditions exist at the site: the terrain is discontinuous, the terrain is subject to extreme seasonal variations in ground conductivity; there are unburied power or control cables; the site is located on pavement.

Appendix B.—Federal Communications Commission, Office of Science and Technology, Washington, D.C. 20554

[Bulletin OST 55]

Characteristics of Open Field Test Sites

1.0 *Introduction*

1.1 *General*

FCC equipment authorization requirements often call for measurement of the field strength of radiated emissions at an open field measurement site. The characteristics of the site can affect the results of such measurements, sometimes leading to substantial measurement errors and false indication of compliance with FCC equipment standards. This bulletin is intended to provide guidance on the construction of open field test sites and present a method of evaluating site performance. It should be noted that § 15.38 of the FCC Rules requires that a description of measurement facilities be filed for sites that are used for equipment certification. The text of Section 15.38 can be found in the appendix to this bulletin.

1.2 *Limitations*

This bulletin is limited in scope to test sites used for making radiated emissions measurements over the frequency range 25–1000 MHz at 3, 10 or 30 meters distance from the equipment under test. Such a site may not be appropriate for testing certain kinds of devices, such as broadcast transmitters, or some industrial, scientific and medical equipment subject to Part 18. The FCC rules or practical considerations would dictate when an alternate test method should be used.

Measurements below 25 MHz or above 1000 MHz are performed using somewhat different techniques than those discussed in this bulletin. Information can usually be found in published measurement standards, the FCC Rules or FCC bulletins that pertain to the equipment being tested.

1.3 *Anechoic chambers/alternative sites*

Anechoic chambers or sites other than open field may be suitable for performing field strength measurements under certain circumstances; however, this bulletin does not specifically address such alternative sites. It is limited strictly to actual open field sites. Nor does this bulletin suggest a method of correlating alternative sites to an open field site. It is left to the test engineer to devise an appropriate method to correlate an alternative site.

2.0 *Equipment test standards*

The test site must provide the necessary facilities and equipment called for in the measurement standards or procedures intended to be used at that site. If the equipment test standard and this bulletin are not in agreement on certain points, the standard shall take precedence.

3.0 *Characteristics of the site*

Various FCC requirements, particularly those in Part 15, call for measurement of the field strength of emissions at either 3, 10 or 30 meters from the equipment under test (EUT). The attached Figure 1 shows the recommended test site layout for each of these distances. The site should be clear of any obstructions such as trees, bushes or metal fences, at least within the elliptical boundary shown in Figure 1. Objects outside this boundary, such as buildings or parked automobiles, may still affect the measurements so care should be taken to choose a location as far as possible from large objects or metallic objects of any sort. Test sites of rectangular shape can also be used providing the length and width of the site are at least as large as the major and minor axes of the elliptical site shown in Figure 1.

4.0 *Ground plane*

The terrain of the test site should be reasonably flat and level. Any object (e.g. loose rock) greater than 5 cm in dimension is to be cleared from the surface.

It is strongly recommended that sites be provided with a metal ground plane, particularly if the site is located atop pavement or on a rooftop. The metal ground plane should be at least the size of the obstruction free area. Acceptable performance may be achieved without a metal ground plane, provided that the ground plane is composed of homogeneous good soil (not sand or rock) free of buried metal.

Wire mesh, either ¼" or ½" in size, sometimes called hardware cloth, is well suited for constructing a ground screen. It is readily available and relatively inexpensive. Hardware cloth comes in rolls about 4 feet wide; it should be electrically bonded along the seams.

5.0 *Physical installation*

5.1 *Services to the EUT*

All electrical service, wires, cables and plumbing (if needed) to the EUT is to be run underground or underneath the ground plane to the maximum extent possible. For sites having a ground plane, the placement of these utilities underneath the ground plane is not critical. However, for sites with unburied utilities to the EUT, or sites without a ground plane, they should extend away from the measuring antenna along the site axis for at least 1.5 meters.

5.2 *Measurement antenna mast*

Most measurement procedures call for varying the height of the measurement antenna above ground to obtain a maximized addition of the direct and ground reflected signal components. See Figure 1. The site should be equipped with a mast that provides for continuous variation of antenna search height. Tripod antenna supports of the conventional type are generally unsuited for continuous variation of antenna height over the required range.

There are many ways to construct an inexpensive mast assembly. A wooden mast with rope and pulley used to control a carriage or trolley (with bracket for mounting the antenna) that rides along the mast is one method. Lightweight PVC pipe is another good material for a mast.

5.3 *Test stand*

The EUT is ordinarily required to be placed upon a table, the height of which is specified in the standard used to perform the

measurements (usually about 1 meter above ground). A turntable arrangement, controlled either manually or by remote control, is required in most instances to rotate the EUT to find the direction of maximum radiation.

5.4 *Location of measurement equipment/ test personnel*

For sites constructed with the ground screen at the same level as the surrounding terrain, the field strength measuring equipment and personnel should be positioned as shown in Figure 1: in the plane of the measuring antenna, at a right angle to the site axis and at least 3 meters from it. For sites having a measuring room underneath the ground screen, the placement of the room is not critical as long as it is completely covered by the ground screen. Service and signal outlets should be provided to the antennas and equipment under test at the level of the ground screen at the locations of the antennas and equipment under test. The positioning of the cable and conduit servicing these outlets is discussed in 5.1.

For sites having a ground screen raised above the level of the surrounding terrain, the above considerations also apply. However, if the measuring equipment and personnel are not to be housed beneath the ground plane, they should be positioned at a level lower than the ground screen and off to the side of the measuring area as discussed above.

5.5 *Instrumentation*

Suitable instrumentation is required for performing field strength measurements. A field strength meter which conforms to ANSI standard C63.2–1980 is generally acceptable.[1] Alternatively, spectrum analyzers capable of meeting the same specifications may also be used. The instrument must be calibrated in accordance with the manufacturer's recommendations at regular intervals. A signal generator and power meter are useful for more frequent checks of calibration.

5.6 *Antenna*

For site attenuation measurements over the range 25–1000 MHz, it is recommended to use half wave dipoles. It is also recommended that these be used in measurement of radiation from equipment under test in this frequency range. Broadband antennas, such as the log periodic and biconical types, are acceptable, provided that the results can be correlated with the results obtained with a dipole. However, use of such antennas for site attenuation measurements often introduce greater uncertainty in the results. The log spiral antenna is not generally acceptable because it is not linearly polarized. Further details on appropriate antennas can be found in equipment test standards or in the FCC rules. See, for example, Part 15, Appendix A.

6.0 *Weather protection enclosures*

A weather protection enclosure may be constructed over either the entire site or a portion thereof. Use of metal above the ground plane should be limited to objects having dimensions less than a tenth of a wavelength at the highest frequency of measurement (e.g. 3cm at 1000 MHz). Fiberglass, plastics, treated wood or fabric are suitable materials for construction of an enclosure. It is good practice to perform preliminary site attenuation measurements before constructing an enclosure so that potential problems are detected before further investment is made.

7.0 *Site characterization*

7.1 *General*

The suitability of a test site used to make radiation measurements may be evaluated by measuring the site attenuation. This information will reveal the existence of ground discontinuities, spurious reflections, and inaccuracies in the measuring equipment set-up which could invalidate measurements of radiation. Site attenuation should be measured over the frequency range 25–1000 MHz at the distance(s) to be used for actual measurements (30, 10 or 3 meters). Measurements should be made at 10 MHz intervals in the range 25–100 MHz, 25 MHz intervals in the range 100–300 MHz, and at 50 MHz intervals in the range 300–1000 MHz.

7.2.0 *Site attenuation measurement procedure*

The procedure for making site attenuation measurements described herein calls for use of two half-wave dipole antennas. Other combinations of antennas, when properly used, may be employed to perform site attenuation measurements, but a detailed analysis of results using other antennas is beyond the scope of this bulletin. Bear in mind that the purpose of making the site attenuation measurement is to judge site performance, so it is best to keep the procedure as simple as possible.

7.2.1

See Figure 1. Place a signal generator on the turntable at the normal location of the equipment under test. Connect the output of a signal generator which is controlled by a standard attenuator to the half-wave dipole radiating antenna via a coaxial cable. Since a half-wave dipole is a balanced antenna, a balun must be used. (Commercially available dipoles usually have built-in baluns.) An impedance matching transformer may also be necessary if the impedance matching is not done with the balun.

7.2.2

The radiating antenna should be set up for horizontal polarization at height H as specified in Figure 1 and oriented for maximum radiation toward the location of the measuring instrument. The antenna should be adjusted to proper length at each frequency of measurement.

7.2.3

Connect a field strength meter or a spectrum analyzer (for brevity, FSM will be used to indicate either instrument) to the receiving half-wave dipole antenna via coaxial cable, again using a balun. Adjust the antenna to the frequency of the generated signal and tune the FSM to that signal.

7.2.4

Set the output level of the signal generator and the standard attenuator at a value that gives an FSM reading significantly above the ambient noise level or interfering signals from other sources. Record the attenuator setting.

7.2.5

Measure the horizontal component of the field strength at the location of the FSM. *Find the maximum value of the field strength by raising and lowering the measuring antenna over the search distance specified in Figure 1.* Record the reading of the FSM.

7.2.6

Disconnect the coaxial cables from the two antenna terminals and connect these cables together. (Depending upon the length of the cables with respect to the separation distance of the antenna, this connection may be possible without physical movement of the signal generator.) If the baluns can be disconnected at the antenna terminals, the baluns should be connected in the circuit as follows: cable ——> balun ——> balun ——> cable.

7.2.7

Adjust the standard attenuator to give the same FSM reading as that recorded in 7.2.4. Record the attenuator setting.

7.2.8

The site attenuation is the difference in dB between the standard attenuator setting recorded in 7.2.7 and that in 7.2.4. If the baluns or impedance matching transformers are removed or other wise not included int the measurement described in 7.2.6 then the loss of these devices must be considered. See paragraph 7.4.3.

7.3 *Plot of site attenuation data*

Plot the site attenuation data on 2 cycle, semi-log graph paper with frequency as the abscissa on the log scale and site attenuation in dB as the ordinate on the linear scale. The data should be plotted over the range 25–1000 MHz at the frequency intervals prescribed in paragraph 7.1.

7.4 *Analysis of site attenuation data*

7.4.1 *Theoretical site attenuation*

Paragraph 7.4.2 provides an equation for calculating the theoretical site attenuation, based on a plane wave model. Empirical results have shown this equation is not representative of what occurs below about 80 MHz. The measured attenuation below 80 MHz can be expected to be up to a few decibels more than what the equation predicts. Paragraph 7.4.5 gives more information on how to analyze the results in the 25–80 MHz region. Further study of theoretical models of site attenuation is taking place at the time of this writing and a more appropriate model covering the entire range 25–1000 MHz may be available in the near future.

7.4.2 *General equation for site attenuation*

The theoretical site attenuation above 80 MHz can be calculated from equation (1).

$$A = 20 \log_{10} D + 20 \log_{10} F_m - G_a - G_r - 27.6 - R \quad (1)$$

[1] American National Standard C63.2–1980, *Specifications for Electromagnetic Noise and Field Strength Instrumentation*, 10 kHz to 1 GHz, available from: Standards Department, The Institute of Electrical and Electronic Engineers, 345 E. 47th St., New York, New York 10017.

Where

A = Site attenuation in dB,

D = Distance in meters between the source (transmitting) antenna and receiving (FSM search) antenna.

F_m = Frequency in megahertz of the transmitted signal.

G_s = Gain in dB of the source antenna relative to isotropic.

G_r = Gain in dB of the receiving antenna relative to isotropic.

R = Contribution from ground reflected radiation.

If the baluns are integral parts of the antenna assemblies, their losses must be determined and included in equation 1. In some cases these losses have been determined by the manufacturers and are included in the manufacturer's specified gain factors. A further discussion of balun losses is given in 7.4.3.

The first five terms of equation 1 represent the attenuation that would be observed if the antennas were mounted in free space. The sixth term in the contribution to the received signal from radiation which is reflected from the ground plane. For 3, 10 and 30 meter site measurements, values of 4.3, 5.7 and 5.9 dB respectively can be used for the ground reflection contribution. These values were obtained using a geometrical model which assumes that the field at the receiving antenna is caused by a direct wave travelling a path, r_1, and a ground reflected wave travelling a path, r_2. On the basis of this model, the ground reflection contribution is

$$20 \log \left(1 + \frac{r_1}{r_2}\right)$$

if we assume perfect ground reflection. Although the geometrical model ground reflection contribution varies with the height of the receiving antenna above ground, the actual range of values over which it varies is quite small (3.74 to 4.84 dB for a 3 meter site, 5.46 to 5.86 dB for a 10 meter site and 5.91 to 5.98 dB for a 30 meter site). The recommended values of 4.3, 5.7 and 5.9 dB stated above are the midpoint values of these ranges.

If two tuned dipoles are used as the source and receiving antennas $G_s = G_r = 2.15$ dB and equation (1) becomes:

$$A = 20 \log_{10} D + 20 \log_{10} F_m - 31.9 - R \quad (2)$$

Sample Calculation:

Consider the case where:

D = 3 m and f_m = 100 MHz

If the source antenna and receiving antennas are tuned dipoles and each antenna balun has a loss of 0.5 dB at 100 MHz, then the site attenuation can be calculated from equation 2 to be

$$A = 20 \log_{10} (3) + \log_{10} (100) - 31.9 - 4.3 + 1.0$$
$$= 9.5 + 40 - 35.2$$
$$= 14.3 \text{ dB}$$

Note that the 1.0 dB balun loss has been included in the calculation.

7.4.3 *Cable and balun losses*

It may have been noticed that the site attenuation equation given in 7.4.2 does not account for cable losses. By connecting both antenna cables end to end as specified in 7.2.6, all cable losses are accounted for in the measurement of site attentuation and therefore need not be included in the theoretical equation. If a procedure different from that in 7.2.6 is used (e.g. only one of the cables is used to connect the signal generator to the FSM), the measured readings should be adjusted to account for cable loss. As baluns are usually wired directly into the antenna mounting structures, their losses cannot easily be determined without disassembling the entire antenna structure. With the baluns which we have used in our measurements, we have found that their losses are usually quite small (1 dB or less) and that if we assumed a value of 1 dB for the total balun loss, our measured results would still be within the acceptance margin discussed in 7.4.4. However, if one uses baluns of a connective type, then they should be disconnected at the antenna terminals and connected in series with the cables when measuring the site attenuation as described in 7.2.6. In this case, the balun losses should not be included in equation 1.

7.4.4 *Sample site attenuation curve*

Figure 2 presents a sample theoretical site attenuation curve for a 3 meter test site. Below 80 MHz the curve can be expected to flatten out, as illustrated by the dashed line portion of the curve. There will be less flattening for 10 and 30 meter sites.

7.4.5 *Comparison of data with the theoretical model*

Although several approximations have been made in deriving equation 1, it does give good agreement with measured site attenuation values at frequencies from 80 to 1000 MHz. Using tuned dipoles and an adequate ground screen, we have had no difficulty in repeatably measuring site attenuation above 80 MHz to within ± 2dB of the theoretical values. However, if other antennas are used or if the balun losses are not known accurately or if a ground screen is not used, then the differences between the experimental and theoretical values could be larger. However, discrepancies of more than 3 dB will perhaps indicate that there may be a problem with the site or with the method of measurement. Also any marked deviations from linearity above 80 MHz could be an indication of site or measurement difficulties.

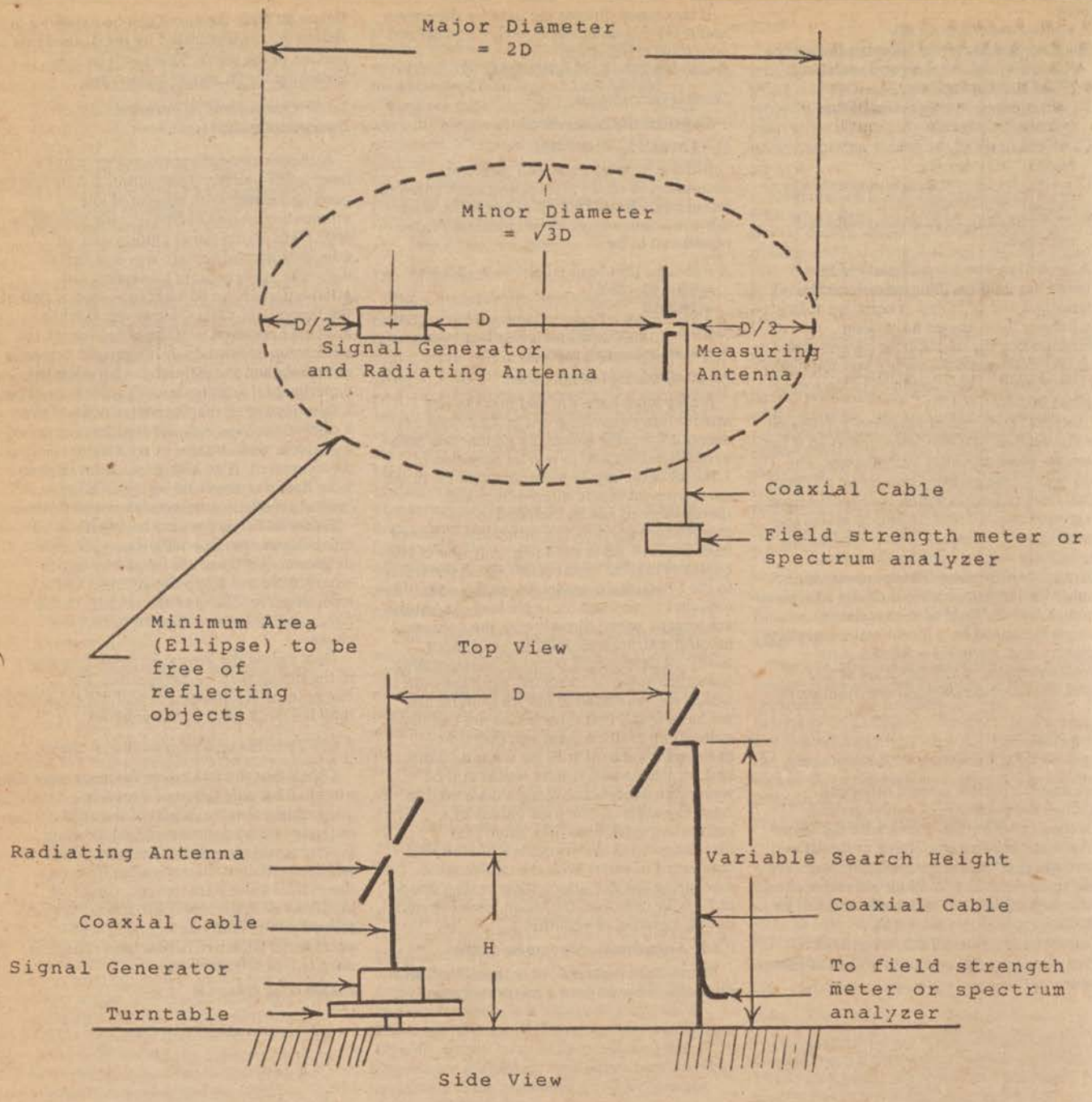
Below 80 MHz, the data is useful not so much for comparison with theory, but for determining if there are frequency bands where there are sharp departures from a smooth curve. Sharp peaks or nulls in the curve should be investigated to find the cause.

Data below the lowest turnable frequency of the dipole may be disregarded. For example, many dipole sets will not physically tune below 27 MHz or thereabouts.

7.4.6 *Possible causes of excesive errors*

Check that the procedure for measuring site attentuation was followed properly, particularly that the height of the FSM antenna was varied as required. Perform measurements at smaller frequency intervals where significant discrepancies from the theoretical values are noticed. Common problems with the site itself are: inadequate ground plane, faulty antennas or test equipment; defective cables; and reflecting objects that are too close.

BILLING CODE 6712-01-M



for D = 3m, H = 2m Search 1 - 4 meters
for D = 10m, H = 2m Search 1 - 4 meters
for D = 30m, H = 2m Search 2 - 6 meters

FIGURE 1. Equipment Arrangement for Measuring Site Attenuation of a Radiation Test Site.

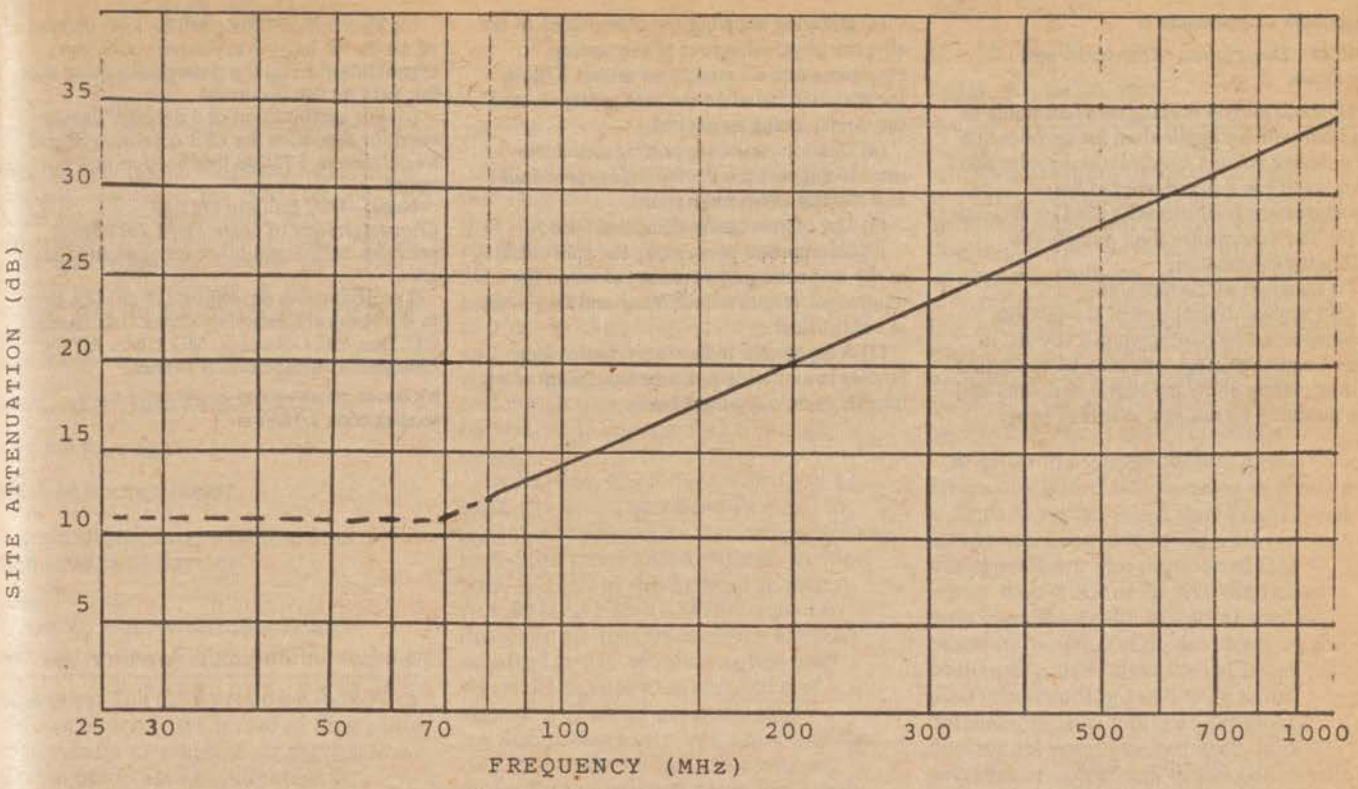


FIGURE 2. Sample Theoretical Site Attenuation Curve.
Both antennas tuned dipoles, D = 3m

The curve above 80 MHz was obtained from equation 1 using a value of 4.3 dB for the average ground reflection coefficient and 1.0 dB for the balun losses. The curve below 80 MHz is an approximation based upon experimental data.

Plot of equation 1
for D = 3m, R = -4.3 dB,
Balun loss = +1.0:

Frequency	Site Attenuation
80	12.4
100	14.3
150	17.9
200	20.4
300	23.9
400	26.4
500	28.3
600	29.9
700	31.2
800	32.4
900	33.4
1000	34.3

From experimental data:

The region from 25 to 80 MHz is relatively flat at about 11 dB.

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Appendix to Appendix B

§ 15.38 *Description of measurement facilities.*

(a) Each person making measurements to be filed with an application for certification of a device subject to regulations under this part, shall file a description of his measurement facilities with the Commission.

(b) The description shall include the following information:

(1) Location of the test site.

(2) Physical description of the test site accompanied by photographs 8" by 10" in size. Smaller photographs may be submitted if they clearly show the required details and are mounted on full size sheets of paper.

(3) Drawing showing the dimensions of the site, the physical layout of supporting structures and all structures within 5 times the distance between the measuring set and the device being measured.

(4) Description of supporting structures used to support the device being measured and the test instrumentation.

(5) List of measuring equipment used.

(6) Information concerning the calibration of the measuring equipment, i.e. when the equipment was last calibrated and frequency of calibration.

(7) A statement indicating whether this facility is available to do measurement work for others on a contract basis.

(c) This information shall be kept current at all times. At least every three years, the organization filing the data shall advise that the data on file is current.

(d) For certification of a decoder device used for detecting the EBS Attention Signal as defined in § 73.906 this Section will not apply.

Note.—FCC Bulletin OST 55 *Characteristics of Open Field Test Sites* provides further guidance on open field test sites.

The above site description should be sent to the Federal Communications Commission, P.O. Box 429, Columbia, MD 21045, ATTN: Equipment Authorization Branch.

[FR Doc. 82-22514 Filed 8-19-82; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 47, No. 162
Friday, August 20, 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.

CIVIL AERONAUTICS BOARD

14 CFR Part 323

[PDR-80 Docket: 40903]

Terminations, Suspensions, and Reductions of Service

August 5, 1982.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The CAB proposes to require airlines to notify the Board of their plans to terminate or suspend air service to a foreign point. This requirement is intended to allow the CAB to begin timely proceedings to find a replacement airline for that foreign air route.

DATES: Comments by: October 19, 1982

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

Requests to be put on the Service List: September 7, 1982

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

ADDRESSES: Twenty copies of comments should be sent to Docket 40903, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C., as soon as they are received.

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

SUPPLEMENTARY INFORMATION: The Board's rules, 14 CFR Part 323, require air carriers to give notice before terminating, suspending, or reducing air service. When Part 323 was first adopted, PR-200, 44 FR 20635, April 6, 1979, it required certificated carriers to file notice with the Board 90 days before terminating all service at a U.S. point, reducing that service below the level that the Board had determined to be essential for that point, or terminating all-cargo transportation to a foreign point. It also required certificated carriers to file notice 60 days before ending the last nonstop or single-plane service between two U.S. points, or the last nonstop or any single-plane service between a U.S. point and a foreign point.

By PR-244, 47 FR 7393, February 19, 1982, the Board amended Part 323 to reflect a change in its statutory authority to require termination notices (Section 1601(a)(1)(D) of the Federal Aviation Act, 49 U.S.C. 1551). With respect to domestic air service, airlines are now required to file advance notice only when the proposed termination of service will affect essential air transportation under section 419 of the Act. Although the Board's statutory authority to require notices involving foreign air transportation was not changed, those notices were eliminated entirely at the Board's own initiative.

Experience since the adoption of PR-244 indicates that the Board may have gone too far in eliminating all notices involving foreign air transportation. Lack of notice in international operations has tended to be harmful to both foreign relations and passenger interests. Entry in foreign markets is often restricted, either by bilateral agreements now in effect or by the practices of the foreign country. In these entry-restricted markets, it is important to ensure that route rights are exploited to their fullest, without substantial service disruptions. Without some advance notice, limited designation rights could lie dormant even though there were carriers willing to provide the service if they were aware of the opportunity.

For example, earlier this year, Braniff Airways served route B.4. between Houston, Texas, and Acapulco, Mexico. While it was still in operation, Braniff decided to terminate its service on that route. Because of the change in Part 323 it was not required, and did not give, any advance notice of the change. The Board became aware of Braniff's plans when Texas International Airlines filed an application for an exemption to serve the route. Texas International learned of Braniff's plans because Braniff mentioned the withdrawal in an exhibit attached to an application it filed in another proceeding. But for this chance discovery of Braniff's withdrawal, the Board might not have been able to arrange for replacement service in time to avoid a lapse in service. Order 82-4-118. Although the Board would probably have learned of Braniff's plans eventually, the significance of their mention in an exhibit to an unrelated application could easily be overlooked.

In order to avoid problems in the future, the Board is proposing to require airlines to report when they plan to end service on a route in foreign air transportation. The purpose of this report would not be to give the Board time to evaluate the essential service needs of the market or the effect on the community, as is the case with notices filed when ending service on some domestic routes. Thus, no service of documents would be required, and answers or objections to the notice will not be entertained. Airlines would be required to report the end of a particular foreign air service 30 days before they plan to terminate it or when they inform any generally-distributed schedule publication such as the Official Airline Guide, whichever occurs first.

In the Board's view, this reporting requirement would not reduce carriers' operational flexibility or be unduly burdensome. It would, however, give the Board advance knowledge of an opening on an entry-restricted international air route. It would also give carriers time to file applications to serve the route and the Board time to consider them.

Paperwork Reduction Act

The reporting requirements of this proposal have not been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and will not be effective until such approval is received and an OMB number is assigned.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354, the Board certifies that this rule will not, if adopted as proposed, have a significant economic impact on a substantial number of small entities. Air carriers that provide foreign air transportation are primarily large airlines and the communities to which

they provide that service are primarily large cities.

List of Subjects in 14 CFR Part 323

Air carriers, Essential air service.

PART 323—TERMINATIONS, SUSPENSIONS, AND REDUCTIONS OF SERVICE

Accordingly, the Board proposes to amend 14 CFR Part 323, *Terminations, Suspensions, and Reductions of Service,* as follows:

1. The Table of Contents would be revised by adding a new § 323.19, as follows:

Sec.

* * * * *

323.19 Report to be filed when discontinuing service in foreign air transportation.

2. A proviso would be added to paragraph (a) of § 323.8, as follows:

§ 323.8 Exemption.

Carriers are exempted from the following provisions of the Act or this part:

(a) Section 401(j) of the Act to the extent that that provision would otherwise require a carrier to file a notice when terminating, suspending, or reducing service in foreign air transportation, provided that it complies with § 323.19; and

* * * * *

3. A new § 323.19 would be added, to read:

§ 323.19 Report to be filed when discontinuing service in foreign air transportation.

(a) An air carrier shall notify the Board when it intends to terminate or suspend all nonstop or single-plane service that it provides between a point in the United States and a point not in the United States.

(b) The report required by paragraph (a) of this section shall be filed 30 days before the air carrier intends to terminate or suspend the service, or at the time that it gives notice of the change to any generally-distributed schedule publication in which the flights are listed, whichever occurs first.

(c) The report shall be sent to the Director of the Board's Bureau of International Aviation.

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

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-22838 Filed 8-19-82; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-128 (Colorado-1 Amdt.)]

High-Cost Gas Produced From Tight Formations; Colorado

August 17, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the proposal of the State of Colorado that the Wattenberg J Sand tight formation designation adopted in Order No. 124 in Docket No. RM79-76 (Colorado-1) be amended.

DATE: Comments on the proposed amendment are due on October 1, 1982.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on September 1, 1982.

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

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

SUPPLEMENTARY INFORMATION:

I. Background

On July 19, 1982, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a letter concerning revisions to exclude certain lands and to include certain lands from the Wattenberg J Sand, as designated as a tight formation pursuant to § 271.703(d). The Wattenberg J Sand Formation underlies portions of Adams, Boulder and Weld Counties, Colorado. The Commission adopted, in part, Colorado's recommendation that the Wattenberg J Sand be designated as a tight formation in Order No. 124, issued January 23, 1981, in Docket No. RM79-76 (Colorado-1) (46 FR 9921, January 30, 1981). The description of the area as designated appears in § 271.703(d)(11) of the Commission's regulations. In Order No. 124, the Commission excluded certain lands contained in Colorado's recommendation from the designation pursuant to § 271.703(c)(i)(D), because these areas had been subject to infill drilling orders, and information in Colorado's recommendation indicated that these areas could be developed absent the incentive price for tight formation gas. A description of the excluded acreage appears in the appendix to Order No. 124, in Docket No. RM79-76 (Colorado-1).

Colorado's July 19, 1982 letter provides amended information concerning well development within the Wattenberg J Sand and recommends that nine drilling units which were excluded by the Commission in Order No. 124 now be included in the tight formation designation and two drilling units which were included in the designation now be excluded from acreage within the Wattenberg J tight formation area. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's proposed amendment should be adopted, amending § 271.703(d)(11) to both add certain lands and delete certain lands from the Wattenberg J tight formation area. Colorado's amendment and supporting data are on file with the Commission and are available for public inspection.

II. Description of Proposed Amendment

Colorado recommends that certain locations within Townships 1 through 3 North, Ranges 65 through 68 West, excluded in Order No. 124 because of infill drilling, be included in the Wattenberg J tight formation area. Colorado also recommends that portions of Townships 2 and 3 North, Ranges 65 and 68 West, designated tight formation acreage in RM79-76 (Colorado-1), be added to the areas excluded in Order No. 124 because of infill drilling.

III. Discussion of Proposed Amendment

On August 21, 1979, Colorado issued Infill Drilling Order No. 232-20 covering portions of the Wattenberg J Sand Formation. The Commission excluded those portions of the area recommended for tight formation designation by

Colorado which were subject to Infill Drilling Order No. 232–20 and in which wells were completed for production prior to August 21, 1979, the date the infill order was issued. Colorado provided amended well completion reports in its July 19, 1982 letter for nine wells located in the area subject to the infill drilling order, showing that these wells were completed for production after the date the infill order was issued. Therefore, Colorado proposes that the 320-acre drilling units on which these wells are located should be included in the designated Wattenberg J tight formation area. Colorado also submitted amended completion reports for two wells located on 320-acre drilling units, subject to the infill drilling order, which indicate these wells were completed for production before the date the infill order was issued. Colorado proposes that these drilling units be excluded from the designated tight formation area. Since the Director expects that some drilling activity may have been undertaken in the areas now proposed to be excluded, in reliance on Order No. 124, any information concerning the existence and extent of any such drilling activity should be provided in comments to this Notice of Proposed Rulemaking.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposed amendment by Colorado that certain areas of the Wattenberg J Sand Formation, as described and delineated in Colorado's letter of correction as filed with the Commission, be either added to or excluded from, as appropriate, the designated area of the Wattenberg J Formation.

IV. Public Comment Procedures

Interested persons may comment on this proposed amendment by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before October 1, 1982. Persons who have undertaken the drilling of wells in the areas proposed for exclusion from the Colorado–1 tight formation designation are especially encouraged to submit comments. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–128 (Colorado-1 Amendment), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than September 1, 1982.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

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

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

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—CEILING PRICES

§ 271.703 [Amended]

Section 271.703(d)(11) is revised by amending the appendix to Order No. 124, Docket No. RM79–76 (Colorado–1), by deleting the following from the area excluded from the tight formation designation:

Weld County

Township 1 North, Range 66 West, 6th P.M.
Section 20: W½
Township 2 North, Range 65 West, 6th P.M.
Section 4: E½
Township 2 North, Range 67 West, 6th P.M.
Section 16: W½
Section 20: N½
Township 2 North, Range 68 West, 6th P.M.
Section 16: E½
Section 22: W½
Township 3 North, Range 65 West, 6th P.M.
Section 12: E½
Section 32: W½
Township 3 North, Range 66 West, 6th P.M.
Section 16: All

By adding the following to the area excluded from the tight formation designation:

Weld County

Township 2 North, Range 68 West, 6th P.M.
Section 16: W½
Township 3 North, Range 65 West, 6th P.M.
Section 32: E½

[FR Doc. 82–22839 Filed 8–19–82; 8:45 am]
BILLING CODE 6717–01–M

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18 CFR Part 271

[Docket No. RM79–76–133 (Colorado–29)]

High-Cost Gas Produced From Tight Formations; Colorado

August 17, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

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

DATE: Comments on the proposed rule are due on October 1, 1982. Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on September 1, 1982.

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

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

SUPPLEMENTARY INFORMATION:

I. Background

On August 2, 1982, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the J Sand Formation located in Adams and Arapahoe Counties, Colorado, be

designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that the J Sand Formation be designated a tight formation should be adopted. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The recommended area is located in Adams and Arapahoe Counties, approximately 24 miles due east of the city of Denver near the town of Strasburg, Colorado, and consists of approximately 51,200 acres of private and state lands. The J Sand Formation in the specified area ranges in thickness from 20 to 180 feet and is found at an average depth of 7,700 feet.

III. Discussion of Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG–34, Order No. NG–34–1 convened by Colorado on this matter demonstrates that:

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

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

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

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

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

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before October 1, 1982. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–133 (Colorado–29), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than September 1, 1982.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

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

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

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulations.

PART 271—CEILING PRICES

Section 271.703(d) is revised by adding new subparagraph (133) to read as follows:

§ 271.703 Tight formations.

* * * * *

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

(99) through (132) [Reserved]

(133) *J Sand Formation in Colorado.* RM79–76–133 (Colorado–29).

(i) *Delineation of formation.* The J Sand Formation is located in Adams and Arapahoe Counties, Colorado, approximately 24 miles due east of the city of Denver. The J Sand Formation underlies Township 3 South, Range 62 West, Sections 17 through 20 and 29 through 32; Township 3 South, Range 63 West, Sections 13 through 36; Township 4 South, Range 62 West, Sections 5 through 8, 17 through 20, and 29 through 32; and Township 4 South, Range 63, All, 6th P.M.

(ii) *Depth.* The J Sand Formation ranges in thickness from 20 to 180 feet. The average depth to the top of the J Sand Formation is 7,700 feet.

[FR Doc. 82–22841 Filed 8–19–82; 8:45 am]

BILLING CODE 6717–01–M

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18 CFR Part 271

[Docket No. RM79–76–129 (Missouri–1)]

High-Cost Gas Produced From Tight Formations; Missouri

August 17, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

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

DATE: Comments on the proposed rule are due on October 1, 1982. Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on September 1, 1982.

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

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or John Roy Johnson, (202) 357–8731.

SUPPLEMENTARY INFORMATION: .

I. Background

On July 14, 1982, the Missouri Department of Natural Resources (Missouri) submitted to the Commission's a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034,

August 22, 1980), that all rock units of Pennsylvanian age (the Pennsylvanian System) located in Cass and Bates Counties, Missouri, be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Missouri's recommendation that the Pennsylvanian System be designated a tight formation should be adopted. Missouri's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The recommended area lies within contiguous parts of Cass and Bates Counties, Missouri, on the eastern flank of the Forest City Basin, approximately 35 miles south of Kansas City in west central Missouri. The recommended area covers about 408 square miles in the following areas, all North and West: All of Townships 45–33, 45–32, 44–33, 44–32, 43–33, 43–32, 42–33, 42–32, and parts of Townships 45–31, 44–31, 43–31, 42–31, 41–33, 41–32, 41–31.

The recommended stratigraphic interval includes all Pennsylvanian formations in the Cherkee, Marmaton, Pleasanton, and Kansas City Groups. The interval is delimited below by the base of the Cherokee Group which is deposited unconformably upon Mississippian age rocks in Cass and Bates counties, and includes all strata from this unconformity upward to the earth's surface.

This Pennsylvanian interval contains numerous limestones, shales, and coal beds; however, most of the pay zones in the recommended interval are channel sands. Depth to the base of the Pennsylvanian System ranges from 400 to 900 feet from the surface.

III. Discussion of Recommendation

Missouri claims in its submission that:

(1) The recommended formation exhibits low permeability characteristics, and the price established in § 271.703(a) is necessary to provide reasonable incentives for production of gas from the recommended formation.

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

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

Missouri further asserts that there are no fresh water aquifers usable for domestic, livestock, or irrigation purposes that will be adversely affected by development of this formation.

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

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views, or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before October 1, 1982. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–129 (Missouri-1), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of a desire to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than September 1, 1982.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

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

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

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—CEILING PRICES

Section 271.703(d) is amended by adding new subparagraph (131) to read as follows:

§ 271.703 Tight formations.

* * * * *

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

(99) through (130) [Reserved]

(131) *Pennsylvanian System in Missouri.* RM79–76–129 (Missouri-1). (i) *Delineation of formation.* The Pennsylvanian System is found in contiguous parts of Cass and Bates Counties, Missouri, in the following areas, all North and West: all of Townships 45–33, 45–32, 44–33, 44–32, 43–33, 43–32, 42–33, 42–32, and parts of Townships 45–31, 44–31, 43–31, 42–31, 41–33, 41–32, 41–31. It is delimited below by an unconformity at the base of the Cherokee Group and includes all strata upward to the earth's surface.

(ii) *Depth.* The Pennsylvanian System in Cass and Bates Counties contains numerous limestones, shales, coal, and channel sands. Depth to the base of the recommended interval ranges from 400 to 900 feet from the surface.

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BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket No. 78N–0198]

GRAS Status of Dextrin

AGENCY: Food and Drug Administration.

ACTION: Tentative final rule.

SUMMARY: The Food and Drug Administration (FDA) is tentatively affirming that dextrin is generally recognized as safe (GRAS) as a direct human food ingredient. The safety of this ingredient has been evaluated under the comprehensive safety review conducted by the agency. FDA is publishing this document as a tentative final rule because the agency is not including levels of use or food categories in the GRAS affirmation regulation for this ingredient.

DATE: Comments on the revisions made to the regulation and issued as part of

this tentative final rule by October 19, 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: Mary C. Custer, Bureau of Foods (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202–426–9463.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 27, 1979 (44 FR 18246), FDA published a proposal to affirm that dextrin is GRAS for use as a direct human food ingredient. The proposal was published in accordance with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review on dextrin and the report of the Select Committee on GRAS Substances (the Select Committee) on dextrin have been made available for public review in the Dockets Management Branch (address above). Copies of these documents have also been made available for public purchase from the National Technical Information Service as announced in the proposal.

In addition to proposing to affirm the GRAS status of dextrin, FDA gave public notice that it was unaware of any prior sanctioned food ingredient uses for the substance, other than for the proposed conditions of use. Persons asserting additional or extended uses, in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions, so that the safety of the prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of dextrin recognized by issuance of an appropriate final rule under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181), or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert or rely on such sanction at any future time.

No reports of prior-sanctioned uses for dextrin were submitted in response to the proposal. Therefore, in accordance with the proposal, any right to assert a prior sanction for a use of dextrin under conditions different from those set forth in this regulation has been waived.

Nine comments were received in response to the proposal on dextrin. None of the comments opposed FDA's proposal to affirm dextrin as GRAS. The comments and the agency's conclusions are summarized below:

1. All nine comments objected to FDA setting current good manufacturing practice (CGMP) use conditions on dextrin either in general or with regard to specific food categories. Three comments opposed establishment of any use information for dextrin other than requiring adherence to general CGMP. The comments argued that FDA and the Federation of American Societies for Experimental Biology (FASEB) safety evaluations of dextrin did not indicate a need for specific CGMP levels of use, and that the National Academy of Sciences/National Research Council (NAS/NRC) survey of food manufacturers supplied incomplete use information on food uses of dextrin. Three national trade associations, representing confectionery, chewing gum, and baked food manufacturers, reported that surveys of their respective members indicated that the levels of use of dextrin in chewing gum, confections, frostings, and baked foods were higher than the proposed levels of use in these food categories.

One comment also reported that the levels of use proposed were not qualified with the phrase "as served", noting that this absence in the proposal was a deviation from normal procedures.

FDA acknowledges that information concerning the use of dextrin in food was not requested during the 1971 NAS/NRC survey of food manufacturers. As noted correctly in the comments, some dextrin food use information was voluntarily reported during this survey, but the survey did not provide a comprehensive list of food uses of dextrin. The agency also notes that there are extreme variations in the use of dextrin in individual foods within a single FDA food category. For example, in the confections and frostings category (21 CFR 170.3(n)(9)), use of dextrin is reported to range from 0.7 to 35 percent. These variations diminish the usefulness of levels of use for individual food categories.

FDA also agrees with the comments that safety concerns for food uses of dextrin are remote. Therefore, FDA concludes that adequate justification exists to remove the previously proposed levels of use and food categories and to require conformity only with the listed technical effects and CGMP. This action is justified because of the combination of the demonstated safety of the substance and of the inadequate food use information that was available to the agency at the time it prepared the proposal. Therefore, the agency is affirming tentatively the GRAS status of dextrin when it is used under current good manufacturing practice conditions of use in accordance with § 184.1(b)(1) (21 CFR 184.1(b)(1)). To make clear, however, that the affirmation of the GRAS status of dextrin is based on the evaluation of limited uses, the regulation sets forth the technical effects that FDA evaluated.

In the judgment of FDA, its decision not to include levels of use and food categories does not represent a major departure from the proposed regulation. The levels of use included in the proposal were never intended to be specific limitations, and the proposal was not intended to preclude the use of dextrins in any food category. However, to afford interested persons the opportunity to comment on the agency's decision, FDA is issuing this tentative final rule under § 10.40(f)(6) (21 CFR 10.40(f)(6)). FDA will review any comments relevant to the removal of the levels of use and food categories that it receives within the 60-day comment period and will issue in the **Federal Register** either an announcement that this tentative final rule has become final or an announcement of modification to this regulation made on the basis of any new comments.

In the future, FDA will propose to adopt a general policy restricting the circumstances in which it will specifically describe conditions of use in regulations affirming substances as GRAS under 21 CFR 184.1(b)(1) or 186.1(b)(1). The agency intends to amend its regulations to indicate clearly that it will specify one or more of the current good manufacturing practice conditions of use in regulations for substances affirmed as GRAS with no limitations other than current good manufacturing practice only when the agency determines that it is appropriate to do so.

By modifying the regulations as described above, there is no need to include the phrase "as served" in this tentative final rule. This phrase was inadvertently omitted from the proposal.

2. A trade association submitted detailed comments regarding dextrin food-grade specifications. The respondent was also opposed to identifying the specific acids and buffers used in the manufacture of dextrin. Instead, the comment recommended modifying the regulation to include the use of acids and buffers that are approved for food use and are listed in the Food Chemicals Codex.

The agency agrees that the inclusion of specific acids and buffers in the manufacturing method for dextrin was too restrictive. However, the agency is not adopting the comment's recommended change, but is indicating that safe and suitable alkali, acids, and pH control agents may be used in the manufacture of dextrin. This modification will permit the use of pH adjusting agents that may not have food-grade specifications listed in the Food Chemicals Codex, but are suitable for use in food.

The agency also agrees with the comment regarding food-grade specifications for dextrin. However, since publication of the proposal and the submission of this comment, the National Academy of Science's Food Chemicals Codex Committee has developed food-grade specifications for dextrin. These specifications, and the corresponding analytical methods, reflect the content of the comment submitted to FDA. Therefore, the agency has removed its previously proposed specifications and has incorporated the specifications listed in the Food Chemicals Codex, 3d Ed., in this tentative final rule.

In the past, when a substance has been listed in Part 182 (21 CFR Part 182) as GRAS for both direct and indirect uses, FDA has proposed separate GRAS affimation regulations in Parts 184 and 186 (21 CFR Parts 184 and 186) to govern its direct and indirect GRAS uses, respectively. Under § 184.1(a), however, ingredients affirmed as GRAS for direct food use in Part 184 are considered to GRAS for indirect use without there being a separate listing in Part 186. Based on § 184.1(a), FDA has reconsidered its traditional practice and has concluded that the duplicative listing in Part 186 is unnecessary, as a general rule, and may cause confusion. Thus, unless safety considerations make it necessary to impose specific purity specifications or other restrictions on the indirect use of a GRAS substance, FDA will no longer list in Part 186 substances that are affirmed as GRAS for direct use in Part 184. In keeping with this change in policy, FDA is not proposing a separate listing in Part 186 for the indirect use of dextrin. The indirect uses of dextrim would be authorized under §§ 184.1277 and 184.1(a).

In the case of dextrin, FDA believes that the general requirements that indirect GRAS ingredients be of a purity suitable for their intended use in accordance with § 170.30(h)(1) (21 CFR 170.30(h)(1)) and used in accordance with current good manufacturing practice are sufficient to ensure the safe use of this ingredient. Therefore, the agency has not proposed any specific purity specifications for its indirect use.

Although the policies discussed in the two preceding paragraphs are not inconsistent with the agency's current regulations, the agency published in the the **Federal Register** of June 25, 1982 (47 FR 27817) a proposal to amend its procedural regulations in parts 184 and 186 to reflect clearly these policies.

The format of the regulations included in this tentative final rule is different from that in previous GRAS affirmation regulations. FDA has modified paragraph (c) of § 184.1277 to make clear the agency's determination that GRAS affirmation is based upon current good manufacturing practice conditions of use, including technical effects. This change has no substantive effect but is made merely for clarity.

The agency has determined under 21 CFR 25.24(d)(6) (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.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect this tentative final rule would have on small entities including small businesses. Because the tentative final rule imposes no new restrictions on the use of this ingredient, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this tentative final rule, and the agency has determined that the final rule, if promulgated from this tentative final rule, would not be a major rule as defined by the Order.

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices and flavorings.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 182 and 184 would be amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§ 182.70 [Amended]

1. In § 182.70 *Substances migrating from cotton and cotton fabrics used in dry food packaging* by removing the entry for "Corn dextrin."

§ 182.90 [Amended]

2. In § 182.90 *Substances migrating to food from paper and paperboard products* by removing the entry for "Dextrin."

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

3. By adding new § 184.1277 to read as follows:

§ 184.1277 Dextrin.

(a) Dextrin ($(C_6H_{10}O_5)_n \cdot xH_2O$, CAS Reg. No. 9004–53–9) is an incompletely hydrolyzed starch. It is prepared by dry heating corn, waxy maize, waxy milo, potato, arrowroot, wheat, rice, tapioca, or sago starches, or by dry heating the starches after (1) treatment with safe and suitable alkalis, acids, or pH control agents and (2) drying the acid or alkali treated starch.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 96, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitations other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing conditions of use:

(1) The ingredient is used as a formulation aid as defined in § 170.3(o)(14) of this chapter; as a processing aid as defined in § 170.3(o)(24) of this chapter; as a stabilizer and thickener as defined in § 170.3(o)(28) of this chapter; and as a surface finishing agent as defined in § 170.3(o)(30) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in

this section do not exist or have been waived.

Interested persons may on or before October 19, 1982, file with the Dockets Management Branch (address above) written comments regarding this tentative final regulation. 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: August 4, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-22598 Filed 8-19-82; 8:45 am]

BILLLING CODE 4160-01-M

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21 CFR Parts 182 and 184

[Docket No. 80G-0306]

Potassium Chloride; Proposed Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to affirm that potassium chloride is generally recognized as safe (GRAS) as a direct human food ingredient. The safety of this ingredient has been evaluated under a comprehensive safety review conducted by the agency. A separate document presenting FDA's conclusion on the safety of sodium chloride appeared in the **Federal Register** of June 18, 1982 (47 FR 26590).

DATE: Comments by October 19, 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: Vivian Prunier, Bureau of Foods (HFF-335), Fooda and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: FDA is conducting a comprehensive review of human food ingredients classified as GRAS or subject to a prior sanction. The agency has issued several notices and proposals (see the **Federal Register** of July 26, 1973 (38 FR 20040)) initiating this review, under which the safety of potassium chloride has been evaluated. In accordance with the provisions of § 170.35 (21 CFR 170.35), the agency proposes to affirm the GRAS status of this ingredient.

The safety evaluations of potassium chloride and sodium chloride conducted by the Federation of American Societies for Experimental Biology (FASEB) were contained in the same report. This proposal presents only the FASEB GRAS evaluation and FDA's conclusion on the safety of potassium chloride. A separate document presenting the FASEB GRAS evaluation and FDA's conclusion on the safety of sodium chloride appeared in the **Federal Register** of June 18, 1982 (47 FR 26590).

Potassium chloride (KCl) is a white, odorless solid, consisting of elongated prismatic or cuboidal crystals that are soluble in water and glycerol. It has a saline taste, but at substantial levels, in the absence of sodium chloride, the taste is bitter. Natural deposits of the mineral sylvine (sylvite) are a source of potassium chloride.

Food-grade potassium chloride does not contain more than 3 parts per million (ppm) of arsenic or 10 ppm of heavy metals (determined as lead). The amount of sodium present does not impart a pronounced yellow color to a nonluminous flame when tested on a platinum wire as a 1 to 20 solution.

Potassium chloride was listed as a GRAS nutrient in a regulation published in the **Federal Register** of November 20, 1959 (24 FR 9368). Subsequently, it was listed as a GRAS nutrient and dietary supplement in a regulaton published in the **Federal Register** of January 31, 1961 (26 FR 938). However, under a regulation published in the **Federal Register** of September 5, 1980 (45 FR 58837), the nutrient and dietary supplement category was divided, with separate listings for GRAS dietary supplements and for GRAS nutrients. As a consequence, potassium chloride is listed as GRAS as a dietary supplement in § 182.5622 (21 CFR 182.5622) and as a nutrient in § 182.8622 (21 CFR 182.8622). It is also permitted as an optional ingredient in §§ 150.141 and 150.161 (21 CFR 150.141 and 150.161) as a stabilizer (jelling aid) in artificially sweetened fruit jelly, preserves, and jams.

Potassium chloride is used in whole or in part as a salt substitute by some people in an effort to reduce their sodium intake. FDA has published a policy statement (21 CFR 250.104) regarding the determination of food or drug status of salt substitutes. The Federal Food, Drug, and Cosmetic Act (the act) requires that salt substitute products containing potassium chloride be properly labeled.

As a medication, potassium chloride is given orally and intravenously in potassium depletion states that are often produced iatrogenically in the treatment of edema caused by renal, hepatic, or cardiac failure, or by diuretics used in hypertension and other cardiovascular diseases.

FDA has set forth labeling requirements for medical use of potassium salt preparations, including potassium chloride, in § 201.306 (21 CFR 201.306). The requirements cover preparations supplying 100 milligrams (mg) or more of potassium per tablet or capsule or 20 mg or more of potassium per milliliter of solution. A warning statement is required for preparations intended for ingestion without adequate prior liquid dilution.

Section 412(g) of the act lists potassium and chloride as required nutrients in infant formula, subject to level restrictions.

As for the use of potassium chloride in infant formula, FDA is reviewing all nutrient levels in infant formulas under a contract with the American Academy of Pediatrics. Any necessary modifications in the nutrient levels of potassium chloride in infant formula will be proposed by a separate rulemaking under section 412(a)(2) of the act.

In 1971, the National Academy of Sciences/National Research Council (NAS/NRC) surveyed a representative cross-section of food manufacturers to determine the specific foods in which potassium chloride was used and the levels of usage. The survey revealed that potassium chloride is used as a flavoring agent, flavor enhancer, and pH control agent. It is an ingredient in a variety of products, including fruit ices, baked goods, soups, and soft candy, at levels of less than 1 percent. It is used in seasonings, such as table salt substitutes, at much higher levels.

NAS/NRC combined the manufacturing information from the 1971 survey with information on consumer consumption of foods to obtain an estimate of the consumer exposure to potassium chloride. FDA estimates from the NAS/NRC survey that 1,325,000 pounds (602,000 kilograms (kg)) of potassium chloride were used in food in 1970.

A comparison of 1970 and 1975 usage of potassium chloride indicates a 2.5-fold increase in usage during the 5-year period. Table salt substitutes consisting of approximately equal parts of sodium chloride and potassium chloride may have contributed to this increase. There is no evidence that the level of potassium chloride added to any food product has changed in recent years. Although this increased use currently poses no general public health problem, the agency intends to continue to monitor the sodium and potassium content of the food supply. Should

substantial distortions in the sodium/potassium ratio occur, FDA may consider a further examination of the safety data for potassium chloride.

Potassium chloride has been the subject of a search of the scientific literature from 1920 to the present. The criteria used in the search were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) carcinogenicity, teratogenicity, or mutagenicity, (7) dose response, (8) reproductive effects, (9) histology, (10) embryology, (11) behavioral effects, (12) detection, and (13) processing. A total of 3,643 abstracts on sodium and potassium chlorides was reviewed, and 68 particularly pertinent reports on potassium chloride from the literature survey have been summarized in a scientific literature review.

Information from the scientific literature review and other sources has been summarized in a report to FDA by the Select Committee on GRAS Substances (Select Committee), which is composed of qualified scientists chosen by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB). The members of the Select Committee have evaluated all the available safety information on potassium chloride.[1] In the Select Committee's opinion:

Potassium chloride, a major constituent of plant and animal cells, is an essential constituent of the body and is rapidly adjusted to homeostatic levels following ingestion in amounts that can be tolerated without causing nausea and vomiting. The amount of potassium chloride added to food by processors in 1975 was of the order of 20 mg daily on a per capita basis while the amount of potassium in the average diet was equivalent to 4 to 9 g of potassium chloride. Review of the availabile information reveals that under clinical conditions, fatal or serious toxic reactions to potassium chloride rarely occur. An occasional complication from concentrated potassium chloride tablets given orally is ulceration of small intestine.

The available evidence indicates that in normal individuals potassium chloride is well tolerated, and that metabolism quickly and efficiently adjusts potassium in the body to narrow homeostatic levels. Certain health conditions are known to affect the normal homeostatic control of sodium and potassium metabolism, and patients with these conditions must adjust their diets to avoid proscribed electrolyte intakes.

Water intake, efficiency of the kidney, and the ratio of sodium to potassium in the diet are interrelated factors that must be evaluated in considering the health aspects of changing the relative intakes of sodium chloride and potassium chloride. Potassium chloride could be substituted for sodium chloride in some of its application; however, the unpleasant taste of substantial amounts of potassium chloride, in the absence of sodium chloride, makes this improbable. Thus, the Select Committee believes that the extensive substitution of potassium chloride, which might increase its per capita usage from 20 mg to 2 g or more, is unlikely. If this degree of substitution were made, the ratio of sodium to potassium in the diet would be reduced from the current value of approximately 1.4 to a value nearer 0.9 in a 2600-kcal diet which would provide about 160 mg potassium and 140 mg sodium per 100 kcal. By replacing some sodium-containing ingredients with ingredients that provide other cations and by increasing the consumption of foods lower in sodium content, it is probable that reduced sodium intakes would be a more important factor than increased consumption of potassium in lowering this ratio. Available data do not provide cause for concern in this regard. Nevertheless, the following conclusion of the Select Committee is premised on the continued monitoring of the sodium and potassium content of the U.S. diet and contingent upon periodic review of the health aspects of using potassium chloride as a food ingredient.[2]

The Select Committee concludes that there is no evidence in the available information on potassium chloride that demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when it is used at levels that are now current or that might reasonably be expected in the future.[3]

FDA has undertaken its own evaluation of available information, insofar as potassium chloride is used as an ingredient in conventional food [4], and concurs with the conclusion of the Select Committee. The agency concludes that no change in the current GRAS status of this ingredient is justified. Therefore, the agency proposes that potassium chloride be affirmed as GRAS.

Additionally, the agency is proposing not to include in the GRAS affirmation regulation for potassium chloride the levels of use and food categories reported in the NAS/NRC 1971 survey for this ingredient. Both FASEB and the agency have concluded that a large margin of safety exists for the use of this substance, and that a reasonably foreseeable increase in the level of consumption of potassium chloride will not adversely affect human health. Therefore, the agency is proposing to affirm the GRAS status of potassium chloride when it is used under current good manufacturing practice conditions of use in accordance with § 184.1(b)(1) (21 CFR 184.1(b)(1)). To make clear, however, that the affirmation of the GRAS status of this substance is based on the evaluation of currently known uses, the proposed regulation sets forth the technical effects that FDA evaluated.

In the future, FDA will propose to adopt a general policy restricting the circumstances in which it will specifically describe conditions of use in regulations affirming substances as GRAS under 21 CFR 184.1(b)(1) or 186.1(b)(1). The agency intends to amend its regulations to indicate clearly that it will specify one or more of the current good manufacturing practice conditions of use in regulations for substances affirmed as GRAS with no limitations other than current good manufacturing practice only when the agency determines that it is appropriate to do so.

The Select Committee had no data upon which to evaluate the use of potassium chloride in dietary supplements because this use was not included in the 1971 survey of the food industry. FDA also has no data on dietary supplement use. Without such exposure data, the agency cannot evaluate the safety of this use of potassium chloride and therefore can take no action on the GRAS status of this substance for this use. In fact, two recent deaths, apparently from misuse of KCl preparations, have raised concerns about the use of potassium chloride in dietary supplements. In one case, a young woman on a liquid protein diet indiscriminately ingested a prescribed KCl medication whenever she felt weak or tired. Postmortem examination revealed that shortly before her death she had ingested 47 tablets of potassium chloride. In the second case, a nursing mother, in accordance with the directions of a popular health book, mixed KCl with her breast milk and administered the mixture to a 2-month-old infant with "colic." Death resulted after an estimated total KCl dose of 4 to 12 times the amount needed had the child been hypokalemic. FDA recognizes that these are unusual cases. However, their occurrence does demonstrate the

[1] "Evaluation of the Health Aspects of Sodium Choride and Potassium Chloride as Food Ingredients," Life Sciences Research Office, Federation of American Societies for Experimental Biology, 1979, pp. 42–49. In the past, the agency presented verbatim the Select Committee's discussion of the biological data it reviewed. However, because the Select Committee's report is available at the Dockets Management Branch and from the National Technical Information Service, and because it represents a significant savings to the agency in publication costs, FDA has decided to discontinue presenting the discussion in the preamble to proposals that affirm GRAS status in accordance with current good manufacturing practice.

[2] *Ibid.*, p. 49.

[3] *Ibid.*, p. 50.

[4] FDA is using the term "conventional food" to refer to food that would fall within any of the 43 categories listed in § 170.3(n) (21 CFR 170.3(n)).

need for caution in the use of KCl dietary supplements. Misuse, even in patients with normal renal and cardiac function, may lead to spurious hyperkalemia and death.

FDA considers only those KCl preparations containing less than 100 mg of potassium per tablet or capsule, or less than 20 mg potassium per milliliter, to be dietary supplements. The agency considers preparations containing amounts equal to or greater than these levels to be drugs that are subject to the requirements of § 201.306 for sale by prescription only. FDA adopted § 201.306 because studies had demonstrated that concentrated doses of potassium salts may produce serious, possibly fatal, lesions in the small bowel.

In light of the foregoing discussion, FDA is retaining the current listing of potassium chloride as a dietary supplement in § 182.5622. The agency cannot affirm GRAS status in the absence of use information. Except for cases of misuse or abuse, however, the data do not suggest that dietary supplements containing KCl present a safety concern to healthy individuals. Consequently, FDA is proposing to amend § 182.5622 to indicate clearly that only those preparations with KCl concentrations below the levels prescribed in § 201.306 are considered to be dietary supplements.

Copies of the scientific literature review on potassium chloride, reports of the teratology and mutagenic screening tests for the ingredient, and the report of the Select Committee are available for review at the Dockets Management Branch (address above), and may be purchased from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161, as follows:

Title	Order No.	Price code	Price [1]
Sodium chloride, potassium chloride (scientific literature review)	PB 241-973/AS	A13	$16.00
Teratogenic evaluation of potassium chloride	PB 245-528/AS	A03	6.00
Mutagenic evaluation of potassium chloride	PB 245-507/AS	A03	6.00
Sodium chloride and potassium chloride (Select Committee report)	PB 298-139/AS	A04	7.00

[1] Price subject to change.

This proposed action does not affect the current use of potassium chloride in pet food or animal feed.

The format of the proposed regulation is different from that in previous GRAS affirmation regulations. FDA has modified paragraph (c) of § 184.1620 to make clear the agency's determination that GRAS affirmation is based upon current good manufacturing practice conditions of use, including the technical effects listed. This change has no substantive effect but is made merely for clarity.

The agency has determined under 21 CFR 25.24(d)(6) (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, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that the effect of this proposal is to maintain current known uses of the substance covered by this proposal by both large and small businesses. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this proposal, and the agency has determined that the final rule, if promulgated, will not be a major rule as defined by the Order.

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices and flavorings.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Parts 182 and 184 be amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. Part 182 is amended:

a. In § 182.5622 by revising paragraph (b), to read as follows:

§ 182.5622 Potassium chloride.

* * * * *

(b) *Conditions of use.* This substance is generally recognized as safe when used in accordance with current good manufacturing practice. Preparations containing amounts equal to or greater than 100 milligrams of potassium per tablet or capsule, or 20 milligrams of potassium per milliliter, are drugs subject to the provisions of § 201.306 of this chapter.

§ 182.8622 [Removed]

b. By removing § 182.8622 *Potassium chloride.*

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. In part 184 by adding new § 184.1622, to read as follows:

§ 184.1622 Potassium chloride.

(a) Potassium chloride (KCl, CAS Reg. No. 7447–40–7) is a white, odorless solid prepared from source minerals by fractional crystallization or flotation. It is soluble in water and glycerol and has a saline taste at low concentration levels.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 241, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitations other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing conditions of use:

(1) The ingredient is used as a flavor enhancer as defined in § 170.3(o)(11) of this chapter; as a flavoring agent as defined in § 170.3(o)(12) of this chapter; as a nutrient supplement as defined § 170.3(o)(20) of this chapter; as a pH control agent as defined in § 170.3(o)(23) of this chapter; and as a stabilizer or thickener as defined in § 170.3(o)(28) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice. Potassium chloride may be used in infant formula in accordance with section 412(g) of the act or with regulations promulgated under section 412(a)(2) of the act.

The agency is unaware of any prior sanction for the use of this ingredient in foods under conditions different from those identified in this document. Any person who intends to assert or rely on such a sanction shall submit proof of its

existence in response to this proposal. The action proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the act (21 U.S.C. 342), and the failure of any person to come forward with proof of an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on it later. Should any person submit proof of the existence of a prior sanction, the agency hereby proposes to recognize such use by issuing an appropriate final rule under Part 181 (21 CFR Part 181) or affirming it as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

Interested persons may, on or before October 19, 1982, submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. 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: August 6, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-22626 Filed 8-19-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 184

[Docket No. 80N-0107]

Maltodextrin; Proposed Affirmation of GRAS Status as Direct Human Food Ingredient

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to affirm that maltodextrin is generally recognized as safe (GRAS) as a direct human food ingredient. The safety of this ingredient has been evaluated under a comprehensive safety review conducted by the agency.

DATE: Comments by October 19, 1982.

ADDRESS: 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: Mary C. Custer, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: FDA is conducting a comprehensive review of human food ingredients classified as GRAS or subject to a prior sanction. The agency has issued several notices and proposals (see the **Federal Register** of July 26, 1973 (38 FR 20040)) initiating this review, under which the safety of maltodextrin has been evaluated. In accordance with the provisions of § 170.35 (21 CFR 170.35), the agency proposes to affirm the GRAS status of this ingredient.

Maltodextrin, also called hydrolyzed cereal solids, is a nonsweet, nutritive saccharide that consists of D-glucose units linked primarily by α-1-4 bonds and that has a dextrose equivalent (D.E.) of less than 20. Maltodextrin is manufactured as a purified concentrated solution, or as a white powder, by acid or acid enzyme hydrolysis of cornstarch. The manufacturing processes for making maltrodextrin are similar to those used in the production of corn syrup, except that maltodextrin is less extensively hydrolyzed than corn syrup and, hence, has a lower D.E. than corn syrup.

In a 1960 opinion letter, FDA stated that it considered dextrin to be GRAS. The agency's letter responded to a letter from industry which defined dextrin to include maltodextrin.

According to food manufacturers' estimates, total production of maltodextrin in 1977 was approximately 1.5 percent of the total corn sweetener production in the United States or about 120 million pounds. Assuming that all the maltodextrin produced was added to processed foods, and these foods were eaten, the per capita intake of maltodextrin in the United States was about 0.7 gram per day.

Because of the similarity between the manufacturing processes for maltodextrin and for corn syrup, the Select Committee on GRAS Substances (the Select Committee), which was appointed by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB), included some information on maltodextrin in its report to FDA entitled "Evaluation of the Health Aspects of Corn Sugar (Dextrose), Corn Syrup, and Invert Sugar as Food Ingredients." However, the Select Committee did not discuss maltodextrin in its opinion statement in that report. Consequently, FDA requested the Select Committee to prepare an additional statement specifically on maltodextrin. The statement of the Select Committee on maltodextrin summarizes the available information on the composition, uses, consumer exposure, and biological properties of this substance and includes the following information:

In carbohydrate tolerance studies with 3-day-old infants, a D.E. 11 maltodextrin was fed as a 20 percent aqueous solution and as the carbohydrate component of a formula containing 20 percent carbohydrate, 2.8 percent protein, 3.5 percent fat, and 73.7 percent water. Glucose, maltose, and a thin-boiling starch (a slightly hydrolyzed starch) were fed in similar preparations. Peak concentrations of glucose in the blood were recorded within 60 minutes after the onset of the feeding for all carbohydrates. The maximum increase following maltodextrin when fed either in aqueous solution or as a component of the formula was similar to that for maltose, significantly less than that for glucose, and greater than that for thin-boiling starch.

Oral administration of Polycose® (a solution of maltodextrin, D.E. about 19) or glucose given to 11 adults on separate occasions after an overnight fast produced no statistically significant differences in mean blood glucose concentrations. Peak levels of blood glucose were reached after one-half hour; concentrations were followed for 5 hours.

Information on the composition of soy isolate infant formulas currently marketed shows corn syrup solids and/or sucrose as the carbohydrate component. According to Anderson *et al.*, the D.E. of these products range from 30 to 42. Prior to 1975, maltodextrin (D.E. about 19) was used as a carbohydrate source in the soy isolate infant formula made by at least one manufacturer. Several studies of the nutritional value of this infant formula have been reported. Jung and Carr reported equal growth in infants (20 in each group) fed, for 16 weeks, this soy-based formula or a milk-based formula. Dean observed that the soy-based formula supported normal growth and development in 14 infants during the first 6 months of life and was comparable in nutritional value to a milk-based formula fed to 29 infants in the control group. In a study of the management of allergy in infants, Cowen *et al.* fed a soy-based formula containing maltodextrin to 28 infants for 6 to 9 months. Increases in length and weight, hemoglobin, total plasma protein and albumin, were essentially within normal ranges.[1]

All the available safety information on maltodextrin has been carefully evaluated by qualified scientists of the Select Committee. In the Select Committee's opinion:

Maltodextrins are obtained by the hydrolysis of corn starch in processes similar to those used in the production of corn syrups except that hydrolysis is stopped at an earlier state. The resulting product has a dextrose equivalent of less than 20 whereas identity standards for corn syrups specify a dextrose equivalent of 20 or more. Maltodextrins are

[1] "Statement on Maltodextrins," Life Sciences Research Office, Federation of American Societies for Experimental Biology, 1978, pp. 1-4. Copies are available from the Dockets Management Branch (address above). FDA is presenting this biological data on maltodextrin in this document because the data are not available from the National Technical Information Service.

almost tasteless and are used in foods primarily because of their functional properties rather than as a caloric source. An exception is their use as a caloric source in some medical foods for hospital use. Per capita daily intake is relatively small, amounting to about 0.7 g.

Studies with infants and adults indicate that maltodextrins are readily digested and absorbed. No adverse results have been reported in controlled studies or clinical experience with infant formulas in which maltodextrins have been used as a carbohydrate source.[2]

The Select Committee concludes that no evidence in the available information on maltodextrin demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when maltodextrins are used at levels that are now current or that might reasonably be expected in the future.[3]

FDA has undertaken its own evaluation of all available information on food uses of maltodextrin and concurs with the conclusion of the Select Committee. The agency concludes that no change in the current GRAS status of this ingredient is justified. Therefore, the agency proposes that maltodextrin be affirmed as GRAS.

Information concerning the use of maltodextrin in food was not requested during the 1971 National Academy of Sciences/National Research Council (NAS/NRC) survey of food manufacturers on the use of food substances that are GRAS. However, some information on maltodextrin use was reported voluntarily during this survey. The survey found that maltodextrin was used in food as an "enzyme" in baked goods at a maximum level of 1.1 percent and as a flavoring agent in nut products at a maximum level of 3.5 percent. The survey also reported uses of hydrolyzed cereal solids (maltodextrin) as a surface-finishing agent in baked goods and in confections and frostings at maximum levels of 0.006 and 0.009 percent, respectively, and as a texturizer in soft candy at a maximum level of 12 percent. Additionally, some uses of dextrin reported during the 1971 NAS/NRC survey appear, from product literature, to be applicable to maltodextrin.

Given the lack of information regarding current uses of maltodextrin in food, FDA requested information from industry concerning the food categories, technical effects, and maximum levels of use of maltodextrin. The resulting reports from the industry showed uses of maltodextrin in at least 32 of the 43 food categories listed in 21 CFR 170.3(n) and for at least 14 of the 32 technical effects listed in 21 CFR 170.3(o). The reports indicated that maltodextrin is used in dry foods as a carrier and bulking agent to ensure uniform distribution of minor ingredients and in wet foods as a bodying agent or crystal modifier to influence mouth feel. In addition, the data from industry and the NAS/NRC survey showed that the maximum level of maltodextrin in food, as manufactured, can vary widely from 0.1 percent to greater that 99 percent, depending upon the food category, and can vary widely even within a single food category. For example, within the breakfast cereal food category (21 CFR 170.3(n)(4)), the levels of maltodextrin range from 4 to 40 percent, depending upon the technical effect.

Additionally, FDA is proposing not to include in the GRAS affirmation regulation for maltodextrin the categories, technical effects, and the levels of use reported both in the information obtained from industry and voluntarily reported to NAS/NRC for the 1971 survey of food substances that are GRAS. Both FASEB and the agency have concluded that a large margin of safety exists for the use of this substance, and that a reasonably foreseeable increase in the level of consumption of maltodextrin will not adversely affect human health. Therefore, the agency is proposing to affirm the GRAS status of maltodextrin when it is used under current good manufacturing practice conditions of use in accordance with § 184.1(b)(1) (21 CFR 184.1(b)(1)).

In the future, FDA will propose to adopt a general policy restricting the circumstances in which it will specifically describe conditions of use in regulations affirming substances as GRAS under 21 CFR 184.1(b)(1) or 186.1(b)(1). The agency intends to amend its regulations to indicate clearly that is will specify one of more of the current good manufacturing practice conditions of use in regulations for substances affirmed as GRAS with no limitations other than current good manufacturing practice only when the agency determines that it is appropriate to do so.

Because no food-grade specifications exist for maltodextrins at the present time, the agency will work with the Committee on Codex Specifications of the National Academy of Sciences to develop acceptable specifications for this ingredient. If acceptable specifications are developed, the agency will incorporate them into this regulation at a later date. Until specifications are developed, FDA has determined that the public health will be adequately protected if commercial maltodextrin complies with the description in the proposed regulations and is of food-grade purity (21 CFR 170.30(h)(1) and 182.1(b)(3)).

Copies of the report of the Select Committee on the health aspects of corn sugar (dextrose), corn syrup, and invert sugar food ingredients and of the Select Committee's statement on maltodextrin are available for review at the Dockets Management Branch (address above). The former may also be purchased from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161, as follows:

Title	Order No.	Price code	Price [1]
Corn sugar, corn syrup, and invert sugar (Select Committee report).	PB-262-659/AS.....	A03	$4.50

[1] Price subject to change.

This proposed action does not affect the current use of maltodextrin in pet food or animal feed.

The format of the proposed regulation is different from that in the previous GRAS affirmation regulations. FDA has modified paragraph (c) of § 184.1444 to make clear the agency's determination that GRAS affirmation is based upon current good manufacturing practice conditions of use. This change has no substantive effect, but is made merely for clarity.

The agency has determined under 21 CFR 25.24(d)(6) (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 evnironment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that the effect of this proposal is to maintain current known uses of the substance covered by this proposal by both large and small businesses. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this proposal, and the agency has determined that the final rule, if promulgated, will not be a major rule as defined by the Order.

[2] *Ibid*, p. 5.
[3] *Ibid*, p. 5.

List of Subjects in 21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CR 5.10), it is proposed that Part 184 be amended by adding new § 184.1444, to read as follows:

§ 184.1444 Maltodextrin.

(a) Maltodextrin ($(C_6H_{10}O_5)_n$' CAS Reg. No. 9050–36–6) is a nonsweet nutritive saccharide polymer that consists of D-glucose units linked primarily by α-1-4 bonds and that has a dextrose equivalent (D.E.) of less than 20. It is prepared as a white powder or concentrated solution by partial hydrolysis of corn starch with safe and suitable acids and enzymes.

(b) FDA is developing food-grade specifications for maltodextrin in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice.

The agency is unaware of any prior sanction for the use of this ingredient in foods under conditions different from those indentified in this document. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The action proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342), and the failure of any person to come forward with proof of such an applicable prior sanction in response to this proposal constitutes a waiver of right to assert or rely on it later. Should any person submit proof of the existence of a prior sanction, the agency hereby proposes to recognize such use by issuing an appropriate final rule under Part 181 (21 CFR Part 181) or affirming it as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

Interested persons may, on or before October 19, 1982, submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. 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: August 4, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–22486 Filed 8–19–82; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 419]

Establishment of Shenandoah Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in Virginia and West Virginia, to be known as "Shenendoah Valley." This proposal is the result of a petition submitted by Shenandoah Vineyards, Edinburg, Virginia. ATF feels that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will allow wineries to better designate the specific grape growing area where their wines come from and will enable consumers to better identify the wines they may purchase.

DATES: Written comments must be received by October 4, 1982.

ADDRESSES: Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044–0385, (Notice No. 419).

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4405, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20226.

FOR FURTHER INFORMATION CONTACT: James A. Hunt, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape growing region distinguishable by geographical features.

Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Petition

ATF has received a petition proposing an area in the counties of Frederick, Clarke, Warren, Shenandoah, Page, Rockingham, Augusta, Rockbridge, Botetourt, and Amherst in Virginia, and the counties of Berkeley and Jefferson in West Virginia, as a viticultural area to be known as "Shenandoah Valley." The area consists of approximately 2.4 million acres. The area varies in altitude

from about 275 feet to 4200 feet. The average altitude is 1340 feet.

Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition.

The petitioner claims that the proposed viticultural area is known locally and nationally by the name "Shenandoah Valley." The petitioner submitted an extensive bibliography with the petition. The bibliography, exhibits 1 and 3 of the petition, is available for public inspection as noted in the **"ADDRESSES"** paragraph of this notice. Generally, the entries in this bibliography are selected articles appearing in 33 publications, such as newspapers, during an 18 month period, in the United States and Canada, in which the subject had been this Shenandoah Valley with the circulation totaling over seven million. Additionally, there is a general bibliography of 30 writings concerning this Shenandoah Valley. The petitioner further bases this claim on (a) 178 listings under the name "Shenandoah" and 217 listings under the name "Shenandoah Valley" in the card catalog of the Virginia State Library, (b) 15 different issues of the National Geographic magazine from 1926–1970 mentioning the Virginia Shenandoah Valley, (c) articles about this Shenandoah Valley appearing in four encyclopedias, and (d) four dictionary references about this Shenandoah Valley.

Evidence relating to the geographical characteristics which distinguish the viticultural features of the proposed area from surrounding areas.

The petitioner claims that the proposed viticultural area is distinguished from the surrounding areas geographically. The petitioner bases this claim on the following:

(a) The surficial deposits consist of residual deposits, colluvium, and alluvium. The residual deposits and colluvium are closely related in origin to the rocks on which they rest. The alluvial deposits are distributed close to or downstream from the rocks that are their source. It is not unusual for residuum to occur in thicknesses of as much as 100 feet and more on carbonate rocks.

In the mountain areas, covers of thicker residuum are found only on the granitic rocks of the Blue Ridge when protected from erosion by a thin mantle of fresh core stones. On the other side of the Shenandoah Valley, shales interbedded with thin sandstones have a cover of residuum protected by a blanket of sandstone flags. Other areas are characterized by many cliffy slopes and thin rocky soils.

The petitioner asserts that the surficial deposits in the valley are, therefore, consistent and have a marked delineation from surrounding areas.

(b) Exclusive of alluvial areas, comprising only about 15 percent of the whole valley, which are relatively flat, the land slopes toward a stream, either steeply or gently. The overall shape or form of the landscape is determined by the network of stream channels, each channel being concave to the sky. The local relief is determined by ridges which rise to a more or less even height above the streams.

(c) The General Soil Map of Virginia prepared by the Soil Conservation Service of the U.S. Department of Agriculture shows that the soils suitable for agriculture in the valley can, in fact, be used to delineate the valley lowlands. Except for the Massanutten Mountain uplift, essentially all of the area is overlain by Frederick-Lodi-Rock outcrop. The petitioner states that this soil does not occur anywhere else in the State.

(d) The climate features, including average temperature and precipitation, are relatively consistent throughout the valley. The petitioner cites data from four weather stations of the U.S. Department of Commerce Weather Bureau, specifically the stations of Lexington and Staunton, Virginia in the southern end and Winchester and Woodstock, Virginia in the northern end of the valley. These stations show average temperatures ranging from 53.9° F to 55.7° F, precipitation from 33.8" to 37.7", heating degree days from 4344 to 4866 and cooling degree days from 851 to 1046. The petitioner states the four stations to the east of the valley show average temperatures ranging from 47.8° F to 57° F, precipitation from 38.6" to 48.6", heating degree days from 4026 to 6463 and cooling degree days from 0 to 1263. Further, the petitioner generally states to the west similar variations occur. (The petitioner made no statement concerning climatological distinction from the surrounding northern and southern areas.)

Historical or current evidence that the boundaries of the proposed viticultural area are as specified in the petition.

The petitioner claims that the boundaries of the proposed viticultural area are as specified in the petition. The petitioner bases this claim on the following information:

The Shenandoah Valley is geologically well defined by the Blue Ridge Mountains on the east and by the Allegheny Mountains on the west. On the north it is drained by the Potomac River, into which the Shenandoah River drains. To the south, the Shenandoah Valley is generally known to extend somwhat beyond the headwaters of the Shenandoah River because of the similar topographic features, the same soils, and similar climatic conditions.

The petitioner refers to John T. Hack as one of the foremost geological authorities on the Shenandoah Valley and refers to his report on the "Geomorphology of the Shenandoah Valley" as the source of the following quotes and summarizations.

The Shenandaoh Valley is an example of a mountain landscape that has been formed by erosion during a long interval of geologic time and that has reached a condition of dynamic equilibrium in which the adjustment between the landforms and the rocks beneath is nearly complete. It is an elongate area lying between the Blue Ridge Mountains on the Southeast and the North and Shenandoah Mountains (the beginning of the Allegheny complex) on the Northwest.

"The Valley" is a segment of a long and fertile lowland or trough, underlain by Cambrian and Ordovician limestone and shale, that extends along the axis of the Appalachian Highlands. It separates the Blue Ridge province from the main part of the Valley and Ridge province and has long been a main route of migration and travel to the west and southwest, as well as one of the country's rich agricultural areas.

On the east side of the Valley, the Blue Ridge Mountains are underlain by igneous rocks, the most resistant of which are metabasalts of the Catoctin Formation of Precambrian age. Highlands on the west side of the Valley are underlain by sandstones and quartzites of Silurian to Mississippian age. The main lowland areas of the Shenandoah Valley are underlain by a thick sequence of limestones, dolomites and shales of early Cambrian to late Ordovician age.

The petitioner further states (not from Hack) that although the literature is replete with references to the Shenandoah Valley lying between the Blue Ridge and the Allegheny Mountains and that it ends on the north with the Shenandoah River emptying into the Potomac, the southern boundary is not quite as completely and sharply defined. A valley, of course, is generally thought of as an area drained by a river and its tributaries. By this definition the Shenandoah Valley would end on the south with the beginning of the headwaters of the Shenandoah River near the southern boundary of Rockbridge County. In fact, the

geological purist would also end it there. The petitioner believes, however, that other conditions relevant to a viticultural area, such as soil and terrain, as well as the geographical features associated with the closing of the mountains and the cutting by the James River dictate that the boundary should be extended, for this purpose, the short distance to the James River. The petitioner states in local usage the valley extends beyond that point, since there is no geographical division discernable at the headwaters of the Shenandoah River.

The petitioner submitted the following references and quotes relating to the southern boundary of the proposed area:

"The Shenandoah Valley is a beautiful rolling area in northwest Virginia. It includes the seven counties drained by the Shenandoah River and much of the area drained by the James River west of the Blue Ridge mountains." 17 World Book Encyclopedia 321 (1980). "Shenandoah Valley, chiefly in Virginia * * * drained by the Shenandaoh River, it embraces nine counties, Berkeley and Jefferson in West Virginia and Frederick, Clark, Shenandoah, Warren, Rockingham, Page and Augusta in Virginia. The valley is often considered to extend to the James River and to include Rockbridge County." IX Encyclopedia Brittanica 132 (1981). The petitioner noted that the 1943 edition of Encyclopedia Brittanica refers to the extension to the James River as popular usage.

Specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey maps.

The boundaries of the proposed Shenandoah Valley viticultural area may be found on four United States Geological Survey Maps. These U.S.G.S. maps are titled as follows:

(1) "ROANOKE," Eastern United States, 1:250,000 scale;

(2) "CHARLOTTESVILLE," Eastern United States, 1:250,00 scale;

(3) "CUMBERLAND," Eastern United States, 1:250,000 scale; and

(4) "BALTIMORE," Eastern United States, 1:250,000 scale.

The boundaries, as proposed by the petitioner, are described in proposed § 9.60.

Viticulture in The Proposed Area

The following statistics were developed from information (not necessarily in the petition) available to ATF:

(1) Total acreage in the proposed area—approximately 2.4 million acres.

(2) Total producing commercial winegrape acreage—approximately 116 acres (100 additional acres proposed for 1982) in the Virginia portion of the proposed area and approximately 13 acres (17 additional acres proposed for 1982) in the West Virginia portion.

(3) Commercial vineyards (winegrapes)—7 in the Virginia portion of the proposed area and 9 in the West Virginia portion.

(4) Commercial wineries—3 in the Virginia portion of the proposed area.

Public Participation—Written Comments

ATF requests comments concerning this proposed viticultural area from all interested persons.

Specific Questions

Note.—A viticultural area is defined as a delimited grape growing region distinguishable by geographical features. The petition is viewed within that viticultural area context. Commenters are, of course, free to submit *any* opinion, data, or conclusion that they feel will be helpful in this rulemaking.

Name

1. The petitioner requests that the name "Shenandoah Valley" be used to designate the proposed viticultural area in Virginia and West Virginia. Because the proposed viticultural area is over 150 miles in length and in two States, should the proposed viticultural area name include the applicable word "Virginia" or "West Virginia"?

2. Is the southern portion of the proposed area (proposed boundary extension in Question 4 following) known by the proposed name? Locally? Nationally? Explain.

Boundaries

3. Do the Shenandoah Valley boundaries proposed by the petitioner describe an area which is only historically known or does the boundary describe a grape growing region? We are not aware of any vineyards in Warren or Clark Counties nor are we aware of any vineyards in the portions of Amherst and Botetourt Counties which are included in the petitioner's boundary. Should these four counties be omitted from the Shenandoah Valley viticultural area if there are no vineyards located in these counties? Explain.

4. Is the southern proposed boundary, which was ". . . extended, for this purpose, the short distance to the James River . . ." accurate as submitted? Explain.

5. Do the proposed boundaries accurately delimit a grape growing region by identifiable geographical features? Explain.

Viticultural Features

6. Are the viticultural features of the proposed viticultural area distinguishable from surrounding areas? Explain.

Comments

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Acting Director within the 45 day comment period. The Acting Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not expected to apply to this proposed rule because the proposal, if promulgated as a final rule, is not expected to have a significant economic impact on a substantial number of small entities. Since the benefits to be derived from using a new viticultural area appellation of origin are intangible, ATF cannot conclusively determine what the economic impact will be on the affected small entities in the area. However, from the information we currently have available on the proposed Shenandoah Valley viticultural area, ATF does not feel that the use of this appellation of origin will have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 the Bureau has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Drafting Information

The principal author of this document is James A. Hunt, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Viticultural areas, Consumer protection, Wine.

Authority

Accordingly, under the authority in 27 U.S.C. 205, (49 Stat. 981, as amended), ATF proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The Table of Sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.60. As amended, the Table of Sections reads as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.60 Shenandoah Valley.

Par. 2. Subpart C is amended by adding § 9.60 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.60 Shenandoah Valley.

(a) *Name.* The name of the viticultural area described in this section is "Shenandoah Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Shenandoah Valley viticultural area are four U.S.G.S. Eastern United States 1:250,000 scale maps. The maps are titled: Roanoke (1971), Charlottesville (1956, with a revision in 1965), Cumberland (1956, revised 1969) and Baltimore (1957, revised 1978).

(c) *Boundaries.* The Shenandoah Valley viticultural area is located in Frederick, Clarke, Warren, Shenandoah, Page, Rockingham, Augusta, Rockbridge, Botetourt, and Amherst Counties in Virginia, and Berkeley and Jefferson Counties in West Virginia. The boundaries are as follows:

The boundary line starts at the point of the intersection of the Potomac River and the Virginia-West Virginia State line approximately eight miles east of Charlestown, West Virginia. The line then proceeds southwesterly approximately 14.8 miles along such State line, which essentially follows the crest of the Blue Ridge Mountains, to its intersection with the westerly border line of Clarke County, Virginia. The line continues approximately 13.8 miles southwesterly along such county line and the crest of the Blue Ridge to its intersection with the westerly boundary line of Warren County, Virginia. The line continues approximately 15 miles along such Warren County line to its intersection with the Skyline Drive. The line continues approximately 71 miles in a southwesterly direction along the Skyline Drive and the Blue Ridge to its intersection with the Blue Ridge Parkway. The line continues approximately 53 miles in a southwesterly direction along the Blue Ridge Parkway to its intersection with the James River. The line then proceeds approximately 44 miles along the James River in a west-northwesterly direction to its intersection with the northwest boundary line of the Jefferson National Forest near Eagle Rock. The line then proceeds approximately 10.5 miles in a northeasterly direction along the Jefferson National Forest line and along the crest of North Mountain to its intersection with the westerly boundary line of Rockbridge County. The line continues approximately 23 miles along such county line in the same northeasterly direction to its intersection with the Chesapeake and Ohio Railroad. The line continues approximately 23 miles along such railroad between the Great North Mountain and the Little North Mountain to its intersection with the southeastern boundary line of the George Washington National Forest at Buffalo Gap. The line continues approximately 81 miles northeasterly along the George Washington National Forest line to the Vertical Control Station, (elevation 1883), on the crest of Little North Mountain approximately 3 miles west of Van Buren Furnace. The line continues approximately 53 miles northeasterly along the crest of Little North Mountain to its intersection with the Potomac River in Fort Frederick State Park. The line then proceeds approximately 47.4 miles southeasterly along the Potomac River to the beginning point at that river's intersection with the boundary line between West Virginia and Virginia.

Signed: July 13, 1982.

Stephen E. Higgins,

Acting Director.

Approved: July 30, 1982.

J. M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 82-22801 Filed 8-19-82; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-049A]

Occupational Exposure to Lead; Respiratory Protection; Quantitative Fit Testing Provision; Reopening Record

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of limited reopening of record.

SUMMARY: On May 19, 1981, OSHA published a notice of proposed rulemaking (46 FR 27358) on the revision of the lead standard to include use of specified forms of qualitative fit testing as an option to the existing requirement for quantitative fit testing in 29 CFR 1910.1025(f)(3)(ii). A hearing was held on the issues of this proposal on September 22, 23, 1981. The record closed on December 18, 1981.

OSHA has just recently received and is placing into the record important new data from Los Alamos National Laboratory which is relevant to this proceeding. In addition, other relevant documents are being added to the record at this time. The record will remain open until September 20, 1982 to allow the public to review these data and to submit comments on the newly entered materials.

DATES: The record will remain open and public comment will be received until September 20, 1982.

ADDRESSES: Written submissions for the record should be sent to the Docket Officer, Docket No. H-049A, Room S-6212, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, D.C. 20210; telephone 202-523-7894. All written submissions as well as the entire record will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT:

Mr. James Foster, Occupational Safety and Health Administration, Rm. N-3637, 200 Constitution Ave. NW., Washington D.C. 20210; telephone 202-523-8151.

Signed at Washington, D.C., this 17th day of August, 1982.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 82-22785 Filed 8-19-82; 8:45 am]

BILLING CODE 4510-26-M

29 CFR Part 1952

Proposed Supplement to California State Plan

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The State of California has submitted a supplement to its occupational safety and health plan which adds a Small Employer Voluntary Compliance Program. The Program exempts from general schedule inspections for one year those small employers who, as a result of a wall-to-wall consultation, voluntarily comply with State occupational safety and health regulations. This document provides an opportunity for interested persons to comment on the change.

DATE: Comments should be submitted by September 20, 1982.

ADDRESS: Written comments should be sent to: Carol Sanford, Project Officer, Office of State Programs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N–3619, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Carol Sanford, telephone (202) 523–8045.

SUPPLEMENTARY INFORMATION:

Background

The California Occupational Safety and Health Plan was approved under Section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c)) and Part 1902 of this Chapter on April 24, 1973 (38 FR 10717). Part 1953 of this Chapter provides procedures for the review and approval of State change supplements by the Assistant Secretary for Occupational Safety and Health (hereinafter called the Assistant Secretary).

Description of Supplement

California has adopted a Small Employer Voluntary Compliance Program which is designed to reward the efforts of small businesses whose voluntary compliance with State occupational safety and health standards results from a wall-to-wall consultation The program, effective March 1, 1981, is described in California's Policy and Procedure C–14, Attachment B, in the Policy and Procedure Manual of the Division of Occupational Safety and Health (hereinafter called DOSH).

In brief, the program provides that employers with 50 or fewer employees who have fixed worksites will not be routinely inspected by DOSH for one year if employers meet the following criteria: (1) The employer has requested and received a wall-to-wall consultation by the Cal/OSHA Consultation Service within the 12 months preceding any attempt by the Division of Occupational Safety and Health to conduct a routine inspection; (2) the employer has corrected, or is in the process of correcting, any safety or health hazards which the Cal/OSHA consultant identified to the employer as a result of the consultation; and (3) the employer has an accident and illness prevention program as required by California General Industry Safety Order 3203. This accident prevention program must at a minimum include (1) a training program for employees in safe work practices and specific instructions with respect to hazards unique to the job assignment and (2) scheduled periodic inspections to identify and correct unsafe conditions and work practices.

To ensure that health coverage is adequate, a consultant with cross-over training is used for any consultation vist where health hazards are anticipated. The consultant may request the services of an industrial hygienist on referral, if necessary. The consultant makes follow-up visits to confirm abatement of all identified hazards or may accept the employer's written confirmation of abatement.

The employer is required to invite employee participation in the consultation walkthrough. The consultant informs the employee representative about the program and explains complaint procedures.

Location of the Plan and its Supplement for Inspection and Copying

A copy of the supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations:

Director, Federal Compliance and State Programs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N–3613, Washington, D.C. 20210.

Regional Administrator, Occupational Safety and Health Administration, 450 Golden Gate Avenue, Room 11349, San Francisco, California 94102.

California Occupational Safety and Health Administration, 525 Golden Gate Avenue, Third Floor, San Francisco, California 94102.

Public Participation

Interested persons are hereby given until September 20, 1982, to submit written data, views and arguments concerning whether the supplement should be approved. Such submissions should be addressed to the Director, Federal Compliance and State Programs, at the above address, where they will be available for inspection and copying.

Any interested person may request an informal hearing concerning the proposed supplement by filing particularized written objections within the time allowed for comments specified above. If, in the opinion of the Assistant Secretary, substantial objections are filed which warrant further public discussion, a formal or informal hearing on the subject and issues involved may be held.

The Assistant Secretary shall consider all relevant comments, arguments and requests submitted in accordance with this notice and shall then issue his decision on approval or disapproval of the supplement, make appropriate changes to Subpart W of Part 1952, and initiate further appropriate proceedings if necessary.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

Signed at Washington, D.C. this 16th day of August, 1982.

Thorne G. Auchter,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 82–22852 Filed 8–19–82; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A–3–FRL 2191–5]

Finding of the Interregional TSP Study for the Steubenville-Weirton-Wheeling Interstate Air Quality Control Region With Respect to the Attainment of the Primary TSP Standard in the West Virginia Portion

AGENCY: Environmental Protection Agency.

ACTION: Notification of study finding and opportunity for public comment.

SUMMARY: This notice announces findings and solicits public comments on a study of Total Suspended Particulate (TSP) in the West Virginia portion of the Steubenville-Weirton-Wheeling Interstate Air Quality Control Region (AQCR). The study supports an earlier control strategy demonstration which concludes that the primary National Ambient Air Quality Standard (NAAQS) for TSP will be met in that area.

DATE: Comments with respect to the findings must be submitted on or before September 20, 1982.

ADDRESSES: Copies of the study reports and findings are available for inspection during normal business hours at the

following office: U.S. Environmental Protection Agency, Region III (3AW13), 6th and Walnut Streets, Philadelphia, PA 19106.

All comments should be addressed to: James E. Sydnor, Chief, West Virginia/Virginia Section (3AW13), U.S. Environmental Protection Agency, Region III, 6th and Walnut Streets, Philadelphia, PA 19106.

FOR FURTHER INFORMATION CONTACT: Edward A. Vollberg (3AW13), WV/VA Section, U.S. Environmental Protection Agency, Region III, 6th and Walnut Streets, Philadelphia, PA 19106. Telephone: (215) 597–8990.

SUPPLEMENTARY INFORMATION: On June 18, 1979, the Governor of West Virginia submitted to EPA an SIP revision for the areas in West Virginia which had not attained the National Ambient Air Quality Standard for Total Suspended Particulates (TSP). The revision was prepared in accordance with the requirements of section 110 and Part D of Title I of the Clean Air Act. EPA conditionally approved the part of the revision for attaining the primary TSP standard in the Steubenville-Weirton-Wheeling Interstate Air Quality Control Region (45 FR 54051, August 14, 1980).

The demonstration of attainment of the primary standard was based upon proportional rollback. (See 36 FR 15489, August 14, 1971.) The rollback demonstration was in accordance with EPA regulations, and no alternate analysis was available at the time. Nonetheless, in the preamble of the final rule (45 FR 54047) EPA noted some limitations of this technique and believed that further study of the source-receptor relationships was necessary. Further, the preamble stated that a consultant under contract to EPA was performing a study. The study titled "Interregional TSP Study for the Steubenville-Weirton-Wheeling Interstate Air Quality Control Region" was completed in October, 1980. EPA has analyzed the study results pertaining to the West Virginia portion of the study area and is stating the findings in this notice.

The study examined the entire AQCR including part of West Virginia and Ohio. One purpose of the study was to find out whether compliance with the then existing regulations on the emission of particulate matter would result in attainment of the TSP standard in the AQCR. In general, it was the conclusion of the report that compliance with the applicable regulations would not result in attainment of the standard throughout the valley. Upon careful examination of the basis for this conclusion, it is found that it applies to several areas in the Ohio portion of the AQCR. Further, the study indicates that with all sources in the AQCR complying with the regulations there would be attainment of the primary annual NAAQS for TSP at the monitoring sites in West Virginia. Statistical analysis of the monitor data indicates that the annual standard is the leading standard (that is, attainment of the annual standard implies that the 24-hour standard will also be met). Thus, under the rollback rules, which require that attainment be demonstrated only at the monitor location, the demonstration remains acceptable.

National Steel Corporation—Weirton Division has also performed some diffusion modeling for certain particulate sources at the Weirton plant. EPA has evaluated that modeling and finds that it is not adequate for purposes of demonstration of standards attainment. EPA believes that, on the balance, there is not adequate justification for changing its earlier approval of the attainment demonstration.

Interested persons are invited to review the TSP study and findings and submit comment. If significant coments are received evidencing that the attainment of the primary TSP standard has not been adequately demonstrated, EPA will require West Virginia to submit a new plan for the AQCR. EPA has the authority to require such a plan under section 110(a)(2)(H) of the Clean Air Act.

Dated: August 5, 1982.

A. Montague,

Acting Regional Administrator.

[FR Doc. 82-22793 Filed 8-19-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 86

[AEN-FRL-2192-3]

American Motors Corp. Application for Waiver of the 1984 Model Year Oxides of Nitrogen Emission Standard Applicable to Light-Duty Diesel Powered Vehicles; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: This notice announces that EPA has received an application from American Motors Corporation (AMC) for waiver of the 1984 model year oxides of nitrogen (NO_x) emission standard applicable to light-duty diesel-powered vehicles. Additionally, Toyota Motor Company, Ltd. (Toyota) has filed a letter of intent to apply for a waiver of the 1984 model year NO_x standard applicable to light-duty diesel powered vehicles. EPA is scheduling a public hearing to consider requests for waivers of the NO_x standard by AMC, Toyota (assuming that its waiver request is timely received) and any other parties timely requesting such a waiver.

DATES: EPA has scheduled a public hearing on August 31, 1982, beginning at 9:00 a.m., to consider applications for waiver of the NO_x standard by AMC, Toyota (assuming that its waiver request is received by August 27, 1982) and any other parties submitting such application by August 27, 1982. Parties desiring to testify should notify the Manufacturers Operations Division, as noted below, not later than August 27, 1982. Interested parties should submit any relevant written comments by September 3, 1982, to ensure that the Administrator can consider these comments in deciding on the applications. If no party testifies at the hearing, EPA will consider the waiver requests based on written submissions to the record.

ADDRESSES: The hearing will be held at the Manufacturers Operations Division Conference Room, 499 South Capitol Street, SW., 2nd floor, Washington, D.C. Parties planning to testify at the hearing should notifty Mr. Peter J. Murtha, as noted below. Manufacturers submitting applications, or parties submitting written comments, should direct their submissions to the Director, Manufacturers Operations Division (EN-340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. All public portions of applications and other relevant information will be available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at U.S. Environmental Protection Agency, Central Docket Section (A-130), Gallery I. Waterside Mall, 401 M Street, SW., Washington, D.C. 20460 (Docket No. EN-82-08).

FOR FURTHER INFORMATION CONTACT: Mr. Peter J. Murtha, Attorney/Advisor, Manufacturers Operations Division (EN-340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382-2521.

SUPPLEMENTARY INFORMATION:

I. Background

Section 202(b)(6)(B) of the Act, 42 U.S.C. 7521(b)(6)(B) (1977), allows any manufacturer to petition the Administrator of EPA for waiver of the 1981–1984 model year NO_x standard of 1.0 gram per vehicle mile (g/mi). The Administrator, after notice and opportunity for public hearing, may

waive the standard for any class or category of light-duty vehicles manufactured during the four model year period, beginning in model year 1981, up to a maximum level of 1.5 g/mi, if the manufacturer can show that the waiver is necessary to permit diesel engine technology to be used on the subject vehicles.

The waiver may be granted if the Administrator determines:

(i) That the Waiver will not endanger public health;

(ii) That the waiver will result in significant fuel savings at least equal to the fuel economy standard applicable in each year under the Energy Policy and Conservation Act; and

(iii) That the technology has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act at the expiration of the waiver.

EPA published guidelines for diesel NO_x waiver applications in the **Federal Register** at 43 FR 30341 (July 14, 1978), in order to apprise manufacturers of the information then deemed necessary to demonstrate that a waiver should be granted. EPA subsequently published a notice in the **Federal Register** at 46 FR 20705 (April 7, 1981), also announcing procedures for submitting NO_x waiver applications covering model years 1981–1984.

EPA has received an application from AMC for waiver of the 1984 model year NO_x standard for its new 4-cylinder 1.6 liter diesel engine family. Additionally, EPA has received a letter of intent to apply for waiver of the 1984 model year NO_x standard from Toyota for its new 1.8 liter normally aspirated and turbocharged diesel engine families.

II. Hearing Procedures

The hearing will provide an opportunity for interested persons to state their views or arguments, or to provide pertinent information concerning the waiver request at issue. Any party desiring to make an oral statement at the hearing should notify Peter J. Murtha of EPA's Manufacturers Operations Division as listed above no later than August 27, 1982. The procedures for the hearing will be the same as those EPA has employed in previous diesel NO_x waiver hearings.[1]

Presentations by the participants at the hearing and interested parties who make written submissions or file applications should address the considerations listed in previous NO_x waiver hearing notices [2] and in the **Federal Register** notice that announced consolidated proceedings to consider NO_x waiver applications for the 1981–1984 model years.[3]

Interested parties should submit written information to the record by September 3, 1982, to ensure its consideration by the Adminstrator in formulating waiver decisions. At the hearing, the Agency will make a verbatim record of any testimony. The Administrator will base determinations with regard to manufacturers' waiver requests on the record of the public hearing and on any other relevant written materials. This information will be available for public inspection at the EPA Central Docket Section in Docket EN–82–8. Interested parties may obtain copies of documents in the public docket as provided in 40 CFR Part 2.

Dated: August 17, 1982.

Charles L. Elkins,

Acting Assistant Administrator for Air, Noise and Radiation.

[FR Doc. 82–22835 Filed 8–19–82; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 256

[HW–9–FRL 2191–7]

Availability of Guam's Solid Waste Management Plan and Request for Public Comment

AGENCY: Environmental Protection Agency.

ACTION: Availability of State plan for public comment.

SUMMARY: As provided by the Resource Conservation and Recovery Act (RCRA), the Territory of Guam has received Federal financial assistance for the development of a territorial solid waste management plan. On July 13, 1982, the Territory of Guam submitted its adopted solid waste management plan to the U.S. Environmental Protection Agency (EPA). Under Section 4007(a) of the Act, EPA is to approve or disapprove State plans within six months of receipt. EPA may also issue a partial plan approval. With an approved plan, States can issue protective compliance schedules to entities engaged in open dumping. Partial plan approval allows EPA to authorize a State to issue protective compliance schedules. Today EPA is announcing the availability for public review of Guam's solid waste management plan which has been submitted to EPA for approval.

DATE: To be considered as part of the administrative record of this proceeding, comments on the Guam solid waste management plan must be received on or before September 20, 1982.

ADDRESSES: Written comments should be sent to: Environmental Protection Agency, Regions 9, Toxics & Waste Management Division, Karen Schwinn (T–2–1), 215 Fremont Street, San Francisco, CA 95105.

Copies of the Guam solid waste management plan are available at the following addresses for inspection by the public:

Solid and Hazardous Waste Program, Guam Environmental Protection Agency, P.O. Box 2999, Agana, GU 96910, (671) 646–8863.

U.S. Environmental Protection Agency, Region 9, Toxics and Waste Management Division, 215 Fremont Street, 6th Floor, San Francisco, CA 94105 (415) 974–8119

U.S. Environmental Protection Agency, Headquarters Library, Room 2404, 401 M Street SW., Washington, D.C. 20464.

FOR FURTHER INFORMATION CONTACT: Karen Schwinn, RCRA State Programs Section, Toxics & Waste Management Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105; (415) 974–8124.

SUPPLEMENTARY INFORMATION: On July 31, 1979, the Environmental Protection Agency published Guidelines for the Development and Implementation of State Solid Waste Management Plans (45 FR 45066). These guidelines were required by Section 4002(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA). The guidelines reflect the statutory requirements for State plans and recommend methods and procedures to meet those requirements.

Under Section 4007 of RCRA, the Administrator approves State plans which meet the requirements of paragraphs (1), (2), (3), and (5) of Section 4003 of RCRA and which contain provisions for revisions. Briefly, these requirements are:

1. The plan shall identify the responsibilities of State, local and regional authorities in the implementation of the State plan; the distribution of Federal funds to the authorities responsible for development and implementation of the State plan; and the means for coordinating regional

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[1] *See* 45 FR 27768 (April 24, 1980).

[2] *See*, e.g., 45 FR 73790 (November 6, 1980).

[3] 46 FR 20705 (April 7, 1981).

planning and implementation under the State plan;

2. The plan shall prohibit the establishment of new open dumps within the State and contain requirements that all solid waste shall be utilized for resource recovery or disposed of in sanitary landfills, as defined by Section 4004(a) of RCRA, or otherwise disposed of in an environmentally sound manner. The State prohibition on open dumps must be effective as of the date on which EPA approves the plan;

3. The plan shall provide for the closing or upgrading of all existing open dumps within the State;

4. The plan shall provide that no local government within the State shall be prohibited under State and local law from entering into long-term contracts for the supply of solid waste to resource recovery facilities; and

5. The plan must contain specific provisions for revisions.

The guidelines also addressed Section 4005 of RCRA which requires a mechanism in the State plan for the establishment of compliance schedules for entities engaged in the prohibited act of open dumping. The plan must provide that, in attempting to obtain such compliance schedules, entities must demonstrate their inability to utilize other public or private alternatives to comply with the prohibition.

On September 23, 1981 (46 FR 47048), EPA amended the Guidelines to authorize partial approval of State plans. These amendments authorize EPA to approve that portion of the State plan under which entities may, pursuant to 40 CFR 256.26, receive compliance schedules from the State leading to compliance with the open dumping prohibition of Section 4005. In such a partial plan approval the Administrator must determine that:

(1) The portion submitted satisfies § 256.26;

(2) The State has authority to issue and enforce compliance schedules; and

(3) The State will complete the remainder of the plan within a reasonable period of time.

The Territory of Guam has submitted a complete solid waste management plan to EPA for approval. The plan was approved by th Guam Environmental Protection Agency, following public hearings, on October 23, 1981. The final plan includes a responsiveness summary which was written in reply to comments received by the Territory at the public hearings.

Copies of the Guam solid waste management plan are available for public inspection and comment as noted above.

Exemption from Executive Order 12291

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 256

Grant programs—environmental protection, Waste treatment and disposal.

(Sec. 4007(a), Pub. L. 94–580, 90 Stat. 2817, (42 U.S.C. 6947); Sec. 3, Pub. L. 96–354, 94 Stat. 1168, (5 U.S.C. 605))

Dated: August 9, 1982.

John Wise,

Acting Regional Administrator.

[FR Doc. 82-22805 Filed 8-19-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 256

[HW-5-FRL-2191-6]

Nebraska's Application for Approval of Solid Waste Managment Plan

AGENCY: Environmental Protection Agency (EPA), Region VII.

ACTION: Availability of State plan for public comment.

SUMMARY: EPA is today soliciting public comment on whether Nebraska's solid waste management plan meets EPA's guidelines for the approval of State solid waste management plans under Subtitle D of the Resource Conservation and Recovery Act of 1976, as amended. Under Section 4007(a) of the Act, EPA is to approve or disapprove State plans within six months of receipt. EPA may also issue a partial plan approval. With an approved plan, States are eligible under the Act for financial and technical assistance and can issue protective compliance schedules to solid waste disposal facilities and practices engaged in open dumping. Partial plan approval allows EPA to authorize a State to issue protective compliance schedules. Today EPA is announcing the availability of Nebraska's plan for public review and is inviting public comment on the plan.

DATE: Comments on the Nebraska's solid waste management plan must be received by September 20, 1982.

ADDRESS: Copies of the Nebraska solid waste management plan are available at the following addresses for inspection and copying by the public: Nebraska Department of Environmental Control, 301 Centennial Mall South, Lincoln, Nebraska 68509; U.S. Environmental Protection Agency Region VII Library, Room 1615, 324 East Eleventh Street, Kansas City, Missouri 64106; and Environmental Protection Agency Headquarters Library, Room 2404, 401 M Street SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: Under Subtitle D of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), EPA is authorized to approve State solid waste management plans. The criteria for approving those plans are set forth in EPA's Guidelines for Development and Implementation of State Solid Waste Management Plans (Guidelines), codified at 40 CFR Part 256. Among other things, the Guidelines require that plans identify a general strategy for achieving the following objectives:

- Protecting human health and the environment from adverse effects associated with solid waste disposal;
- Prohibiting the establishment of new open dumps;
- Upgrading or closing existing open dumps;
- Encouraging resource recovery and resource conservation;
- Providing adequate disposal capacity in the State;
- Establishing priorities for State solid waste activities; and
- Dealing with other issues relevant to solid waste management.

The State plan must also set forth the institutional arrangements that the State will use to implement this strategy.

Under RCRA and the Guidelines, EPA's approval of a State plan has two major implications. First, it permits the State to issue compliance schedules which can shield solid waste disposal facilities and practices from citizen suits seeking to enforce the Federal prohibition on open dumping in Section 4005(a) of RCRA. Second, it may affect the State's eligibility for Federal funding under Sections 4007 and 4008 of RCRA. Once a plan has been approved, EPA must withhold Subtitle D technical and financial assistance to the State if the Administrator at any time determines that the plan is no longer in compliance with the Guidelines and withdraws approval. *See* Section 4007(b)(3).

On July 6, 1982, Nebraska submitted its solid waste management plan to EPA for approval. EPA is soliciting public comment on whether this plan meets the requirements set forth in the Guidelines. In particular, EPA is seeking comment on the following issues:

- Does the plan effectively prohibit the establishment of new open dumps?
- Does the plan provide authority to upgrade or close existing open dumps?
- If the plan does not meet the Guidelines in its entirety, can it be approved in Part? *See* 40 CFR 256.04, as amended by 46 CFR 47048, (September 23, 1981).

Exemption from Executive Order 12291

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

List of Subjects in 40 CFR Part 256

Grant programs, Environmental protection, Waste treatment and disposal.

Authority: Section 4007(a), Pub. L. 94–580, 90 Stat. 2817, (42 U.S.C. 6947); Section 3, Pub. L. 96–354, 94 Stat. 1168, (5 U.S.C. 605).

Dated: August 9, 1982.

John J. Franke, Jr.,

Regional Administrator.

[FR Doc. 82–22806 Filed 8–19–82; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 17, 73, and 74

[BC Docket No. 82–537; FCC 82–369]

Operating and Maintenance Logs for Broadcast and Broadcast Auxiliary Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission solicits comment on the feasibility of eliminating operator and maintenance logging requirements for broadcast and broadcast auxiliary stations. This action is believed desirable in furthering the Commission's ongoing deregulation efforts and is being initiated by the Commission on its own motion. The effect of this action would be to relieve broadcast licensees of certain periodic measurement and logging burdens which may be of questionable value in consideration of present broadcast equipment capability and licensee incentives to maintain the proper technical operation of their stations.

DATES: Comments are due on October 18, 1982, and reply comments are due on November 17, 1982.

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

FOR FURTHER INFORMATION CONTACT: James E. McNally, Jr., Broadcast Bureau, Policy and Rules Division at (202) 632–9660.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 17

Aviation safety, Construction, Marking and lighting of antenna structures.

47 CFR Part 73

Radio broadcasting, Television broadcasting.

47 CFR Part 74

Communications equipment, Education, Radio, Research, Television.

Adopted: August 4, 1982.

Released: August 17, 1982.

1. The Commission institutes this proceeding on its own motion to examine the usefulness of the present rules requiring broadcast licensees to maintain operating and maintenance logs.[1] We believe that the time is appropriate to consider whether detailed logs continue to be a necessary part of the Commission's regulatory scheme.

2. We are not proposing any change in the operating tolerances of broadcast stations, nor in the licensee's obligation to maintain its technical operation within the limits and terms of its authorization. Rather, we question the necessity of Commission imposed inspection and logging procedures given a licensee's basic obligation to ensure the proper technical operation of the station. Moreover, we question whether state-of-the-art communciations technology makes the periodic recording of specific transmission system information unnecessary in any case.

3. The Commission's rules require broadcast stations to be operated within prescribed technical limits. In order to provide a record of proper operation, the rules require licensees to maintain detailed logs of station operating parameters and equipment maintenance. Many of the logging requirements contained in the present rules are older than this Commission. For example, the operating log requirements for AM stations, now contained in § 73.1820, have appeared in § 73.113 (1963–1978), § 3.113 (1963), § 3.111 (1956–1963), § 3.181 (1948–1956), § 3.404 (1940–1948), § 3.90 (1939–1940) and § 34.20 (1937–1939). Prior to that, the requirements were carried over from the Federal Radio Commission's General Order (Rule) 172, adopted in 1933 that was, in turn, derived from General Order (Rule) 106, adopted in 1931.[2] A review of the history of this rule reveals that the logging requirements gradually were expanded over the years, until all significant technical parameters indicative of proper station operation were encompassed.

4. In adopting those first logging requirements, the Federal Radio Commission (1931) found that significant improvements had been made in transmitter modulation capability, operating frequency stability, and in reducing harmonic and spurious emissions. The Commission explained how maximizing modulation reduced the ratio of "nuisance area" to the "service area" of a station; how a tightening of the frequency tolerance from ±500 to ±50 cycles per second would reduce heterodyne interference; and how a reduction in harmonic and spurious emissions would enable more effective use of the spectrum by other classes of stations. However, the Commission noted that while some stations had installed transmitters having these improvements, others had not. If radio listeners were to be given the best service possible, it reasoned, broadcasters should be required to install the most modern equipment in order to make full use of the allocated facilities. The Commission then reiterated the well accepted principle of radio regulation that, in order to enjoy the privileges of using a portion of a limited resource (*i.e.*, the radio spectrum), the user's equipment must meet standards consistent with good engineering practice. Accordingly, all stations were required to install equipment that would operate in accordance with standards reflecting state-of-the-art communications technology. (See "Technical improvements in broadcasting," *Fifth Annual Report of Federal Radio Commission (1931).*

5. This same philosophy has been the foundation of the various changes in our technical logging rules over the past 50

[1] A daily operating log reflects the results of various periodic measurements presently required by the rules. Examples are transmitter final stage input and output power and AM directional antenna adjustments. A maintenance log reflects any special measurements or repairs necessary for proper transmission system operation. Examples are statements of circumstances surrounding replacement of individual electronic components, the results of alignment procedures, frequency measurements and any other type of proof-of-performance measurement. Often the operating and maintenance logs are maintained as a single combined log.

[2] In keeping with the emerging technology of that time, General Order 106 simply required that the operating log contain:

(a) An entry of the time the station's carrier wave goes on the air and the time the station's carrier wave is stopped;

(b) An entry of the time the program begins and ends;

(c) An entry of every interruption of the carrier wave, its cause and duration; and,

(d) An entry of each of the following every 30 minutes:

(1) Operating constants on the last radio stage (total plate current and voltage); the antenna current;

(2) A frequency check; and,

(3) The temperature of the crystal chamber (if used).

years. However, we now question the need to establish detailed procedures for broadcasters to fulfill their baseline obligations. For example, the Commission has eliminated its specific requirements for the conduct of community ascertainment, leaving the radio broadcaster free to discern and program for the issues in the community in any appropriate manner. *In the Matter of the Deregulation of Radio*, 87 FCC 2d 797 (1981), *appeal pending sub nom. Office of Communication of the United Church of Christ* v. *FCC*, D.C. Cir. No. 81–1032. The Commission has also taken action recently to deregulate certain aspects of noncommercial radio and television broadcasting. In August, 1981, the Commission proposed to limit its oversight of noncommercial station programming, to eliminate noncommercial stations' ascertainment obligations, and to delete the program logging requirements. *Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees*, 46 FR 43190, published August 27, 1981 (Notice of Proposed Rule Making). We also recently have proposed to delete the requirements that limit the types of modulation monitors that may be used by broadcast licensees. If adopted, this proposal will permit licensees to purchase modulation monitors having characteristics tailored to their individual needs. *In the Matter of Amendment of Part 73 of the Commission's rules and regulations to Eliminate the Requirement for Type Approval of Aural Modulation Monitors*, 46 FR 52398 (published October 27, 1981). We wish to determine whether it is appropriate to extend these deregulatory initiatives to the Commission's operating and maintenance logging requirements.

6. The quality of broadcast equipment has obviously improved significantly since 1931. Yet, this improvement does not mean that some licensees do not experience problems in maintaining their transmitting equipment within Commission specified limits. Rather, the use of up-to-date equipment produces fewer situations requiring remedial action by the broadcaster. However, regardless of the quality of the equipment used, licensees are expected to understand the technical problems associated with the operation of a broadcast station and to devise suitable procedures to ensure proper operation.

7. We also believe that there are substantial incentives for a broadcaster to maintain a high quality signal, absent operating and maintenance log requirements. Any single incremental deterioration of a station's signal may not be noticed by the listening public. However, the cumulative effect of inattention to such details will be a lower quality signal that ultimately will be perceived by the station's audience. Deficiencies in the technical operation of a station could also create increased interference to other stations resulting in complaints to the Commission, litigation expenses and/or forfeitures. Thus, we believe it is in the broadcaster's own self-interest to take whatever steps are necessary to ensure that its operation complies with the Commission's technical rules and the station's license.

8. Accordingly, after giving careful thought to the various provisions currently contained in §§ 73.1820 and 73.1830, we believe that the logging requirements contained therein, together with the mandated schedule of meter and monitor readings, inspections, and field strength measurements the present log rules impose, should be reviewed for possible reduction or elimination. In some instances, this means that broadcast licensees would no longer be obliged to perform certain measurements at prescribed intervals. Nevertheless, because licensees must operate their stations in accordance with the technical standards stated elsewhere in the rules, and in keeping with the terms of the station license, it will be necessary for them to check the operation of their station often enough to ensure proper operation. Additionally, the proposed amendments would permit the Commission to require, on a case-by-case basis, a station to temporarily keep technical records for resolving an interference situation, or correcting severely deficient operation.

9. We have also studied the maintenance and logging requirements contained elsewhere in the rules and we are proposing a range of options. Thus, in addition to the operating and maintenance logging requirements in §§ 73.1820 and 73.1830 in Part 73, we propose to review the counterpart sections in Part 74 for translator and broadcast auxiliary stations (§§ 74.481, 74.581, 74.681, 74.781, 74.881, 74.981 and 74.1281). Any change in other rules would be simply editorial in nature and would involve deleting references to logging requirements.

10. The thrust of this proceeding is to emphasize the licensees' responsibility to operate within the framework of essential technical standards without the additional layers of regulatory requirements contained in the current rules (or in a station's authorization). From experience we recognize that the rule mandated periodic observation schedule is too inadequate for some stations and excessive for others. For example, nearly all AM stations using directional antenna systems have a license condition requiring weekly or, in some cases, monthly field strength measurements at specified monitoring point locations. This requirement has existed for many years without review to determine if there is a substantive record to support such mandated schedules.

11. The present operating and maintenance log rules distinguish between directional AM stations having approved antenna monitor sampling systems and those without such systems. The stability of the directional antenna is indicated by both field strength measurements made at specified monitoring points and the antenna operating parameters indicated by base currents and monitor indications. Because of the poor reliability of many antenna monitoring systems, new standards were established in 1976 for the approval of all new and modified monitor sampling systems. Since greater reliance can be placed on the antenna monitor indications of stations having approved sampling systems, these stations may make less frequent field strength measurements. They are also exempt from triweekly readings of antenna base currents and annual antenna proof of performance measurements. Many older stations have also upgraded their sampling systems in order to take advantage of the lesser measurement and logging requirements.

12. If the periodic observation and logging requirements are deleted (including those now contained in the stations' authorizations), the rules would no longer distinguish between stations with and without the approved sampling systems. Comments are requested on the desirability of continuing to differentiate between stations on the basis of their monitoring systems. We note that deleting the requirement for periodic measurements removes the incentive for AM stations having older installations to upgrade their sampling systems that the rules now clearly encourage. Since 1976 nearly 65 percent of all AM stations with directional antenna systems have installed approved sampling systems. While we believe the installation of approved monitor sampling systems is desirable and some may believe we should require all AM directional stations to do so, a separate rule making proceeding addressing that issue would be required.

13. Although we are considering the elimination of both operating and

maintenance logs together with the mandated periodic meter and monitor readings, inspections, and field strength measurements the present log requirements impose, some parties may feel that such action will increase the potential for inter-station interference, particularly from AM directional stations. Thus they may request the imposition of conditions retaining these requirements on individual station authorizations. Such requests would be based on the same assumption as the existing Commission rules, *i.e.*, that licensees must be required to observe and log certain information to ensure the proper operation of their station. Since we question this assumption, we believe that substantial evidence of adverse impact should be required before adding observation and logging requirements to the terms of a station's license. Thus, we are proposing a rule under which specific observation and record keeping requirements could be required on a case-by-case basis in circumstances of unusual interference potential due to deficient operation. Such circumstances could include times when directional AM stations operate at variance with their licensed parameters or with partially malfunctioning equipment.

14. Although we wish to explore the possible elimination of logging requirements, some broadcasters or other interested parties may believe that a few of the present provisions should be retained or may suggest other alternatives. For example, we are proposing elimination of §§ 73.1820 and 73.1830 that include required entries concerning proper tower light operation. Similar requirements are contained in § 17.47 that requires both broadcast and non-broadcast licensees to perform daily and quarterly observations and inspections of tower lights and associated control equipment, and in § 17.49 that requires the recording of tower light inspections in some station record. For purposes of consistency, we are proposing to eliminate the recording of routine tower light information currently required in § 17.49 (a), (b) and (d), while retaining the observation and inspection requirements in § 17.47. We specifically invite the comments of the Federal Aviation Administration, broadcasters and other interested parties concerning the appropriateness of deleting these logging requirements.

15. We are proposing to retain the logging requirements applicable to the various classes of experimental stations authorized in Subparts A, B and C of Part 74. These stations utilize new and untried technologies. The Commission requires comprehensive information concerning these technologies in order to properly determine the feasibility of authorizing routine operation. Even where routine operation of a regular broadcast station is concerned, the proposed rules contain a provision permitting the Commission to require a station to keep technical records when they might be helpful in resolving an interference situation or correcting a severely deficient operation.

16. There may be other record keeping requirements [such as those pertaining to tests of the Emergency Broadcast System in § 73.1820(a)(1) (ii) (iii) and (iv) and § 73.830(a)(1) (vi), (vii) and (vii)(C)] that our licensees may believe should be retained and we ask that these also be identified and discussed in the comments.

17. In conclusion, we reiterate that while we are proposing the reduction or elimination of required operating and maintenance logs and the mandated schedule of routine periodic observations and inspections to obtain the log data, this proposal would not relieve licensees of their responsibility to effectively monitor station technical performance or strictly comply with the terms of the station authorization. If an inspection by the Commission reveals a violation of the rules, the licensee will be asked to indicate what procedures have been employed to ensure operation within the sepcified parameters. If the licensee has failed to take reasonable measures to ensure proper operation, a forfeiture could be issued for willful violation of the rules involved. As *Midwest Radio-Television*, 1 RR 2d 491 (1963) makes clear, "[T]the word, "willfully," as employed in section 503(b), does not require a showing that the licensee knew he was acting wrongfully; it requires only that the licensee knew he was doing the acts in question—in short, that the acts were not accidental * * *." Thus, in *Southeast Texas Broadcasting*, 1 FCC 2d 1129 (1965), the Commission refused to rescind or reduce a forfeiture issued against a station for operating rule violations. Rejecting the licensee's argument that it did not have knowledge of the violation because operation had been entrusted to the station manager, the Commission held that the licensee was fully responsible for the operation of the station. Not only were the violations numerous, the station was found to have been badly neglected. Under these circumstances, the violations were held to be willful as well as repeated.

18. *Regulatory Flexibility Act Initial Analysis*

I. Reason for Action

The Commission believes that many of the rules for broadcast stations requiring periodic observations and inspections or keeping records thereof may no longer serve a regulatory function.

II. The Objectives

The Commission wishes to pursue its policy of deregulation of its various radio services, in this case by eliminating or reducing the required schedule of observations and inspections of transmitting equipment and the keeping of logs and records.

III. Legal Basis

Action proposed is in furtherance of Sections 303 (e), (f), (j) and (r) of the Communications Act of 1934, as amended.

IV. Description, Potential Impact and Number of Small Entities Affected

Inasmuch as licensees of smaller stations often have limited resources, they would stand to benefit the most from the proposed changes, assuming their equipment was of satisfactory reliability. Operating personnel would be freed from many periodic measurement and logging requirements. We expect that significant station operating parameters would be checked as often as necessary, although perhaps randomly, with no significant adverse impact on station operation, signal quality, or the public's reception; or result in serious interference to other stations. We estimate that AM, FM, and TV licensees annually spend 78,000 hours (at a cost of approximately $390,000) in completing operating logs and 68,000 hours (at a cost of approximately $544,000) in completing maintenance logs.

V. Recording, Record-Keeping and Other Compliance Requirements

A potential reduction of up to 146,000 person hours per year for keeping operating and maintenance information would result. While certain redundant functions would be eliminated or reduced, licensees would be fully responsible for operating their stations with diligence.

VI. Federal Rules Which Overlap, Duplicate, or Conflict With These Rules

None.

VII. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent With the Stated Objective

None, and retention of the *status quo* would constitute a continuing burden.

19. The Secretary shall cause a copy of this *Notice of Proposed Rule Making*, 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. No. 96–354, 94 Stat. 1164, 50 U.S.C. *et seq.*).

20. Accordingly, it is proposed to amend Parts 17, 73, and 74 of the Commission's Rules as set forth in the attached Appendix.

21. Authority for the action taken herein is contained in §§ 4(i) and 303 (e), (f), (j) and (r) of the Communications Act of 1934, as amended.

22. Pursuant to procedures set forth in §§ 1.4, 1.415 and 1.419 of the Commission's rules and regulations, interested parties may file comments on or before October 18, 1982, and reply comments on or before November 17, 1982. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments or other appropriate pleadings.

23. In accordance with § 1.419 of the Commission's Rules and Regulations, an original and five copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished the Commission. Members of the general public who wish to participate informally in this proceeding may submit one copy of their comments, specifying BC Docket Number 82–

24. All filings 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 at 1919 M St., NW., Washington, D.C.

25. Further information on this proceeding may be obtained by contacting James E. McNally, Jr., Broadcast Bureau, (202) 632–9660. For purposes of this nonrestricted 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 or pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits an *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments on the proceeding must prepare a written summary of that presentation; and, 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. 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 consideration information and ideas not contained in the comments, providing that such information or a statement 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. A summary of the Commission's procedures governing *ex parte* contacts in informal rule makings is available from the Commission's Consumer Assistance Office, FCC, 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.

Attachment: Appendix.

Appendix

It is proposed to amend 47 CFR Parts 73, 74 and 17 of the Federal Communications Commission's rules and regulations as follows:

PART 73—RADIO BROADCAST SERVICES

§§ 73.1820, 73.1830 [Removed]

I. In Part 73, §§ 73.1820 and 73.1830 would be removed and any references to a logging requirement would be editorially removed from the following sections and paragraphs.

73.51 (e)(2) and (f)(1)
73.56(b)(1)
73.57 (d)(1) and (g)
73.58(e)(1)
73.61(a)
73.67(a)(5)(i)
73.68 (b)(1), (b)(3), (c), (d)(1), (d)(2), and (e)(2)
73.69 (b)(1), (b)(2), (d)(2), and (e)
73.140(c)(1)
73.144(c)
73.146(e)
73.253(b)(1)
73.258(e)(1)
73.275 (a)(5)(i) and (c)
73.295 (f) and (h)
73.340(c)(1)
73.342(j)
73.344(c)
73.346(e)
73.540(c)(1)
73.542(j)
73.544(c)
73.546(e)
73.553(b)(1)
73.558(e)(1)
73.575(a)(5)(i)
73.595(f)
73.676(a)(2)
73.688(e)(1)
73.691(b)(1)
73.781(b)
73.932 (d)(1) and (d)(2)
73.961
73.962(e)(4)
73.1215(e)
73.1225(d)
73.1515(c)(4)
73.1550 (c)(1) and (e)
73.1580(b)
73.1665(b)
73.1800 (a), (f), (g), and (h)
73.1870(d)

II. In Part 73, § 73.1835 would be added to read as follows:

§ 73.1835 Technical records.

The Commission may require a broadcast station licensee to keep operating and maintenance records as necessary to resolve conditions of potential interference or seriously deficient technical operation.

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

III. In Part 74, § 74.19 would be added to read as follows:

§74.19 Technical records.

The Commission may require the licensee of a station authorized under the provisions of this Part to keep operating and maintenance records as necessary to resolve conditions of potential interference or seriously deficient technical operation.

§§ 74.581, 74.681, 74.781, 74.881, 74.981, 74.1281 [Removed]

IV. In Part 74, §§ 74.581, 74.681, 74.781, 74.881, 74.981 and 74.1281 would be removed.

PART 17—CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURES

V. In Part 17, § 17.49 would be revised as follows:

§ 17.49 Recording of tower light inspections in the station record.

The licensee of any radio station which has an antenna structure requiring illumination shall make the following entries in the station record in the event of any observed or otherwise known extinguishment or improper functioning of a tower light:

(a) Nature of such extinguishment or improper functioning.

(b) Date and time the extinguishment or improper operation was observed or otherwise noted.

(c) Date, time and nature of the adjustments, repairs or replacements made.

[FR Doc. 82-22766 Filed 8-19-82; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Export of Bobcats Taken in 1982-83 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed findings and rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animal and plant species. Exports of animals and plants listed in Appendix II of CITES may only occur if a Scientific Authority (SA) has advised a permit-issuing Management Authority (MA) that such exports will not be detrimental to the survival of the species, and if a Management Authority is satisfied that the animals or plants were not obtained in violation of laws for their protection.

This notice announces proposed findings by Scientific and Management Authorities of the United States on export of bobcats from this country. Such findings have been made annually on a State-by-State basis. The Service requests comments on these findings and information on the species involved.

DATES: The Service will consider information and comments received by September 20, 1982 in making its final findings and rule.

ADDRESS: Please send correspondence concerning this notice to the Office of the Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Office of the Scientific Authority, room 536, 1717 H Street, NW., Washington, D.C., or at the Federal Wildlife Permit Office, room 621, 1000 N. Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT:

Scientific Authority—Dr. Richard L. Jachowski, Office of the Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (202) 653-5948.

Management Authority—Mr. S. Ronald Singer, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (703) 235-2418.

Export Permits—Ms. Maggie Tieger, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (703) 235-1903.

SUPPLEMENTARY INFORMATION: This is the second in a series of notices concerning the Service's findings on export of bobcats (*Lynx rufus*) taken in the 1982-83 harvest season. In this notice, the Service announces its decisions on the guidelines to be used in making Scientific Authority and Management Authority findings, and proposes findings based on those guidelines.

In the previous notice on this subject (47 FR 14664; April 5, 1982), the Service invited comments on proposed guidelines and information on the bobcat and certain other Appendix II species. Proposed findings for bobcat exports and guidelines used for those findings are being addressed separately from those for other species because of legal complications in satisfying CITES requirements for export of bobcats.

Scientific Authority Advice

1. Background

CITES regulates international trade in species included in Appendix II through a system of permits issued by designated MA's in each party nation. Export permits are to be issued only if a MA receives advice from a SA that export will not be detrimental to the survival of the species.

The endangered Species Act of 1973, as amended in 1979, designates the Secretary of the Interior as both MA and SA of the United States, for purposes of CITES. These functions are carried out by the Fish and Wildlife Service. MA responsibilities are delegated to the Associate Director-Federal Assistance. SA responsibilities are delegated to the Associate Director-Research.

Scientific Authority advice on export of bobcats is given in a general way, applicable to any specimens harvested in particular States in a given season, rather than on a permit-by-permit basis. Reasons for this practice are that (1) individual exporters who apply for permits are unable to supply much information about the sources of pelts or the effect of their harvest on bobcat populations, (2) bobcats are subject to commercial exploitation, and it would be burdensome to both the industry and the Service if separate SA decisions were to be made on each of the many individual permits, and (3) development of general advice on a State-by-State basis enables the Service to conduct a comprehensive review of the Status of the bobcat and the effect of international trade on its survival. Advice based on such a review is more meaningful than it would be if it were based only on information supplied in connection with individual permit requests.

2. Proposed Guidelines

For this year, the Service initially proposed to use the following guidelines for SA advice on bobcat exports:

1. A current estimate of the total number of animals in the preharvest population is to be developed for each affected State, derived by a (a) extrapolating the number of animals per unit area in each of the major habitat types to obtain an estimate of the total number of animals in the State, where the number of animals per unit area is determined by direct count, (e.g., by using radio tracking) or by indirect indictions of abundance (e.g., track counts, scented track plots, hunter-trapper surveys, and/or harvest records); or (b) by using population modeling (e.g., calculating population size from data on recruitment, mortality, sex ratio, age composition, or other parameters).

2. An upper limit on the total number of animals that can be harvested without detriment to the survival of the species is to be developed for each affected State, considering such factors as (a) population trends, (b) sizes of past harvests, (c) age composition and sex ratio of harvested animals, and (d) prey abundance.

3. Export would be deemed nondetrimental only for animals taken in those States for which there were (a) a preharvest population estimate that the Service determines to be reliable, either statistically, or by use of population models, or by comparison to other indications of abundance, and (b) a management program within the State that can prevent the total harvest from exceeding an amount that the Service determines can be harvested without detriment to the survival of the species. This level generally would not be allowed to exceed 20 percent of the estimated total preharvest population, although the allowable percentage would be adjusted for each State in view of factors such as those mentioned in paragraph 2 above, and in view of the reliability of the population estimate.

The Service proposed these guidelines in order to comply with a ruling by the U.S. Court of Appeals for the District of Columbia [*Defenders of Wildlife* vs. *Endangered Species Scientific Authority*, 659 F. 2d 168 (1981)] that bobcat exports may not be permitted under CITES unless the Service's SA findings were based on "reliable estimates of the bobcat population and data showing the total number of bobcats to be killed, in each of the States involved."

The proposed guidelines responded to a subsequent District Court decision which held that the Service's decision-making methodology for making findings for the 1981–82 season did not comply with the Court of Appeals ruling. The proposed guidelines described acceptable methodologies for making population estimates and how the Service would assess reliability. The guidelines made it clear that a reliable population estimate is a prerequisite to a finding that export will not be detrimental to the survival of the species. They also described considerations underlying allowable kill levels and made the determination of such levels a requirement for a no detriment finding.

3. Comments Received

The Service received comments and information from 24 State wildlife conservation agencies, the majority of which took issue with the Court of Appeals' evaluation of wildlife management techniques. Several States pointed out that their regulation of bobcat harvest is not based on estimates of the total bobcat population or on numerical limits on total harvest.

Minnesota, for example, remarked that data on population structure, reproduction, harvest, and relative densities provides more precise and reliable information for managing wildlife than is obtainable from preharvest population estimates. Likewise, Oregon commented that its harvest regulations were based on data obtained through age structure, reproductive information, and annual harvest rates. In general, States indicated that they adequately regulate the harvest of bobcats on the basis of various types of information other than population estimates, which they contend have little practical value for management purposes because of their low statistical reliability and the high cost of research to generate them.

Comments supporting these remarks of the States were submitted by the International Association of Fish and Wildlife Agencies, the Wildlife Legislative Fund of America, and the National Alligator Association. The Service understands the positions indicated by these comments. However, the Service is required to fulfill its responsibilities under CITES and the Endangered Species Act as set forth in the Court of Appeals' ruling. Since this ruling requires population estimates and maximum harvest levels, the Service is unable to adopt these comments.

Several States also commented on the proposed requirement of a numerical limit on harvest that would be deemed nondetrimental. They indicated that harvest is limited by adjusting the length and timing of the harvest season and by specifying harvest methods, and that it is neither feasible nor necessary for them to establish mechanisms to stop harvest at a finite number during the harvest season. Further, Colorado, Kansas, Louisiana, and New York pointed out that they control harvest so that it does not substantially exceed an expected amount. Bobcats are a renewable resource; if the expected harvest is exceeded in one season, remedial action is taken by issuing more restrictive regulations for the following season. Colorado also remarked that it is biologically unsound to assume that harvest of animals in excess of an expected level within a given season would cause irreparable detriment to the survival of the species.

The establishment of a numerical limit on harvest, like the estimation of population size, is required by the Court of Appeals' ruling. Accordingly, the Service is unable to adopt these comments.

The Service proposed to establish the number of bobcats that can be harvested without detriment to the survival of the species as a percentage of the total preharvest population, generally not exceeding 20 percent. Arizona, Florida, and Wyoming commented that reference to an arbitrary percentage is inappropriate, in view of the low precision of population estimates and the need to base harvest levels on each State's population research findings. The Service agrees with this comment. The guidelines that are adopted herein do not set a precise percentage of population as the limit for harvest. Rather, the harvest limit will be determined on a case-by-case basis considering population size, population trends and other factors.

The law firm of Covington and Burling submitted comments on the proposed guidelines on behalf of Defenders of Wildlife and the Humane Society of the United States. These organizations commended the Service for its proposed guidelines and stated that, in general, they meet concerns and requirements set out in the Court of Appeals decision. However, Defenders and the Humane Society stated that the guidelines needed further clarification and detail. Specific points that they raised are discussed below.

First, Defenders and the Humane Society stated that the Service must make it clear that population estimates will not be based solely upon harvest data. They contended that the quantity and types of animals killed cannot give a reliable picture of the current status of the population. The Service agrees that population estimates should not be based only on harvest data. The estimation of population size will generally include consideration of habitat data and population densities as determined by telemetry or mark and recapture. The adopted guidelines preclude the estimation of population based solely on harvest data.

Second, Defenders and the Humane Society commented that the upper limit on the total number of animals to be harvested must be based, first and foremost, on the population estimate. The Service concurs; its third proposed guideline previously incorporated this requirement. Point two of the adopted guidelines specifies that the population estimate and its reliability are the primary factors to be used in determining allowable harvest levels.

Third, Defenders and the Humane Society stated that the Service must require that the States' management programs can and will ensure that total harvest does not exceed the upper limit set by the Service. They commented that the Service's guidelines should include: (1) Legal authority for the State agency to take action once the harvest limit is reached, (2) a mechanism for monitoring harvest during the season to indicate when the harvest limit is reached, and

(3) evidence that the State agency will take action once the harvest limit is reached.

The Service finds that items 2 and 3 are impractical and unnecessary to satisfy the Court of Appeals' ruling. As previously stated, the harvest level will be primarily based on the population estimate. A range of variation is inherent in this population estimate. Thus, the harvest limit, which is derived from the population estimate, will also contain a range of variation. While harvest should not be allowed to *substantially* exceed a conservative limit, a small amount of harvest in excess of the harvest limit will have been considered, as within the range of variation, in making the "no detriment" determination. The Service believes that the States, as the traditional manager of resident wildlife, are in the best position to develop a management program consistent with the harvest limit. However, State management programs will be reviewed as a component of the "no detriment" determination. Since occurrence of harvest in excess of harvest limits will weigh against States in the review of management programs, the Service believes States will choose mechanisms determined to be most appropriate to assure compliance with harvest limits.

Fourth, Defenders and the Humane Society stated that more specific guidelines are required to indicate how the Service will determine the percentage of the total population that may be harvested without detriment to survival of the species, in view of available data. In response, the Service notes that the types of available data vary from State to State, and that bobcat populations may vary in their response to harvest pressure depending on habitat conditions and others factors affecting recruitment and survival. It will be necessary for the Service to determine nondetrimental harvest levels in each State based on a number of factors including individual assessments of bobcat population size estimates and their reliability, the available information on population trends, past harvests, age structure, reproductive condition, habitat and any other locally relevant factors. The Service is revising its guidelines to make this clearer. Given the variables affecting each State, the Service believes it would be inappropriate to adopt guidelines incorporating predetermined harvest percentages related to loosely defined population levels, or to establish specific guidelines, in the nature of a formula, indicating how the Service will determine allowable harvest levels, as recommended by Defenders and the Humane Society.

4. Adopted Guidelines

The Service has modified the guidelines to be used for SA advice in view of comments discussed above. The adopted guidelines are as follows:

1. A current estimate of the total number of animals in the preharvest population is to be developed for each affected State, derived by:

(a) Extrapolating the number of animals per unit area (square mile or square kilometer) in each major habitat type to obtain an estimate of the total number of animals in the State, where the number of animals per unit area is derived by direct measures (e.g., radio tracking or frequency of mark and recapture), or by indirect indications of abundance (e.g., track counts or scent post surveys), or

(b) Using population modeling to calculate population size from data on recruitment, mortality, sex ratio, age composition, and/or other parameters.

The population estimate is not to be based solely on harvest data (quantity and types of animals harvested), although such data may be used together with other information.

2. An upper limit on the number of animals that can be harvested without detriment to the survival of the species is to be developed for each affected State, considering the population estimate and its reliability, and other relevant factors, which may include:

(a) Population trends,

(b) Numbers of animals harvested in previous years, and

(c) Age composition and reproductive condition of harvested animals.

3. Export will be deemed not detrimental to the survival of the species only for animals harvested in those States for which there is:

(a) A preharvest population estimate that the Service determines to be sufficiently reliable for the purpose of establishing an upper limit on the number of animals that can be harvested without detriment, either statistically, or by use of population models, or by comparison to other indications of abundance, and

(b) A management program within the State that can and will prevent the harvest from substantially exceeding an amount that the Service determines can be harvested without detriment.

Management Authority Findings

Exports of bobcats can only be authorized if the MA is satisfied that they were not obtained in contravention of laws for their protection and if the SA issues favorable advice.

Alternative ways to satisfy basic tagging requirements for the 1982–83 season are described below. The Service is pursuing discussions with States about the establishment of possession tagging for pelts between actual take and application of State export tags as a possible requirement for exports of bobcat pelts in future seasons. At a minimum, tagging for the 1982–83 season must include:

(1) Application of permanent, locked tags bearing the appropriate legend, to all bobcat pelts to be exported;

(2) Such tags must be applied to pelts by State personnel, dealers registered with the State for this purpose, or the persons taking the animals; and

(3) Where tags are applied by dealers or persons taking the animals, such persons should be accountable to the State on the use of those tags.

For the 1982–83 season, the Service will continue to require the use of self-locking, permanent tags marked to specify State, year of take, species, and a serial number. The Service arranged for the manufacture of permanent, locking export tags for most skin-exporting States in 1981 and will do the same in 1982. States may purchase and use their own tags for 1982, provided their style of tag and legend has been approved by the Service.

Evidence of legal take for bobcat has been provided by State tagging programs. Comments submitted to the Service on tagging requirements are discussed in the Service's notice of proposed findings for export of lynx and other Appendix II species (47 FR 14665; April 5, 1982). Ideally, the Service would like to see such programs include both mandatory possession tagging of all bobcat pelts harvested, and required presentation of each pelt to a State agent for removal of the possession tag and application of a permanent, locking tag.

Recognizing that such practices have not yet been implemented in all effected States, and that it is not feasible to establish them for the next harvest season in certain States, the Service also will continue to accept certain less-comprehensive programs as evidence that pelts were lawfully acquired within particular States in the 1982–83 season. However, the Service believes that tagging of all bobcat pelts harvested is important to control unlawful trade, that pelts should be tagged promptly when harvested to reduce the likelihood they will be passed off as taken in another State, and that persons applying tags should report to the State on all tags used.

Information Sought

Information to be used in developing both SA and MA findings was outlined in the April 5, 1982, notice. In this notice, information needs have been reduced to relate directly to the adopted guidelines. The Service has eliminated requests for data underlying population estimates, number of animals bought by dealers, number of licensed trappers, and prices paid to trappers for pelts. Information that has been provided in past years need not be resubmitted, provided it is cited and its validity is affirmed.

In making an export finding for a particular State, the Service exercises its own independent judgment as required by CITES. Recognizing that the responsibility and authority for conservation of "resident species" (as opposed to migratory species) lies primarily with the States, the Service prefers to make export determinations only after providing each State and affected parties an opportunity to supply relevant information. Consequently, the Service requests the following information concerning each affected State from all interested parties.

1. An estimate of the Statewide preharvest population based on densities of animals in major habitat types or on population modeling, together with an explanation of how the estimate was derived and an assessment of its reliability.

2. An assessment of population trends of bobcats in each State; the relationship of these trends to habitat condition, management practices, harvesting pressure, or other factors, and a brief summary of any research being conducted to assess the distribution, abundance, or general condition of the species in the State.

3. Total Statewide harvest of bobcats expected to be allowed by the State in the 1982–83 season, together with an explanation of the basis for this figure, and a description of methods used by the State to insure that actual harvest will not substantially exceed this harvest level objective.

4. Information concerning, or copies of current State regulations governing harvest, possession, transport, and sale of bobcats, including tagging requirements and samples of actual tags.

5. Statewide harvest information for the previous 1981–82 season: the number of bobcats that were harvested, tagged, and any available information on harvest pe: unit effort.

Proposed Findings

Information from previous seasons on the status and management of bobcats in each State has been assembled by the Service. New information necessary to make determinations in accordance with the adopted guidelines will be reflected in the final findings. This information and records of the Service's evaluation of it in terms of guidelines described above are available for public inspection at the Service's Office of the Scientific Authority.

The Service proposes to approve exports of bobcats harvested during the 1982–83 season in the following States, on the grounds that both SA and MA guidelines are expected to be met: Alabama, Arizona, Arkansas, California, Colorado, Georgia, Idaho, Kansas, Klamath Tribe, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, Montana, Navajo Nation, Nebraska, Nevada, New Hampshire, New Mexico, New York, Oklahoma, Oregon, South Dakota, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

The Service also proposes not to grant general approval for exports of bobcats harvested in certain States that have received export approval in the past. The Service presently lacks assurance that its SA guidelines will be met in these States: Florida, Michigan, Missouri, North Carolina, North Dakota, South Carolina, Tennessee, and Virginia.

For all other States not addressed above, either the taking of bobcats is not allowed by the State, bobcats do not occur in the State, or the Service did not obtain adequate information on which to base SA and MA findings. The Service proposes not to grant general approval for export of bobcats from such States.

Comments Solicited

The Service requests comments on the proposed findings and current information on the species. Final findings will take into consideration the comments and any additional information received, and such consideration might lead to final findings that differ from this proposal.

This proposal is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. et seq.; 87 Stat. 884 as amended), and was prepared by Dr. Richard L. Jachowski, Office of the Scientific Authority, telephone (202) 653–5948.

Note.—The Department has determined that these proposed findings are not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, the preparation of an Environmental Impact Statement is not required. A determination on whether final findings are a major Federal action significantly affecting the quality of the human environment will be made at the time the final findings are published. The Department has determined that this is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). This rule treats exports on a case-by-case basis and, in most cases, proposes to approve export in accordance with State management programs. Since any effects on small entities are imposed by these State management programs, this rule will have little effect on small entities in and of itself.

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

Dated: August 2, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, the Service proposes to amend Part 23 of Title 50, Code of Federal Regulations, as set forth below:

Subpart F—Export of Certain Species

1. In § 23.52, add new paragraph (f) as follows:

§ 23.52 Bobcat (Lynx rufus).

* * * * *

(f) 1982–83 Harvest: Alabama, Arizona, Arkansas, California, Colorado, Georgia, Idaho, Kansas, Klamath Tribe, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Navajo Nation, Nebraska, Nevada, New Hampshire, New Mexico, New York, Oklahoma, Oregon, South Dakota, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

Condition on findings: Pelts must be clearly identified as to State of origin and season of taking, including tagging according to conditions established by the Service.

[FR Doc. 82–22810 Filed 8–19–82; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 47, No. 162
Friday, August 20, 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.

ACTION

Guidelines for Mini-Grants

AGENCY: Action.

ACTION: Final notice of guidelines for Mini-Grants.

SUMMARY: The following notice sets forth the final guidelines under which applications for Mini-Grants will be accepted. This revision replaces the current Mini-Grant Guidelines which were published in the Federal Register, Volume 46, No. 19 on Thursday, January 29, 1981. This Notice describes the program purpose, applicant eligibility, grant scope, application procedures and criteria for Mini-Grants. Both those mini-grants funded by the ACTION agency and those mini-grants funded through either non-federal contributions or Federal Inter-Agency Agreements are covered.

DATE: These guidelines shall take effect on October 4, 1982.

FOR FURTHER INFORMATION CONTACT: Office of Volunteer Liaison (OVL), ACTION, Room M-907, 806 Connecticut Avenue, NW., Washington, D.C., 20525, or telephone toll-free 800-424-8867.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Revision of Guidelines for Mini-Grants was published in the Federal Register, Vol. 47, No. 99 on Friday, May 21, 1982. The Notice proposed amendments that would affect the scope of the grants, procedures for awarding grants, and reporting requirements. It proposed to include in the procedure those mini-grants funded either through non-federal contributions or Federal Inter-Agency Agreements. In addition, the notice deleted the special language to refer to the type of basic human needs Mini-Grants are intended to serve; the maximum allowable Federal share of the grant was increased; and section 3, subsection (c), that the use of Federal funds must be directly related to supporting the project volunteers, was dropped. Reference to Agency funding priorities has been changed. Specific percentage set asides are no longer required. Those instructions regarding where application forms will be sent, which office will set deadlines, and who will provide project Close-Out Reports have been changed only in the area of mini-grants funded by ACTION. Those other mini-grants funded either through non-federal contributions or Federal Inter-Agency Agreements may require applications to be submitted to ACTION State Offices or to the appropriate ACTION Program Office, Washington, D.C.

Written comments were received by the Agency, and accordingly inserted as appropriate in the proposed Notice, now adopted as final.

ACTION has reviewed these Guidelines and has determined that they are not a major rule as defined in E.O. 12291. The reason underlying this determination is that both the size and purpose of these grants are such that they will not have the economic ramification envisioned by E.O. 12291's definition of a major rule. These Guidelines are published pursuant to the authority contained in section 123 of the Domestic Volunteer Service Act of 1973, as amended (42 U.S.C. 4993).

A Notice requesting applications for mini-grants will be published in the Federal Register when funding for the program becomes available.

Discussion of Comments Received

A. Nature of Comments

The Agency received one letter containing two recommended inclusions to the final mini-grant guidelines: 1) Specific reference to the legislative authority for the program; and 2) frequent and specific references to the program's legislative mandate of strengthening and supplementing efforts to meet poverty-related human, social and environmental needs. These inclusions are recommended based on the commentor's objection that statutory requirements for the expenditure of Title I, Part C funds, that "the program must be poverty-related," were ignored.

B. Response.

ACTION has considered the comment received and determined that although reference to the guidelines' authority was provided in the proposed guidelines—42 U.S.C. 4993—a clearer and more prominent citation would be helpful.

ACTION has, furthermore, made reference in the Guidelines to the legislative mandate for the program under Title I, Part C, Section 123; "the purpose of this part is to strengthen and supplement efforts to meet a board range of human, social and environmental needs, particularly those related to proverty.* * *"

ACTION has determined, accordingly, that contrary to the comment received there is no exclusive requirement that the expenditure of Part C funds must be proverty-related. (Section 1a of the guidelines makes clear that the program puts special, but not exclusive, emphasis on needs related to proverty.)

This determination is based upon a comparison of the language of Title I, Part A, Section 101 and Title I, Part B, Section 111 with the above (Section 123). The language of both Parts A and B is the same as to purpose, as follows: "The purpose of this part is to strengthen and supplement efforts to eliminate poverty and poverty-related human, social and environmental problems. * * *" The Agency understands these differences in wording to be distinct and intentional, based upon a review of the legislative history of the Domestic Volunteer Service Act, Pub. L. 93-113. The legislative history of the Act (1973 U.S. Code Congressional and Administrative News 2155-2232) states "The reported bill fully preserves and protects the antipoverty mission of the Agency's basic programs by earmarking the first expenditures of funds for anti-poverty programs, particularly VISTA, UYA, and the Foster Grandparent program.", (p.2160) and "It provides for new voluntary activities to meet a broad range of human and social needs beyond the strict anti-poverty program.* * *" (p. 2160)

In its analysis, the legislative history states: "Part C of [T]itle I of this Act provides entirely new authority to the agency to carry out and stimulate domestic volunteer programs aimed at alleviating problems not directly related to proverty. ", (p.2209) and "The Committee agrees that this is a worthwhile new purpose that should be pursued to widen the impact and focus of the ACTION Agency programs. * * *" (p. 2209) In the analysis of Section 121 (Title I, Part C)

the legislative history states, "Only this Part, part A of Title II, and the Title III programs of the Act are not solely anti-proverty in nature."

The agency has made reference to the legislative mandate under Title I, Part C, Section 123 for purpose of program emphasis, as intended, but not as requirement.

1. *Program Purpose.* a. The ACTION Mini-Grant Program is intended to initiate, strengthen and/or supplement volunteer efforts and to encourage broad-based volunteer citizen participation which will develop and enhance community self-reliance. Mini-Grants are intended to be directed to meet a broad range of basic human needs, especially in the poverty sector.

b. Mini-Grants should be considered and used as a means to establish or strengthen activities, mechanisms, and programs which may be one-time or on-going in nature, but which must demonstrate a solid potential for long-term effect.

c. The program is intended to assist organizations, particularly low-income and community based groups.

2. *Eligibility.* Public or private non-profit organizations, including, for example, hospitals, institutions of higher learning, and local units of government, which utilize, or will utilize, volunteers as an integral part of their provision of services may apply for grants.

3. *Scope of Grant.* The Mini-Grant Program provides funds on a one-time, non-renewable basis for a budget period not to exceed one year under the following conditions:

a. The Federal share of the grant award shall not normally exceed $10,000 to organizations for a local project or $15,000 to organizations for a project that relates to an entire state or Federal region.

b. All grants of $3,500 or more in ACTION Federal funds require a minimum matching share of 10% of the total grant cost. The matching share can be cash or an in-kind contribution; e.g., project director's salary and fringe benefits, space or equipment used by the project, or meals provided to project volunteers.

c. Mini-Grants will be awarded for projects which have measurable goals achievable in a specified time frame not to exceed one year.

d. Mini-Grants are basically a vehicle by which volunteers can be mobilized to help alleviate community problems. It is expected that for each Federal dollar awarded, at least one (1) hour of volunteer service will be generated. If the project is of a nature where numbers of volunteers and volunteer hours cannot be documented, then the grantee is asked to describe the impact of the project on the larger issue of volunteer activity in the organization/community.

e. ACTION reserves the right to establish funding priorities each year in order to meet national needs and Agency goals. For further information regarding current priorities contact the Office of Volunteer Liaison at the above address.

4. *Procedures.* a. Applications for those mini-grants funded by ACTION will be submitted to the ACTION office of Volunteer Liaison (OVL) on ACTION Forms A–1017, (OMB 3001–0069) Application for Federal Assistance, and ACTION Form A–1036, (OMB 3001–0036) Title 1, Part C Program Narrative.

A–1017:

(1) Part I Face Sheet—complete all items in Sections I and II. Do not make any entries in Section III.

(2) Part II Project Approval Information—Complete all items as requested.

(3) Part III Budget Information—Submit budget information as requested. Include a narrative justification for each line item in the budget.

A–1036:

(4) Part IV Project Narrative—The Program Narrative Statement should be brief, showing the need, objectives, approach, anticipated number of volunteers and volunteer hours, geographic location of the project, and the benefits expected.

(5) Part V Assurances—Submit with A–1017 and A–1036.

b. Demonstration Mini-Grant applications which are funded either through non-federal contributions or Federal Inter-Agency Agreements should be submitted to the appropriate ACTION Program Office on the ACTION forms listed in 4. a. above.

5. *Deadlines.* Deadlines for submission of applications are established by the Office of Volunteer Liaison.

6. *Reports and Records.*—a. *Reports Requirements.* Grantee should maintain sufficient records in order to validate required financial and program reporting. Grantee will make financial reports on ACTION form A–451, (OMB 3001–0068) Financial Status Report, within ninety (90) days after the end of the budget period. Grantee will submit a program progress report one-half of the way through the budget period and a final program report at the conclusion of the project in a form to be prescribed by the ACTION Office of Volunteer Liaison. The final program report should reflect degree of achievement towards goals as outlined in the program narrative, including the actual number of volunteers and volunteer hours generated.

b. *Records Retention.* Grantee must retain all financial records, supporting documents statistical records, and all other records pertinent to the grant for a period of three (3) years after submission of the final Financial Status Report. If any litigation, claim or audit is begun before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

(42 U.S.C. 4993).

Signed in Washington, D.C. on July 19, 1982.

Thomas W. Pauken,

Director.

[FR Doc. 82–22767 Filed 8–19–82; 8:45 am]

BILLING CODE 6050–01–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child Care Food Program; Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes for the Period Beginning July 1, 1982 Until Such Time as Other Rates are Announced

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of adjustments in the administrative reimbursement rates for sponsors of day care homes. Further adjustments are made to these rates to reflect the higher costs of operations in Alaska and Hawaii. The adjustments contained in this notice are required by a federal district court's construction of the statutes and regulations governing the Program.

Adjustments to the administrative rates for sponsors of day care homes would normally have been made at the same time as the other adjustments to Child Care Food Program rates published at 47 FR 31411 (July 20, 1982). However, due to a June 28, 1982, federal district court order granting a preliminary injunction in the case *Petry v. Block*, no. 82–1682 (D.D.C., June 28, 1982), the Department made no adjustment to these rates at that time. The court order required the Department to rescind the formula for reimbursement published at 47 FR 27540 (June 25, 1982) and to apply the 1981 formula, pending promulgation of a new regulation. The government is appealing the district court's orders.

Although the litigation has not yet been resolved, the Department is announcing the adjusted rates based on the reimbursement formula mandated by the district court in order to enable administering agencies to reimburse sponsoring organizations for July 1982 claims. These rates shall remain in effect until such time as the Department issues notification that different rates are to be applied.

EFFECTIVE DATE: July 1, 1982.

FOR FURTHER INFORMATION CONTACT: Jordan Benderly, Director, or Beverly Walstrom, Child Care and Summer Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 416, Alexandria, Virginia 22302 or by telephone at (703) 756–3888.

SUPPLEMENTARY INFORMATION:

Classification

This notice has been reviewed under Executive Order 12291, and has been determined to be "non-major" because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete.

This notice has been reviewed for compliance with the requirements of Pub. L. 96–354. Samuel J. Cornelius, Administrator of the Food and Nutrition Service, has determined that this notice will not have a significant economic impact on a substantial number of small entities. This notice complies with a Congressional requirement to adjust reimbursement rates in the Child Care Food Program to allow for changes in the Consumer Price Index, and with the district court's mandate in the *Petry* case.

Background

Pursuant to Section 17 of the National School Lunch Act (NSLA), and § 226.4 and § 226.12 of the regulations governing the Child Care Food Program (7 CFR Part 226), notice is hereby given of the new administrative payment rates for participating sponsoring organizations of day care homes.

These rates, which are issued because of the federal district court orders in the *Petry* case, shall be in effect during the period beginning July 1, 1982 until further notice by the Department. The adjustments announced in this notice are based on the CPI for the 12-month period from May 1981 (the month used for the last CPI adjustment on July 1, 1981) and May 1982. The CPI adjustments to all reimbursement rates in the Child Care Food Program are made only once each year, on July 1, in compliance with the requirements of Pub. L. 97–35.

All States Except Alaska and Hawaii

Administrative payment rates for sponsoring ortanizations of day acre homes—per home/per month rates in dollars.

Initial 25 day care homes	$57
Next 50 day care homes	$44
Additional day care homes	$38

Pursuant to Section 12(f) of the NSLA, the Department adjusts the payment rates for participating institutions in the States of Alaska and Hawaii. The new payment rates for Alaska are as follows:

Alaska

Administrative payment rates for sponsoring organizations of day care homes—per home/per month rates in dollars.

Initial 25 day care homes	$92
Next 50 day care homes	$72
Additional day care homes	$61

Hawaii

Administrative payment rates for sponsoring organizations of day care homes—per home/per month rates in dollars:

Initial 25 day care homes	$66
Next 50 day care homes	$52
Additional day care homes	$44

The changes in the administrative payment rates reflect a 6.73 percent increase during the 12 month period May 1981 to May 1982 (from 269.0 in May 1981 to 287.1 in May 1982) in the series for all items of the Consumer Price Index for all Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating in the Program is based on the rates contained in this notice.

Definitions: The terms used in this notice shall have the meaning ascribed to them in the regulations governing the Child Care Food Program (7 CFR Part 226) published on November 27, 1981, at 46 FR 57980–58006.

(Catalog of Federal Domestic Assistance Program No. 10.558)

(Sec. 810 and 820, Pub. L. 97–35, Omnibus Reconciliation Act of 1981; Sec. 2, Pub. L. 85–627, 92 Stat. 3603 (42 U.S.C. 1766); Sec. 10(a), Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760)

Dated: August 18, 1982.

Samuel J. Cornelius,

Administrator, Food and Nutrition Service.

[FR Doc. 82–22931 Filed 8–19–82; 8:45 am]

BILLING CODE 3410–30–M

Food Stamp Program; Operational Guidance System

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: This notice advises the public of a proposed revision of the policy interpretation system currently being used by the Food and Nutrition Service for the Food Stamp Program. Comments are being requested at this time on theses proposed changes.

DATE: To be considered, comments must be received by October 19, 1982.

ADDRESS: Comments should be submitted to Joseph Pinto, Supervisor, Policy Section, Program Policy and Analysis Branch, State Operations Division, Food and Nutrition Service, United States Department of Agriculture, Alexandria, Virginia 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 am to 5:00 pm, Monday through Friday) at Park Office Center, 3101 Park Center Drive, Alexandria, Virginia 22302, Room 613.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Pinto, Supervisor, Policy Section, Program Policy and Analysis Branch, State Operations Division, Family Nutrition Programs, Food and Nutrition Service, Alexandria, Virginia 22302, telephone (703) 756–3498.

OMB Submittal

This proposal does not contain reporting and recordkeeping requirements subject to approval by OMB under the Paperwork Reduction Act.

Regulatory Flexibility Act

The Administrator of the Food and Nutrition Service has certified that this proposal will not have a significant economic impact on a substantial number of small entities. This action will mainly affect State and local agencies which administer the Food Stamp Program.

Classification

This proposal 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; or 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, the Department has determined that this rule is not a major rule.

SUPPLEMENTARY INFORMATION:.

Background

On December 26, 1979, a notice was published in the **Federal Register** implementing a system for responding to questions from Food and Nutrition Service (FNS) Regional Offices on the application of Food Stamp Program regulations. On August 1, 1980, based on an evaluation of public comments, a final notice was published in the **Federal Register.**

Under the system, inquiries are placed in one of four categories. The four categories are:

1. Inquiries that require rulemaking;
2. Inquiries that embody interpretations of the Act or regulations, or statements of policy of major importance and general applicability;
3. Inquiries that embody interpretations or clarifications of the Act or regulations of a limited nature, or dealing with particular factual situations which are common to a group of households; and
4. Inquiries that can be answered by direct reference to the Act or regulations or refer to the application of the regulations to the factual circumstances of a particular household.

FNS Regional Offices screen inquiries and those falling into category 4 are answered by the Regional Office either directly or after consultation with the National Office. All other inquiries are forwarded to the National Office for response in the form of a Policy Memo, notice in the **Federal Register** or a regulation change as appropriate.

In working with the system since December 1979, FNS has had an opportunity to better evaluate the types of clarification and guidance that are needed to facilitate application of the program regulations. Further, the Food Stamp Reguatory Relief Task Force has made recommendations regarding the use of the existing system. Therefore, we are proposing a revision of the system in response to the task force recommendations and as an effort to meet the goal of lessening the administrative burden on States. The revision is based on the knowledge gained during the last few years through using the existing system.

It is proposed that the system address inquiries on issues which are likely to arise in any State and must therefore be handled consistently nationwide. Inquiries addressing individual cases that do not have national application will not be handled through this system, but will be answered by FNS in direct correspondence to the inquirer. This system will result in State agencies having to incorporate less material into their manuals and only that material which may be applicable in all States.

Operational Guidance System

Under the system being proposed, requests for regulatory clarification which have national application will be placed into one of two classes. The two classes are:

1. Inquiries that require rulemaking; and
2. Inquiries that require clarifications of existing rules that do not provide latitude for deviation and must therefore be handled consistently by all State agencies.

The first class identifies those issues which are not addressed by existing provisions of the Act or regulations and therefore, have been determined to require rulemaking.

The second class identifies those issues which require clarification of existing rules. The clarifications will not establish new requirements, but rather will explain the proper application of a particular regulatory requirement in a situation which could arise in any State. As such, the clarifications must be applied by all State agencies to ensure nationwide consistency in the processing of applications, the processing of eligibility determinations and the issuance of benefits, when the regulations are of such a nature that deviations are not permissible.

Those inquiries classified as needing regulatory guidance will be responded to through the full rulemaking process. As such, the implementation date will be determined for each rulemaking, as published.

Those inquiries placed in the second class will be responded to through the FNS Directives Management System and will be identified as FNS–FSP Operational Guides. Copies of the Operational Guides will be provided by the FNS National Office to each FNS Regional Office for distribution. The Operational Guides will be numbered sequentially by fiscal year, in addition to referencing the relevant regulatory provision. A list of the numbers and subjects of the guides will be included in the quarterly FNS Index of Records as part of the FNS Table of Contents—FNS Instructions, Handbooks and Supplements, which is available to the public. The State agency will be required to have the procedure in place by the date specified in the guides. This date will normally be 60 days from the date the guide is issued by the FNS National Office. A 60-day implementation date is being specified as a result of requests over the last two years from both State agencies and FNS Regional Offices that an implementation timeframe be established. In general, we believe most State agencies will already be following the procedures outlines in the clarifications provided by FNS. For those that are not, they will normally have 60 days to implement the procedure. However, FNS retains the right to specify a shorter or longer implementation period in those instances in which it is determined necessary.

The present system provides for the publication of notices in the **Federal Register** when addressing inquiries of major importance, i.e., the current category two. In practice we have found that inquiries are classified in either category one or category three of the existing system. Ther are very few issues that require publication of a **Federal Register** notice. Those issues that have been addressed in notices have been the few regulatory interpretations that require special emphasis. As such, FNS believes that a separate category for issues that must be handled through **Federal Register** notices is generally unnecessary. However, FNS would retain the right to provide the response to an inquiry through publication of a notice in the **Federal Register.** Publication of notices would be used on a very limited basis. The implementation dates will be specified in the notices.

FNS would like to ask specifically for comments on the proposed implementation provisions, and requests the submission of any alternate implementation schemes and the identification of any additional issues FNS should address in the final notice.

(91 Stat. 958 (7 U.S.C. 2027))

(Catalog of Federal Domestic Assistance Programs, No. 10.551, Food Stamps)

Dated: August 13, 1982.

Robert E. Leard,

Associate Administrator.

[FR Doc. 82-22849 Filed 8-19-82; 8:45 am]

BILLING CODE 3410-30-M

Food Stamp Program: Solicitation of Contract Proposals From State Welfare Agencies

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The Food and Nutrition Service (FNS) of the United States Department of Agriculture (USDA) announces the availability of $30 million in contract funding to State welfare agencies to continue the job search services for Food Stamp Program work registrants. Proposals are not being requested with this notice. Information regarding contract proposal requirements and submittal deadlines will be sent directly to State welfare agencies.

EFFECTIVE DATE: August 20, 1982.

FOR FURTHER INFORMATION CONTACT: Paul Stobaugh, State Operations Division, Family Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, telephone (703) 756–3496.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1, and has been classified "not major". The notice will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Because this notice will not affect the business community, it will not result in significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This notice has also been reviewed with regard to the requirements of the Regulatory Flexibility Act Pub. L. 96–354. The Administrator of the Food and Nutrition Service has certified that the notice will not have a significant economic impact on a substantial number of small entities. Contract funds will be offered to State welfare agencies on an optional basis to perform certain services. State welfare agencies may subcontract, again on an optional basis, for these services or perform the services themselves.

This notice does not contain reporting or record keeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

Currently, USDA has an agreement with the Department of Labor (DOL) to provide job search services to Food Stamp Program work registrants. This Notice announces a new approach for providing job search services to registrants. Funding will now be available for State welfare agencies on a contract basis to continue job search services. As a result of this development, the Department will no longer transfer funds to DOL for this purpose.

A provision in the Fiscal Year 1982 Appropriation Bill passed by Congress in December 1981 provided that $35 million be spent on work registration and job search over and above the $30 million USDA had agreed previously to transfer to DOL. See P.L. 97–103, 95 Stat. 1485. Of this additional designated amount, five million dollars will be used for work registration and job search demonstration projects. The remaining thirty million dollars will be offered to the States through contracts to perform or procure job search services. To the extent funds are available, USDA will pay 100 percent of the costs for the provision of job search services. Funding is intended for commitment or use in Fiscal Year 1982.

The contracts should result in continuation of the current job search system. State welfare agencies may perform the job search services themselves or subcontract them to State Employment Security Agencies (SESA) or private employment agencies, or use any other method acceptable to FNS. Job search requirements for registrants will remain the same as described in Part 273.7 of the Food Stamp Program regulations. Not all registrants, however, will be required to perform a job search. Due to funding limitations, State welfare agencies may target job search services to certain geographic areas or otherwise limit referrals for job search. Participants chosen for job search activities will still be sanctioned of non-compliance.

The Department has computed each State agency's fair share of the funds in order that current job search services may continue in each State. The formula uses the number of work registrants in the State compared with the total number nationwide. Each State participating will be assigned a minimum number of persons to whom job search must be offered for the contract amount. States may have an opportunity, if additional funds become available, to request such funds so as to serve a greater number of registrants.

Regardless of whether or not a State agency contracts to provide or procure job search services, State welfare agencies must continue to work register all non-exempt food stamp recipients as a condition of eligibility.

(91 Stat. 958 (7 U.S.C. 2011–2027))

(Catalog of Federal Domestic Assistance Program No. 10.551, Food Stamps)

Dated: August 17, 1982.

Samuel J. Cornelius,

Administrator, Food and Nutrition Service.

[FR Doc. 82–22851 Filed 8–19–82; 8:45 am]

BILLING CODE 3410–30–M

Forest Service

Delegation of Authority; Regional Foresters and Deputy Regional Foresters

Pursuant to the delegation of authority to the Chief, Forest Service, 7 CFR 2.60, authority is hereby delegated through the Deputy Chief for the National Forest System to the Regional Forester and Deputy Regional Forester of each Forest Service Region to perform the following acts under the authority to Title V of the Act of October 21, 1976 (43 U.S.C. 1761, et seq.) section 28 of the Act of February 25, 1920, as amended (30 U.S.C. 185), and in accordance with regulations of the Department relating to special uses of National Forest System lands, 36 CFR 251.50:

(1) Grant easements; and

(2) Take actions to suspend, revoke, or terminate easements in accordance with the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary, 7 CFR 1.130–1.151, or without administrative proceedings, if the easement, by its terms, provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time.

Effective date: This delegation of

authority shall be effective August 20, 1982. Done at Washington, DC, this 16th day of August, 1982.

R. Max Peterson,

Chief, Forest Service.

[FR Doc. 82-22837 Filed 8-19-82; 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

[Docket 40771]

American World Airways Fitness Investigation; Hearing

Notice is hereby given, pursuant to the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled matter is assigned to be held commencing September 13, 1982, 9:30 a.m. (local time) in Room 1003, Hearing Room "A", Universal Building North, 1875 Connecticut Avenue, NW., Washington, D.C. before the undersigned chief administrative law judge.

Dated at Washington, D.C., August 13, 1982.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 82-22843 Filed 8-19-82; 8:45 am]

BILLING CODE 6320-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits, Week Ended August 13, 1982

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Aug. 11, 1982	40913	Windward Islands Airways International N.V., c/o Bruce H. Rabinovitz, Ginsburg, Feldman, Weil and Bress, 1700 Pennsylvania Ave., N.W, Washington, D.C. 20006. Application of Windward Islands Airways International N.V., pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests an amendment of its permit to add Tortola, British Virgin Islands, as an authorized intermediate point. As amended, the route description in the permit would read: Between a point or points in the Netherlands Antilles, the intermediate point Tortola, British Virgin Islands, and the coterminal points St. Thomas, Virgin Islands, St. Croix, Virgin Islands, and San Juan, Puerto Rico. Answers may be filed by September 8, 1982.
Aug. 12, 1982	40921	Capitol Air, Inc., P.O. Box 325, Smyrna, Tennessee 37167. Application of Capitol Air, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests authorization to provide "back-up" scheduled foreign air transportation of persons, property and mail between: "The terminal point Miami, Florida on the one hand, and the terminal point London, United Kingdom, on the other hand;" Conforming Applications, motions to modify scope, and Answers may be filed by September 9, 1982.
Aug. 13, 1982	40922	Guy-America Airways, Inc., c/o Michael F. Goldman, Verner, Liipfert, Bernhard and McPherson, Suite 1100, 1660 L Street, N.W., Washington, D.C. 20036. Application of Guy-America Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests issuance of a "Type I" certificate of public convenience and necessity (see Order 81-11-23) which would authorize it to engage in the interstate and overseas air transportation of persons. Guy-America also requests authorization to engage in the interstate and overseas air transportation of property and mail between all points in the United States, its territories and possessions. Conforming Applications, motions to modify scope and Answers may be filed by September 10, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-22845 Filed 8-19-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket 36595]

Investigation Into the Competitive Marketing of Air Transportation; Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in this case is assigned to be held before the Board on Wednesday, September 15, 1982 at 11:00 a.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue, NW, Washington, D.C.

Each party which wishes to participate in the oral argument shall so advise The Secretary, in writing, on or before Wednesday, September 8, 1982, together with the name of the person who will represent it at the argument.

Dated at Washington, D.C., August 16, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-22844 Filed 8-19-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket 40887]

United States-Peoples Republic of China Service Proceeding (Phase II); Hearing

Notice is hereby given, pursuant to the Federal Aviation Act of 1958, as amended, that a hearing in the above-titled manner is assigned to be held commencing October 4, 1982, 9:30 a.m. (local time) in Room 1003, Hearing Room "A", Universal Building North, 1875 Connecticut Avenue, NW., Washington, D.C. before the undersigned chief administrative law judge.

Dated at Washington, D.C., August 17, 1982.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 82-22842 Filed 8-19-82; 8:45 am]

BILLING CODE 6320-01-M

CIVIL RIGHTS COMMISSION

Georgia 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 Georgia Advisory Committee to the Commission will convene at 2:30 p.m. and will end at 5:30p, on September 10, 1982, at the Marriott Hotel, Courtland and International Boulevard, in the Lincoln Room, Atlanta, Georgia 30303. The purpose of this meeting is to establish State Advisory Committee (SAC) priorities for the SAC Chairpersons' Conference, to discuss program plans

for Fiscal Year 1983 and to review the final draft of the Committee's report on bigotry and violence.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Clayton Sinclair, 301 Equitable Building, 100 Peachtree Street, Atlanta, Georgia 30303, (404) 681–0797 or the Southern Regional Office, Citizens Trust Bank Building, 75 Piedmont Avenue, NE., 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., August 17, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82–22796 Filed 8–19–82; 8:45 am]

BILLING CODE 6335–01–M

Illinois 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 Illinois Advisory Committee to the Commission will convene at 2 p.m. and will end at 4:30 p.m. on September 10, 1982, at the J.C.K. Federal Building, 230 South Dearborn, in Room 3280, Chicago, Illinois 60604. At this meeting the subcommittee on Hispanic issues will develop a study of Hispanic concerns and issues in Chicago for submission to the full Committee.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Thomas J. Pugh, 500 West Melbourne Avenue, Peoria, Illinois 61604, (309) 686–3121 or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604, (312) 353–7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 17, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82–22797 Filed 8–19–82; 8:45 am]

BILLING CODE 6335–01–M

Oregon 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 Oregon Advisory Committee to the Commission will convene at 12:00 p.m. and will end at 5:00 p.m., on September 10, 1982, at the Portland Hilton, 921 South West Sixth, in the Director's Suite, Portland, Oregon 97204. The purpose of this meeting is to plan activities for the future.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Thomas J. Sloan, 215 North West Orchard Drive, Portland, Oregon 97229, (503) 627–8162 or the Northwestern Regional Office, 915 Second Avenue, Room 2852, Seattle, Washington, (206) 442–1246.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 17, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82–22798 Filed 8–19–82; 8:45 am]

BILLING CODE 6335–01–M

San Jose Hearing, Growth Industries

Notice is hereby given pursuant to the provisions of the Civil Rights Act of 1957, 71 Stat. 634, as amended, that public hearings of the U.S. Commission on Civil Rights will be held on September 20–21, 1982 in the San Jose Convention Center, Montgomery Theatre, Market Street at West San Carlos Street, San Jose, California 95113. An executive session not open to the public may be convened at any appropriate time before or during the hearings.

The purpose of the hearings is to collect information within the jurisdiction of the Commission, particularly concerning the rapid growth of the high technology industry and the effects of that growth on business development opportunities and employment opportunities for minorities and women.

The Commission is an independent bipartisan factfinding agency authorized to study, collect, and disseminate information and to appraise the laws and policies of the Federal government with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice.

Dated at Washington, D.C., August 17, 1982.

Clarence M. Pendleton, Jr.,

Chairman.

[FR Doc. 82–22799 Filed 8–19–82; 8:45 am]

BILLING CODE 6335–01–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1982; Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to and Deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1982 commodities to be produced by and services to be provided by workshops for the blind and other severly handicapped.

Comments must be received on or before: September 22, 1982.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square Building #5, 1755 Jefferson Davis Highway, Suite 1107, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1982, November 12, 1981 (46 FR 55740):

Class 7920

Cloth, Wiping, Jean Cotton, White (Lint Free)
7920–LL–L01–0013
7920–LL–L01–0014

SIC 7349

Custodial Services and Grounds Maintenance, U.S. Army Reserve Center, Memorial Parkway, Huntsville, Alabama.
Janitorial/Mechanical Services, Federal Building, U.S. Post Office, Frederica and 5th Streets, Owensboro, Kentucky.
Janitorial Service, FSS Depot Building 58, Hingham Industrial Park, 319 Lincoln Street, Hingham Massachusetts.
Janitorial/Custodial, Springfield Federal Building, Main and Bridge Streets, Springfield, Massachusetts.
Janitorial/Custodial, U.S. Post Office and Courthouse, 445 Broadway, Albany, New York.
Janitorial Service, FDR Library, Hyde Park, New York.

Janitorial Service, Federal Building, U.S. Courthouse, 315 South McDuffie Street, Anderson, South Carolina.
Janitorial Service, Federal Building, U.S. Courthouse, 300 East Washington Street, Greenville, South Carolina.
Cutodial Services, U.S. Courthouse, 400 South Phillips Street, Sioux Falls, South Dakota.

Deletion

It is proposed to delete the following commodities from Procurement List 1982, November 12, 1981 (46 FR 55740):

Class 8410

Havelock
8410-00-762-2782
8410-01-013-9109

C. W. Fletcher,

Executive Director.

[FR Doc. 82-22803 Filed 8-19-82; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1982 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1982 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: August 20, 1982.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher (703) 557-1145.

SUPPLEMENTARY INFORMATION: On February 22, 1982, April 9, 1982, and April 30, 1982, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (47 FR 7721, 47 FR 15403, and 47 FR 18639) of proposed additions to Procurement List 1982, November 12, 1981 (46 FR 55740).

After consideration of the revelant matter presented, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following commodities and services are hereby added to Procurement List 1982:

Class 7530

Envelope, Wallet
7530-00-281-5976
7530-00-281-4844
7530-00-281-4846

Paper, Teletypewriter, Roll
7530-00-943-7076

SIC 7349

Janitorial Service, Federal Center, Buildings 616, 617, 618, Walla Walla, Washington.

SIC 7369

Commissary Shelf Stocking and Custodial Service, Maxwell Air Force Base, Alabama, Gunter Air Force Station, Alabama.

C. W. Fletcher,

Executive Director.

[FR Doc. 82-22802 Filed 8-19-82; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Oil Pipeline Tentative Valuation

The Federal Energy Regulatory Commission by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to Section 19a of the Interstate Commerce Act.

Notice is hereby given that a tentative valuation is under consideration for the common carrier by pipeline listed below:

1977 Report (August 18, 1982), Valuation Docket No. PV—1452-000, Chase Transportation Company, P.O. Box 2256, Wichita, Kansas 67201.

On or before September 27, 1982, persons other than those specifically designated in Section 19a(h) of the Interstate Commerce Act having an interest in this valuation may file, pursuant to rule 70 of the Interstate Commerce Commission's "General Rules of Practice" (49 CFR 1100.70), an original and three copies of a petition for leave to intervene in this proceeding.

If the petition for leave to intervene is granted the party may thus come within the category of "additional parties as the FERC may prescribe" under Section 19a(h) of the Act, thereby enabling it to file a protest. The petition to intervene must be served on the company at its address shown above and an appropriate certificate of service must be attached to the petition. Persons specifically designated in Section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Francis J. Connor,

Administrative Officer, Oil Pipeline Board.

[FR Doc. 82-22792 Filed 8-19-82; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2192-8]

Notice of Availability of Environmental Impact Statements Filed August 9 Through August 13, 1982 Pursuant to 40 CFR Part 1506.9

RESPONSIBLE AGENCY: Office of Federal Activities, General Information 382-5075 or 382-5076.

Corps of Engineers:
- EIS No. 820543, Final, DOE, LA, Atchafalaya Basin Floodway System Improvement, Due: Sept. 20, 1982
- EIS No. 820530, DSuppl, DOE, ND, Park River Flood Control Plan, Grafton, Walsh County, Due: Oct. 4, 1982

Department of Commerce:
- EIS No. 820544, Draft, NDA, SEV, ATL REG, Snapper-Grouper Complex Fishery Management Plan, NC/SC/GA/FL, Due: Oct. 4, 1982
- EIS No. 820546, Final, NOA, NY, New York State Coastal Management Program, CZM, Approval, Due: Sept. 20, 1982

Department of Interior:
- EIS No. 820531, Final, BLM, CA, San Gorgonio Wind Resource Programmatic Study, Riverside County, Due: Sept. 20, 1982
- EIS No. 820542, Draft, MMS, SEV, MXG, Gulf of Mexico Regional DCS Oil-Gas Lease Sales Nos. 72, 74 & 79, Due: Oct. 12, 1982
- EIS No. 820545, Draft, NPS, FL, Loxahatchee River, Wild-Scenic Designation, Palm Beach & Martin Cos., Due: Oct. 13, 1982

Department of Transportation:
- EIS No. 820536, Draft, FHW, MI, Carpenter Road Widening, N. Saginaw St. to Genesee Rd., Genesee Co., Due: Oct. 4, 1982
- EIS No. 820532, Final, FHW, MD, I-370 Construction, I-270 to Shady Grove Metro Station, Montgomery Co., Due: Sept. 20, 1982
- EIS No. 820541, Final, FHW, NC, East-West Thoroughfare Construction/Extension Forsyth & Gullford Cos., Due: Sept. 20, 1982
- EIS No. 820529, Final, FHW, NC, US 74/ Independence Boulevard Corridor, Upgrading, Mecklenburg County, Due: Sept. 20, 1982
- EIS No. 820538, Final, FHW, NC, Durham East-West Freeway Completion, I-85 to US 70, Durham County, Due: Sept. 20, 1982
- EIS No. 820528, Final, FHW, VA, NW Expressway Extension, Forest Road to Boonsboro Road, Campbell Co., Due: Sept. 20, 1982
- EIS No. 820540, DSuppl, FHW, MA, MA-25 Completion, Red Brook to Bourne Bridge, Plymouth/Barnstable Cos., Due: Oct. 4, 1982
- EIS No. 820537, Draft, UMT, FL, Jacksonville Metropolitan Area Transit Improvement, Duval County, Due: Oct. 4, 1982

EIS No. 820539, Draft, UMT, MA, North Station Boston Green Line, Improvements, Suffolk County, Due: Oct. 4, 1982

Environmental Protection Agency:

EIS No. 820534, Draft, EPA, TX, ATL Sabine-Neches Ocean Disposal Site Designation, Jefferson County, Due: Oct. 4, 1982

EIS No. 820535, Draft, EPA, OK, Tulsa Northside Wastewater Treatment Facilities, Grant, Tulsa County, Due: Oct. 4, 1982

Department of Housing and Urban Development:

EIS No. 820533, Draft, HUD, HI, Kaka'ako Community Plan, Mortgage Insurance and Grants, Honolulu Co., Due: Oct. 4, 1982

Dated: August 17, 1982.

Paul C. Cahill,

Director, Office of Federal Activities.

[FR Doc. 82-22834 Filed 8-19-82; 8:45 am]

BILLING CODE 6560-50-M

[TSH-FRL-2191-8; OPTS-51427]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of eight PMNs and provides a summary of each.

DATES: Close of Review Period: PMN 82-562, November 3, 1982. PMN 82-563 and 82-564, November 7, 1982. PMN 82-565, November 8, 1982. PMN 82-566, 82-567, 82-568, and 82-569, November 9, 1982. Written comments by: PMN 82-562, October 4, 1982. PMN 82-563 and 82-564, October 8, 1982. PMN 82-565, October 9, 1982. PMN 82-566, 82-567, 82-568, and 82-569, October 10, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-51427]" 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 Branch, 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-confidential version of the submission provided by the manufacturer on the PMNs received EPA. The complete non-confidential document is available in the Public Reading Room E-107.

PMN 82-562

Importer. Confidential.

Chemical. (G) 1-Naphthalenesulfonic acid, ((((triazin)amino)disulfo)azo)-, trisodium salt.

Use/Import. (S) Textile reactive dye. Import range: 300-3,000 kg/yr.

Toxicity Data. Acute oral: 5,000 mg/kg; Skin irritation: Slight irritant; Eye irritation: Slight irritant; Ames Test: Negative; 96 hr TL_{50} (Zebra): >1,000 mg/l; BOD_5: 0 mg/$g0_2$; COD: 989 mg/$g0_2$; Treatment plant bacterial inhibition: No inhibition @300 mg/l.

Exposure. Import and processing: 400 manhrs/yr distributed over 10-30 employees.

Environmental Release/Disposal. No release. Disposal by textile plant water treatment system.

PMN 82-563

Manufacturer. Lithium Corporation of America.

Chemical. (S) Ethyllitkium.

Use/Production. (S) Polymerization initiation and organic synthesis. Prod. range: 10,000-60,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: a total of 5 workers, up to 6 hrs/da, up to 138 da/yr.

Environmental Release/Disposal. 10-100 kg/yr released to air.

PMN 82-564

Importer. Enthone, Inc.

Chemical. (G) Aliphatic polyol oligoacrylate oligopropionate.

Use/Import. (S) Component of formulated screen ink for manufacture of printed circuit boards. Import range: 100-4,400 kg/yr.

Toxicity Data. Skin irritation: Mild irritant.

Exposure. Processing: dermal, a total of 2 workers, up to 8 hrs/da, up to 100 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to land. Disposal by industrial laundry.

PMN 82-565

Importer. Confidential.

Chemical. (G) Alkenyl alkanoate ester.

Use/Import. (S) Paint additive. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg.

Exposure. Import and use: dermal and inhalation, a total of 1 worker.

Environmental Release/Disposal. Release to air. Disposal by incineration and approved landfill.

PMN 82-566

Manufacturer. Confidental.

Chemical. (G) Heteromonocycle, substituted.

Use/Production. (G) Open use. Prod. range: Confidential.

Toxicity Data. Confidential.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 82-567

Manufacturer. Confidential.

Chemical. (G) Heteromonocycle, substituted.

Use/Production. (G) Open use. Prod. range: Confidential.

Toxicity Data. Confidential.

Exposure. Processing: dermal and inhalation.

Environmental Release/Disposal. Confidential.

PMN 82-568

Manufacturer. Milliken and Company.

Chemical. (G) Chromophore substituted poly(oxyalkylene).

Use/Production. (G) Colorant. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 82-569

Manufacturer. Lilly Industrial Coatings, Inc.

Chemical. (G) Epoxidized hydroxystearic acid.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing and use: dermal, a total of 11 workers, up to 20 hrs/da, up to 9 da/yr.

Environmental Release/Disposal. No release. Disposal by publicly owned treatment works (POTW).

Dated: August 16, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82-22820 Filed 8-19-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 78N-0124]

Depo-Provera Sterile Aqueous Suspension; Notice of Prehearing Conference on Proposal To Refuse Approval of Supplemental New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the decision of the Public Board of Inquiry to hold a prehearing conference in the proceeding involving the agency's proposal to refuse approval of a supplemental new drug application (NDA) of The Upjohn Co. The NDA was submitted for the general marketing of Depo-Provera (medroxyprogesterone acetate) Sterile Aqueous Suspension as a contraceptive agent in humans.

DATES: The prehearing conference will start on September 23, 1982, at 9 a.m., and, if necessary, the conference may be continued on September 24, 1982, at a time designated by the chairperson of the Public Board of Inquiry.

ADDRESS: The prehearing conference will be held in Conference Room D, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tenny P. Neprud, Jr., Regulations Policy Staff (HFC-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 27, 1979 (44 FR 44274), FDA ordered that a hearing before a Public Board of Inquiry (PBOI) be held to determine whether the supplemental NDA for Depo-Provera (NDA 12-541/S-004) contained reports of investigations that were adequate to show that the drug is safe for use under the conditions prescribed, recommend, or suggested in the labeling as required by section 505(d) (1), (2), and (4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(d) (1), (2), and (4)), and whether that information, combined with other information about the drug, provides a sufficient basis from which FDA can determine that Depo-Provera is safe for general marketing in the United States under such conditions. On September 10, 1981, pursuant to 21 CFR 13.10(c), the Commissioner of Food and Drugs appointed the following individuals to serve as members of the Depo-Provera PBOI: Judith Weisz (chairperson), Griff T. Ross, and Paul D. Stolley.

The Board has decided that a prehearing conference on this matter will be held beginning at 9 a.m., on September 23, 1982, in Conference Room D, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. If time is not sufficient to complete the prehearing conference on September 23, 1982, it will be continued on September 24, 1982, at a time designated by the chairperson of the Board. The prehearing conference will be transcribed and open to the public in accordance with 21 CFR 13.30(g).

The purpose of the prehearing conference is to establish the methods and procedures to be used in developing the evidence at the hearing. Specifically, the Board will determine at the conference the sequence of presentations by the participants to be followed at the hearing, the amount of time each participant shall be allotted, when and how questions by participants will be permitted, and whether summations will be allowed. All participants are to appear at the prehearing conference prepared to discuss and resolve these matters and to raise any other matters that might reasonably be anticipated and resolved at that time.

Participants who cannot or do not wish to attend the prehearing conference may submit written suggestions for the procedures that should be followed at the hearing. Written submissions shall be submitted in triplicate to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 6500 Fishers Lane, Rockville, MD 20857, and must be received by September 16, 1982.

The date, time, and place of the hearing will be set at the prehearing conference and will be announced in a subsequent notice to be published in the Federal Register.

Dated: August 16, 1982.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-22816 Filed 8-17-82; 4:56 pm]

BILLING CODE 4160-01-M

Office of the Secretary

Privacy Act of 1974; Matching Program—Federal Personnel/AFDC and Black Lung Benefit Records

AGENCY: Health and Human Services Department.

ACTION: Notification of a Matching Program—Federal Personnel/AFDC and Black Lung Benefit Records.

SUMMARY: The Department of Health and Human Services is providing notice that the Office of Inspector General intends to conduct matches of federal personnel records of the Office of Personnel Management, the Department of Defense, the United States Coast Guard, and the Tennessee Valley Authority with State Aid to Families with Dependent Children (AFDC) records and Social Security Black Lung Payment information. A matching report is set forth below.

DATES: These matches will begin in September and October 1982.

ADDRESS: Send any comments to Office of Public Affairs, Office of Inspector General, Department of Health and Human Services, Room 5267, HHS North Building, 330 Independence Avenue, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Richard McGowan, Public Affairs Officer, Office of Inspector General, Department of Health and Human Services, Room 5267 HHS North Building, 330 Independence Avenue, SW., Washington, D.C. 20201 or call (202) 472-3142.

SUPPLEMENTARY INFORMATION: The Office of Inspector General under the auspices of the President's Council on Integrity and Efficiency has initiated a major project to reduce fraud and abuse by federal employees, retirees, or survivors who are improperly receiving AFDC or Black Lung benefits and to identify program weaknesses requiring corrective action. Set forth below is the information required by paragraph 5.f.1 of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget, 47 FR 21656 (May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Dated: August 13, 1982.

Richard P. Kusserow,

Inspector General.

Report of Matching Program: Federal Personnel Records/AFDC and Black Lung Benefit Records

a. *Authority:* Pub. L. 94-505

b. *Program Description:* 1 *AFDC Match.* The Office of Inspector General plans to match lists of AFDC recipients furnished by the various states against wage and/or annuity data of Federal employees, retirees, or survivors. Matches of identical factors ("hits") will

be provided to appropriate federal, state, or local officials for further review and investigation. Where appropriate, federal officials will be requested to furnish wage data of Federal employees to States in which AFDC recipients reside. The appropriate States will review the individual "hits" and report the results of their findings and resolutions to the Office of Inspector General.

2. *Black Lung Match.* An extract of individuals (name, social security number, and date of birth) whose wages affect black lung benefit payments and who are in current payment status as shown on SSA's Black Lung Payment System will be matched against federal personnel records. Information from the Black Lung records which matches a beneficiary who is a Federal employee, retiree, or survivor will be identified as part of a computer print-out. The identifying information on these cases will be given to SSA for verification of the eligibility of the Black Lung beneficiaries to determine whether these beneficiaries have wages which may offset their benefit.

c. *Records to be Matched:* Records from the following records systems will be matched against state AFDC record tapes and the SSA Black Lung Payment System, 46 FR 52962 (October 27, 1981):

1. Office of Personnel Management—General Personnel Records system, 47 FR 16489 (April 16, 1982) and Civil Service Retirement and Insurance Records system, 47 FR 16474 (April 16, 1982)

2. Department of Defense, Defense Manpower Center Data Base system, 47 FR 16193 (April 15, 1982)

3. Tennessee Valley Authority-Personnel Records system, 45 FR 9428 (February 12, 1980); Payroll Records system, 45 FR 9435 (February 12, 1980); and Retirement Systems Record system, 45 FR 9445 (February 12, 1980)

4. Coast Guard, Active Duty Military Payroll System 46 FR 59752 (December 7, 1981) and Personnel Management Information System 46 FR 59766 (December 7, 1981)

Appropriate routine uses have been published by these agencies to permit disclosures to the Department to conduct these matches.

d. *Period of the Match:* These matches will begin in September and October, 1982 and will be completed within 6 months.

e. *Safeguards:* Records used in this match will be maintained under strict security. Access to the computer files and printed information is restricted to only those persons associated with the matching program on a "need-to-know" basis. The records will be kept in locked file cabinets and under the control of the Office of the Inspector General. We will return all of the computer source tapes to the respective sources within 60 days of the match. We will also degauss all computer work tapes at completion of the matching program. We protect all computer tapes by the use of passwords to prohibit unauthorized access. All computer files are safeguarded in accordance with the provisions of the National Bureau of Standards Federal Information Processing Standards 41 and HHS ADP Systems Manual, Part 6, "ADP Systems Security" .

f. *Retention and Disposition of Records:* Only those records produced in the match which meet predetermined criteria will be maintained. All records maintained will be destroyed within 6 months except for those records which are necessary to the completion of pending law enforcement activities or administrative activities of the matching program. Paper listings will either be shreaded or burned.

[FR Doc. 82-22830 Filed 8-19-82; 8:45 am]

BILLING CODE 4150-04-M

Privacy Act of 1974; Report on New System

AGENCY: Health and Human Services Department.

ACTION: Notification of Report on New System, "Federal Personnel/HHS or HHS Funded Benefit and Loan Program Temporary Matching File, HHS/OS/OIG".

SUMMARY: The Department of Health and Human Services proposes to establish a new system of records entitled "Federal Personnel/HHS or HHS-Funded Benefit and Loan Program Temporary Matching File, HHS/OS/OIG", under the Privacy Act and in accordance with OMB Supplemental Guidance for Matching Programs. The Department is requesting public comments on the routine uses in the system.

DATES: The Department has sent new system reports for this system to the Congress and OMB on August 13, 1982. The Department has requested a waiver of the 60 day advance notification required by OMB Circular A-108. If this waiver is granted, the systems notice, with the exception of the routine uses, will be effective on the date the waiver is granted. Regardless of whether a waiver is granted, the routine uses will not be effective before 30 days from the date of publication provided no comment is received which results in a contrary determination. If the waiver is not granted, the systems notice will be effective 60 days from the date submitted to OMB.

ADDRESS: Comments should be addressed to Richard McGowan, Public Affairs Officer, Office of Inspector General, Department of Health and Human Services, Room 5267 North Bldg., 330 Independence Avenue, SW., Washington, D.C. 20201. Comments received will be available for inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard McGowan, Public Affairs Officer, Office of the Inspector General, Department of Health and Human Services, at the above address or call (202) 472-3142.

SUPPLEMENTARY INFORMATION: The Office of Inspector General under the auspices of the President's Council on Integrity and Efficiency has initiated a major project to reduce fraud and abuse by federal employees, retirees, or survivors who are improperly receiving federal or federally funded benefits or who have debts owing to the federal government and to identify program weaknesses requiring corrective action. The project will consist of matches of federal personnel records against HHS or HHS funded program records to identify individuals who appear in both records systems. Cases identified through computer comparison of files will be forwarded to the federal employing agency for verification of status. Cases will then be referred to the appropriate federal, state, or local agency for an entitlement determination or collection of outstanding debts. Where there is evidence of fraud, cases will be referred to the appropriate federal, state, or local law enforcement agency for investigation and prosecution. It is expected that federal employing agencies will pursue administrative sanctions in appropriate cases.

The routine use disclosures provided for in the notice are necessary to accomplish the purposes of the system of records as described above or are compatible with the collection of data for those purposes. Disclosures will also be made in accordance with other disclosure provisions of the Privacy Act (5 U.S.C. 552a(b)).

Dated: August 13, 1982.

Richard P. Kusserow,

Inspector General.

09-90-0102

SYSTEM NAME:

Federal Personnel/HHS or HHS Funded Benefit and Loan Program Temporary Matching File HHS/OS/OIG.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of the Inspector General, DHHS, Room 5262, North Building, 330 Independence Avenue, SW., Washington, D.C. 20201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal personnel (employees, retirees, and survivors) who are also included in HHS or HHS funded benefit and loan program record files.

CATEGORIES OF RECORDS IN THE SYSTEM:

Federal personnel records including name, social security number, date of birth, sex, work status, pay grade, duty station, OPM claim number, health benefit enrollment code, retirement date, annuity rate, pay status of case, correspondence address, zip code, and HHS or HHS funded benefit and loan program records including name, social security number, date of birth, address, and data used to determine eligibility.

AUTHORITY FOR MAINTENANCE OF THIS SYSTEM:

Pub. L. 94–505.

PURPOSE(S):

This system of records is maintained to facilitate the comparison of records to identify those federal employees, federal retirees, or their survivors who may also be receiving assistance under an HHS or HHS funded benefit or loan program. These records will then be used for the purpose of reviewing eligibility and identifying any debts owed under these programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used as follows:

1. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, foreign, State or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto where such responsibility rests outside of OIG.

2. A record from this system of records may be disclosed as a "routine use" to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement records or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee or disciplinary or other administrative action concerning an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. A record from this system of records may be disclosed to a Federal agency in connection with the hiring or retention of an employee or disciplinary or other administrative action concerning an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the agency, to the extent that the record is relevant and necessary to the agency's decision on the matter.

4. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

5. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the department or any of its components; or (C) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

6. A record from this system may be disclosed as a "routine use" to a Federal, State, or local agency maintaining pertinent records if necessary to obtain a record relevant to a Department decision concerning the determination of initial or continuing eligibility for program benefits.

7. Disclosures may be made to the Office of Personnel Management or the Merit Systems Protection Board (including the Office of the Special Counsel) of information relevant and necessary to carrying out their functions.

8. Disclosures may be made to third party contacts where the party contacted may have information needed to establish or verify relevant information.

9. Disclosures may be made to Federal, State, and local agencies or to other agencies administrating federally funded programs where necessary to take action with regard to individuals not entitled to program benefits or individuals delinquent on loan payments under federally funded programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are stored on computer tape files and computer printed listings.

RETRIEVABILITY:

The records are retrieved by computer using Social Security Number as the principal matching criterion.

SAFEGUARDS:

Direct access is restricted to authorized staff members of the Office of the Inspector General. Access within HHS is limited to those employees who are directly involved in the matching program on a need-to-know basis. Computer files and printed listing are maintained in security type safes or lock bar file cabinets. They are safeguarded in accordance with the provisions of the National Bureau of Standards Federal Information Processing Standards 41 and 31, and the HHS Information Processing Standards, HHS ADP Systems Manual, Part 6, "ADP Systems Security." All computer tapes are password protected prohibiting unauthorized access.

RETENTION AND DISPOSAL:

In instances of computer matching of files, only those records which meet predetermined criteria are maintained. All records which do not meet these criteria are destroyed. All original source commuter tapes will be returned within 60 days. All records obtained as a result of the matching program will be degaussed as soon as possible within 6 months except for those records which are necessary to the completion of pending law enforcement activities or administrative activities of the matching program. Paper listings will be either shredded or burned.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General/Deputy Inspector General, Room 5246, North Building, U.S. Department of Health and Human Services, 330 Independence Avenue, SW., Washington, D.C. 20201.

NOTIFICATION PROCEDURE:

Contact: Richard McGowan, Public Affairs Officer, Office of Inspector General, Department of Health and Human Services, Room 5267, North Building, 330 Independence Avenue, SW., Washington, D.C. 20201.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above, and reasonably identify the record and specify the information to be contested, the corrective action sought and the reasons for the correction with supporting justification.

RECORD SOURCE CATEGORIES:

Records are furnished from the Central Personnel Data File (CPDF) maintained by the Office of Personnel Management, from other Federal agency personnel records systems, and from HHS or HHS-funded program records systems.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

[FR Doc. 82-22829 Filed 8-19-82; 8:45 am]

BILLING CODE 4150-04-M

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 August 13.

Public Health Service

Food and Drug Administration

Subject: Medical Device Establishment Registration Form (0910-0060) (FDA-2891a)—Extension
Respondents: Establishments engaged in manufacturing medical devices
OMB Desk Officer: Fay S. Iudicello

Office of the Assistant Secretary for Health

Subject: Evaluation of Data Collection Policies of the National Ambulatory Medical Care Survey—Preliminary Plan—New
Respondents: Hospitals
OMB Desk Officer: Richard Eisinger

Office of the Secretary

Subject: National Long Term Care Demonstration Follow-Up Instrument—New
Respondents: Individuals participating in the Long Term Care Channeling Demonstration
OMB Desk Officer: Milo Sunderhauf
Subject: State Request for HHS Approval of Federal Financial Participation in the Cost of ADP Systems, Equipment and Services (0990-0058)—Extension
Respondents: Single State Agencies (Social Security Act Grantees)
OMB Desk Officer: Richard Eisinger

Social Security Administration

Subject: Application for Disability Insurance Benefits (SSA-16-F6)—Revision
Respondents: Individuals or Households
Subject: Statement of Agricultural Employer About a Worker's Alleged Wages (SSA-1002 (2-81))—Reinstatement
Respondents: Farms/businesses or other institutions
Subject: Statement of Employer (Non-Farm) About a Worker's Alleged Wages (SSA-7011)—Reinstatement
Respondents: Businesses or other institutions
Subject: Statement of Self-Employment Income to Determine if a Self-Employed Claimant had the Minimal Amount of Net Earnings from Self-Employment in the Current Year (SSA-766 (7-82))—Revision
Respondents: Individuals or households
Subject: Black Lung Student's Statement Regarding Resumption of Attendance (SSA-2602 (6-82))—New
Respondents: Individuals or households
OMB Desk Officer: Milo Sunderhauf

Health Care Financing Administration

Subject: Hospital, Skilled Nursing Facility and Health Care Complex Cost Report (HCFA-2552 Part: Hill-Burton Reinbursement Supplement)—Revised
Respondents: Hospitals, skilled nursing facilities, and health care complexes
Subject: Documentation to Certify Medicare Supplemental Policies (Medigap (HCFA-367))—New
Respondents: Health insurance organizations
Subject: Report to Medicare of Automobile or Liability Insurance Coverage (HCFA-365)—New
Respondents: Emergency services providers and Medicare beneficiaries
Subject: Attending Physician Statement and Documentation of Medicare Emergency (HCFA-1771)—Extension/No Change
Respondents: Physicians
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)

Dated: August 12, 1982.

Dale W. Sopper,

Assistant Secretary for Management and Budget.

[FR Doc. 82-22592 Filed 8-19-82; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-82-1151]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Robert G. Masarsky, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, telephone (202) 755-5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as

required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from Robert G. Masarsky, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: New Horizons Quarterly Progress Report
Office: Fair Housing and Equal Opportunity
Form number: None
Frequency of submission: Quarterly
Affected public: State or Local Governments
Estimated burden hours: 5,600
Status: New
Contact: Gabriel Nemeth, HUD, (202) 755–7009; Robert Neal, OMB, (202) 395–6880

Notice of Submission of Proposed Information Collection to OMB

Proposal: New Horizons Fair Housing Strategy and Assessment
Office: Fair Housing and Equal Opportunity
Form number: None
Frequency of submission: Annually
Affected public: State or Local Governments
Estimated burden hours: 1,750
Status: New
Contact: Gabriel Nemeth, HUD, (202) 755–7009; Robert Neal, OMB, (202) 395–6880

(Sec. 3507, Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Dated: August 12, 1982.

Judith L. Tardy,

Assistant Secretary for Administration.

[FR Doc. 82-22814 Filed 8-19-82; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Eastern States; Transfer of Lands To Be Held by the United States in Trust for Certain Communities of the Mdewakanton Sioux in Minnesota

Correction

In FR Doc. 82-21122, appearing on page 34050, in the issue of Thursday, August 5, 1982, make the following change:

On page 34050, in the second column, the second line of the Sec. 2 land description should read: "NW¼SE¼, E½SE¼ excepting therefrom 15".

BILLING CODE 1505-01-M

National Park Service

National Capital Memorial Advisory Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Advisory Committee will be held at 1:30 p.m. on Wednesday, September 22, 1982, in Room 234 at the National Capital Region Headquarters, 1100 Ohio Drive, SW., Washington, D.C.

The Committee was established for the purpose of preparing and recommending to the Secretary broad criteria, guidelines and policies for memorializing persons and events on Federal lands in the National Capital Region (as defined in the National Capital Planning Act of 1952, as amended) through the media of monuments, memorials and statues. It is to examine each memorial proposal for adequacy and appropriateness, make recommendations to the Secretary with respect to site location on Federal land in the National Capital Region and to serve as an information focal point for those seeking to erect memorials on Federal land in the National Capital Region.

The members of the Committee are as follows:

Mr. Russell E. Dickenson (Chairman), Director, National Park Service, Washington, D.C.
Mrs. Helen M. Scharf, Chairman, National Capital Planning Commission, Washington, D.C.
Mr. George M. White, Architect of the Capitol, Washington, D.C.
General Mark W. Clark, Chairman, American Battle Monuments Commission, Washington, D.C.
Mr. J. Carter Brown, Chairman, Commission of Fine Arts, Washington, D.C.
Honorable Marion S. Barry, Mayor of the District of Columbia, Washington, D.C.
Mr. A. R. Marshall, Commissioner, Public Buildings Service, Washington, D.C.

The purpose of the meeting will be to review H.J. Res 485, which would authorize the Secretary of the Interior to construct a National Law Enforcement Heroes Memorial and H.J. Res 523, which would authorize the erection of a memorial on public grounds in the District of Columbia or it's environs, in honor and commemoration of members of the Armed Forces of the United States who served in the Korean War.

The meeting will be open to the public. Any person may file with the Committee a written statement concerning the matters to be discussed. Persons who wish to file a written statement or who want further information concerning the meeting may contact Mr. John G. Parsons, Associate Regional Director, Land Use Coordination, National Capital Region, at area code 202–426–7750. Minutes of the meeting will be available for public inspection 2 weeks after the meeting at the Office of National Capital Region, Room 206, 1100 Ohio Drive, SW., Washington, D.C.

Dated: August 13, 1982.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 82-22817 Filed 8-19-82; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Section 10706(a)(5)(A) Application No. 6]

Institute of Shortening and Edible Oils, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of agreement and request for comments.

SUMMARY: Under the provisions of 49 U.S.C. 10706(a)(5)(A), shippers must obtain Commission approval of any agreements to discuss among themselves the amount of compensation to be charged rail carriers for the use of privately-owned cars. If such an agreement is approved, the antitrust laws do not apply to parties and other persons with respect to the making and carrying out of the agreement, pursuant to paragraph (2) of this subsection. However, an agreement will only be

approved if it furthers the transportation policy set forth in 49 U.S.C. 10101a. When necessary, additional conditions may be imposed by the Commission to assure the furtherance of that policy.

An application was filed on April 1, 1982, by The Institute of Shortening and Edible Oils, Inc., on behalf of its members, who own or lease tank cars and supply them to the railroads.

The application may be inspected at the Office of the Secretary, Interstate Commerce Commission, in Washington, D.C.

DATES: Comments on this application should be filed within 30 days of the date of publication of this notice in the Federal Register.

ADDRESS: Send an original and, if possible, 15 copies of comments to: Office of Proceedings, Room 5340, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275-7277
or
Tom Smerdon, (202) 275-7277.

SUPPLEMENTARY INFORMATION: The application was filed by The Institute of Shortening and Edible Oils, Inc. (ISEO), on behalf of its 19 member companies who ship edible food oils in private tank cars. Members of this association control, through ownership or leasing, approximately 6,600 tank cars.

Allowances for the use of private cars were the subject of extended controversy between railroads and shippers until the investigation in Ex Parte No. 328, *Investigation of Tank Car Allowance System*, decided June 14, 1979 (not printed), produced an agreed-upon system of compensation. Subsequently, section 224(b) of the Staggers Rail Act of 1980 was enacted [and codified at 49 U.S.C. 10706(a)(5)(A)], permitting shippers under approved agreements, to collectively propose to the railroads what compensation they should receive for use of their cars. If approved, the agreement would permit members to consider and decide together, what action they would take on any proposals for changes in compensation to be paid for use of privately-owned or leased tank cars (without abrogating the right of an individual member to take independent action).

An application for approval of a similar agreement filed by the American Petroleum Institute, on behalf of its members who also own and lease tank cars, is pending. Section 10706(a)(5)(A) Application No. 4. Part of its justification, to which ISEO subscribes was that the Commission had already approved a railroad rate bureau's agreement, which authorizes the railroads to collectively submit their car compensation proposals to shippers. Also pending is a similar application filed by the Chemical Manufacturers Association. Section 10706(a)(5)(A) Application No. 5.

Comments are invited on the proposed agreement, with special attention to the following: (1) How will this agreement further the transportation policy set forth in 49 U.S.C. 10101a, including whether the requested anti-trust immunity is necessary? (2) Are there any foreseen anti-competitive effects that might result from such agreement? (3) Must individual shippers be allowed to take independent action to negotiate separately their car compensation rates? (4) Are any safeguards necessary, for example, to ensure that the proposed agreement will not have an undesirable anti-competitive effect or supress competition among members of the association? (5) What other matters should be considered by the Commission in deciding whether to approve the agreement?

While it does not appear that this action will significantly affect the quality of the human environment or conservation of energy resources, comments on these issues are also invited.

(49 U.S.C. 10706(a)(5))

Dated: August 13, 1982.

By the Commission, Chairman Taylor, Vice-Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-22818 Filed 8-19-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applicants; Decision-Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Consevration Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3 Members Krock, Joyce, and Dowell.

MC-FC-79554. By decision of July29, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to TEXAS EASTERN TRANSPORT, INC., of Lufkin, TX, of Permit No. MC-143066 (Sub-No. 2), issued July 9, 1982, to B.G.M. TRUCKING, INC., of Huston, TX, which authorizes the transportation of *general commodities* (except classes A and B explosives), between points in the United States, under continuing contract(s) with Mims Meat Company, Inc., of Houston, TX. Representative: Timothy Mashburn, P.O. Box 2207, Austin, TX 78768.

Note.—By decision of January 7, 1982, Transferor was authorized to transfer its authority in Permit No. MC-144771 (Sub-No. 1F) and Certificate Nos. MC-143066 (Sub-Nos. 1 and 3) to Transferee. At that time MC-143066 (Sub-No. 2) was not issued and, therefore, not subject to transfer.

MC-FC-79752. By decision of July 29, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the

transfer to Dorn's Delivery & Transfer, Inc., of Appleton, WI of Permit No. MC–155247 issued to W.S.I. Trucking, Inc., of Menasha, WI, authorizing: General commodities (except classes A and B explosives), between points in the U.S., under contract with Warehouse Specialists, Inc. of Menasha, WI. Representative: James A. Spiegel, 6333 Odana Rd., Madison, WI 53719. TA lease is not sought. Transferee is not a carrier.

MC–FC–79906. By decision of August 5, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to U.S. Express, Inc., of Little Rock, AR, of Certificate No. MC–156079 and in Sub-Nos. 1 through 5, issued to Circle "C" Carriers, Inc., of Little Rock, AR, respectively authorizing the transportation of (1) charcoal and charcoal briquets between points in Baxter County, AR, on the one hand, and on the other, points in the United States; (2) building materials between points in Bradley County, AR, on the one hand, and, on the other, points in the United States. Representative is: Stephen F. Grinnell, 1600 TCF Tower, Minneapolis, MN 55402.

MC–FC–79911. By decision of August 5, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Love Truck Lines, Inc., of Riverton, NJ, of Certificate No. MC–78080 issued June 24, 1981, MC–78080 (Sub-No. 1) issued May 27 1982, MC–78080 (Sub-No. 2) issued May 27, 1982, and MC–78080 (Sub-No. 3) issued August 2, 1982, to Bickley's Auto Express, Inc., of Phila., PA, authorizing (1) *general commodities* (except classes A and B explosives), between Philadelphia, PA, and points in Berks, Bucks, Carbon, Chester, Columbia, Delaware, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Monroe, Montgomery, Montour, Northampton, Pike, Schuylkill, Wayne, Wyoming and York Counties, PA, and Warren and Hunterdon Counties, NJ; (2) *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munition) between points in the US (except AK and HI) for or on behalf of the United States Government, (3) *general commodities* (except classes A and B explosives, commodities in bulk, and household goods as defined by the Commission) between Philadelphia, PA, and New York, NY, and points in DE and Cape May, Ocean, Cumberland, Sales, Gloucester, Camden, Atlantic, Burlington, Mercer, Middlesex, Somerset, Morris, Union, Essex, Bergen, and Passaic Counties, NJ; and (4) over specified regular routes, (a) *general commodities*, except liquors, commodities of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and commodities requiring special equipment, between Woodstown, NJ, and Philadelphia, PA, serving all intermediate points; and the off-route points of Sharptown and Harrisonville , NJ, and (b) general commodities, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment, between Philadelphia, PA, and Woodbury, NJ, serving all intermediate points; and the off-route points of Verga and National Park, NJ. Representative: Robert F. Blomquist, 499 Cooper Landing Road, Box No. 5459, Cherry Hill, NJ, (609) 667–6000. TA lease is not sought. Transferee is not a carrier.

MC–FC–79925. By decision of July 26, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Nivram Corp. of Permit No. MC–123900 (lead and Sub-Nos. 6 and 7F) issued April 5, 1971, December 5, 1975 and December 11, 1980 respectively to Doric Transportation Corp. Generally authorizing the transportation of paper, books, pamphlets, brochures and materials and supplies used in the production of such commodities between points in the United States and (2) from, to, and between specified points in NJ and NY under continuing contract or contracts with named shippers. Representative: Morton E. Kiel, Attorney At Law, Suite 1832, Two World Trade Center, New York, NY 10048.

MC–FC–79936. By decision of 8–3–82 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to C. L. Feather, Inc. of Altoona, PA of Certificate No. MC–124045 (Sub-No. 4)X, issued May 11, 1981, to Raymond G. Wishard d/b/a Wishard Trucking, of Chambersburg, PA, authorizing transportation over *irregular* routes, of *commodities in bulk* between points in DE, IL, (except Chicago and a 50-mile radius of Chicago), IN, MD, MI, MO, NJ, (except Cumberland, Salem, Gloucester, Cape May, Atlantic, Burlington, and Camden Counties), NY, OH, PA, VA, WV, WI, with certain restrictions. Representative: Sally A. Davoren, 1500 Bank Tower, 307 Fourth Avenue, Pittsburgh, PA (412) 471–3300.

MC–FC–79946. By decision of July 29, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Thru Lines, Inc., W. Hartford, CT, of Certificates Nos. MC–28536 (Sub-Nos. 8 and 10 through 18) issued to Fox & Ginn, Inc., Bangor, ME, authorizing the transportation of general commodities, with exceptions, except where otherwise indicated (Sub-No. 8) between Moose River, ME, and the United States-Canada Boundary line at or near Dennistown, ME, serving no intermediate points, over a specified route; (Sub-No. 10) between (a) Rockland and Wiscasset, ME, serving certain intermediate and off-route points, over a specified route, and (b) Wiscasset and Newagen, ME, serving certain intermediate and off-route points, over a specified route; (Sub-No. 11) between (a) Bangor and Milford, ME, serving all intermediate and certain off-route points, over a specified route, and (b) Bangor and Stillwater, ME, serving all intermediate points and certain off-route points, over a specified route; (Sub-No. 12) between Tewiston and Rumford, ME, serving all intermediate points, over a specified route; (Sub-No. 13) between (a) Worcester and Boston, MA, serving certain intermediate and off-route points, over a specified route, (b) Worcester and Oxford, MA, serving the intermediate point of Teicester, MA, over a specified route, (c) Worcester and Charlton, MA, serving certain intermediate and off-route points, over a specified route, and (d) Worcester, Boston, Springfield, Salisbury, and Newburyport, MA, on the one hand, and, on the other, points in MA, over irregular routes; (Sub-No. 14) between Tiuermose Falls and Farmington, ME, serving all intermediate points and the off-route point of Dryden, ME, over a specified route.

MC–FC–79948. By decision of 8–4–82 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Tara Lines, Inc., of Stafford, VA, of (1) Certificates Nos. MC–61802 (Sub-No. 11) and MC–61802 (Sub-No. 15) authorizing the transportation of passengers and their baggage between Lake of the Woods, VA, and the District of Columbia, over regular routes, and (2) that portion of Certificate No. MC–61802 (Sub-No. 2) authorizing the transportation of passengers and their baggage, in round trip, charter operations, beginning and ending at points in Carolina, Essex (except points south of Virginia Highway 631), King George, Orange, Spotsylvania, Stafford, and Westmoreland Counties, VA, and extending to Washington, DC, and points in CT, DE, MD, NJ, NY, NC, OH, PA, SC, TN, VA, and WV. TA has not

been sought. Representative: L. C. Major, Jr., Suite 304 Overlook Bldg., 6121 Lincolnia Road, Alexandria, VA 22312.

Note.—Transferee holds authority in Certificate Nos. MC–146988 (Sub-No. 2F) and MC–146988 (Sub-No. 3).

MC–FC–79949. By decision of July 30, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Alpine Van Lines, Inc. of Certificate No. MC–59475 and (Sub-No. 4) issued to Chicago Avenue Transfer, Inc. authorizing the transportation of (1) *household goods,* as defined by the Commission, between points in MN on the one hand, and, on the other, points in IA, IL, MO, ND, SD, WI, OH, IN, PA, NJ, NY, MA, MI, KS, OK, NE, TX, MD, KY, AR, WV, and WY, traversing DE, CT and RI for operating convenience only; and (2) *used household goods,* between points in MN, restricted to the transportation of traffic having a prior or subsequent movement in containers beyond points authorized and further restricted to the performance of pick up and delivery service in connection with packing and decontainerization of such traffic. Representative: Robert P. Schwinn, 1380 Soo Line Building, Minneapolis, MN 55402.

Note.—Transferee is a non-carrier.

MC–FC–79953. By decision of August 2, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Ronald May d/b/a R. May Trucking of Permit No. MC–139644 issued to Frank May, Jr. d/b/a Frank May Jr., Trucking authorizing the transportation of *such commodities* as are sold or dealt in by retail and department stores, between Paterson, NY, New York, NJ, and Philadelphia, PA, under continuing contract(s) with Brook Brothers, Division of Garfinckle, Brooks Brothers, Miller & Rhoades, Inc. Representative: Frank May Jr., 154–52 Riverside Dr., Whitestone, NJ 11357.

Note.—Transferee is a non-carrier.

MC–FC–79955. By decision of 8/3/82 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to New England-New York Transport, Inc., of Springfield, MA of Certificate No. MC–2059 issued to L. Gary Morton, dba L. G. Morton Trans., of Auburn, MA, authorizing: Named commodities, including furniture, paper, and baby carriages, and general commodities, from, to or between named points in MA, CT, NY, and NJ. Representative: Patrick A. Boyle, 40 Sky Ridge Lane, Springfield, MA 01128. TA lease is not sought. Transferee is a carrier.

MC–FC–79957. By decision of August 6, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to New Concept Transportation, Inc., of Gilbertsville, PA, of Certificate No. MC–135647 (Sub-No. 2)X issued to Robert Emanuel and Margaret Emanuel d.b.a. Emanuel's Express, Kirklyn, PA, authorizing: General commodities (with exceptions), between points in Berks, Bucks, Chester, Delaware, Mongomery, and Philadelphia Counties, PA, on the one hand, and, on the other, points in PA, NY, NJ, DE, MD, and DC. Representative: Alan Kahn, 100 S. Broad St., Philadelphia, PA 19110. TA lease is not sought. Transferee is not a carrier.

MC–FC–79959. By decision of July 30, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Robert's Transportation, Inc. of Certificate of Registration No. MC–96713 (Sub-No. 1) issued to Knickerbocker Motor Lines, Inc. authorizing the transportation of *general commodities* between points in RI. Representative: Charles R. Reilly, 391 Davisville Rd., North Kingstown, RI 02852.

Note.—Transferee is a non-carrier.

MC–FC–79963. By decision of 8–4–82 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Rutgers Express, Inc. of Certificate No. MC–20841 (Sub-Nos. 1, 2, 3, 4, 7, and 10), issued to Marathon Freight Lines, Inc., of North Bergen, NJ authorizing: the transportation of (1) *general commodities* (with exceptions), (a) over regular routes, between Carteret, NJ and New York, NY, serving the intermediate points of Newark and Jersey City, NJ and Liberty, NY, (b) over regular routes, between Carteret and Philadelphia, PA, serving no intermediate points, (c) over irregular routes, between points in the New York commercial zone and between points in the New York commercial zone on the one hand, and, on the other, points in Middlesex, Somerset, Union, Essex, Hudson, Passaic, and Bergen Counties, NJ and Westchester County, NY, and (d) over irregular routes, from New York, NY to points on Long Island, NY; (2) canned goods, processed foods, matches, clothes pins, tooth picks, and paper products, over irregular routes, from Jersey City and Woodbridge, NJ to various points in NY and NJ; (3) hardware and agricultural and horticultural implements, over irregular routes, from New York, NY to Newark, Patterson, Passaic, and Perth Amboy, NJ; (4) foodstuffs and such commodities as are used by or sold in grocery or department stores (with exceptions), from named plantsites at North Bergen and Edgewater, NJ to points in CT and points in Rockland and Orange Counties, NY, and (5) such commodities as are used or sold by grocery, discount, department or drug stores and candy or tobacco distributors (with exceptions), between named facilities at Jersey City, on the one hand, and, on the other, points in NJ, CT and certain points in NY. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. TA lease is not sought. Transferee is a carrier.

MC–FC–79977. By decision of 8–5–82 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to V.F. Warner & Son, Inc. of Certificate No. MC–146551 (Sub-Nos. 12, 13 and 14X) issued to Taylor Transport, Inc. authorizing the transportation of (1) *general commodities* (except classes A and B explosives, household goods as defined by the Commission and commodities in bulk), between points in the U.S., restricted to traffic originating at or destined to the facilities of Purex Corporation, (2) *such commodities* as are dealt in by grocery stores and food business houses, between points in CA, and those points in the United States in and east of MN, IA, MO, AR and LA, and (3) a *food and related products,* and *equipment, materials* and *supplies* used in the manufacture, preparation and distribution of the foregoing commodities, (1) between Philadelphia, PA and points in Bergen County, NJ and Hancock County, OH, on the one hand, and on the other, points in the United States, (2) between points in Van West County, OH and Middlesex County, MA, on the one hand, and, on the other, points in the United States, and (b)(1) *such merchandise* as is dealt in by wholesale, retail, chain grocery and food business houses, institutions, catalog show room stores and home center stores and (2) *equipment, materials* and *supplies* used in the manufacture, preparation and distribution of the foregoing commodities, between points in Lucas, Ottawa, and Wood Counties, OH, on the one hand, and, on the other, points in the United States. Representative: Owen B. Katzman, 1828 L Street, N.W. Suite 1111, Washington, DC 20036.

Notes.—(1) TA application has been filed (2) Transferee is an ICC motor carrier.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-22820 Filed 8-19-82; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Alcan Aluminum Corporation, 100 Erieview Plaza, Cleveland, Ohio 44114.

2. Wholly-owned subsidiary which will participate in the operations: Erieview Cartage, Inc., 100 Erieview Plaza, Cleveland, Ohio 44114.

1. Parent Corporation: Commercial Metals Company, 3000 Diamond Park Drive (75247), Post Office Box 1046 (75221), Dallas, Texas, State of incorporation: Delaware.

2. The following 100% wholly-owned subsidiaries will participate in the operation:

Cometals, Inc., One Penn Plaza, Room 3401, New York, New York 10001, State of incorporation: New York

Commonwealth Metal Corporation, 560 Sylvan Avenue, Englewood Cliffs, New Jersey 07632, State of incorporation: New Jersey

Enterprise Metal Corporation, 175 Great Neck Road, Room 408, Great Neck, New York 10021, State of incorporation: New York

Structural Metals, Inc., Mill Road, Seguin, Texas 78155, State of incorporation: Texas

Capitol City Steel Company, 6717 Circle S Road, Austin, Texas 78745, State of incorporation: Texas

CMC Dismantling and Process Equipment Company, 2317 Quitman Street, Houston, Texas 77210, State of incorporation: Texas

CMC Oil Company, 3000 Diamond Park Drive, Dallas, Texas 75247, State of incorporation: Texas

CMC Steel Company, Inc., 3000 Diamond Park Drive, Dallas, Texas 75247, State of incorporation: Texas

CMC Steel Fabricators, Inc. doing business under the following names:
State of incorporation: Texas

Arkansas Steel Rolling Mills, Inc., Kerlin Road, Box 489, Magnolia, Arkansas 71753, State of incorporation: Arkansas

Capitol Steel, Inc., 2655 North Foster Drive, Post Office Box 66636, Baton Rouge, Louisiana 70896, State of incorporation: Louisiana

CoMet Steel, Inc., 4846 Singleton Blvd., Dallas, Texas 75212, State of incorporation: Texas

Safety Railway Service Company, Aloe Field, Post Office Box 2298, Victoria, Texas 77901, State of incorporation: Texas

Safety Steel Service, Inc., Rodd Field, Post Office Box 6546, Corpus Christi, Texas 78411, State of incorporation: Texas

Safety Steel Service, Inc., 201 East Crestwood Drive, Victoria, Texas 77901, State of incorporation: Texas

Safety Steel Warehouse, Inc., 201 East Crestwood Drive, Post Office Box 2298, Victoria, Texas 77901, State of incorporation: Texas

Southern States Steel Company, 9675 Walden Road, Beaumont, Texas 77706, State of incorporation: Texas

Southern Farm Supply Company, 1318 Buschong Road, Houston, Texas 77039, State of incorporation: Texas

Southern Fence Post Company, 1318 Buschong Road, Houston, Texas 77039, State of incorporation: Texas

Southern Post Company—Austin and Houston, 1318 Buschong Road, Houston, Texas 77039
1960 Benchmark Drive, Roundrock, Texas 78664 (Austin), State of incorporation: Texas

Sterling Steel Company, 5600 Braxton, Suite 12, Houston, Texas 77036, State of incorporation: Texas

Houston Steel Service Company—Rebar Division, 5321 Westpark Drive, Houston, Texas 77056, State of incorporation: Texas

Commercial Metals Railroad Salvage Company, 3000 Diamond Park Drive, Dallas, Texas 75247, State of incorporation: Texas

Karchmer Steel Supply Company, 4724 West Maple Street, Route 4, Springfield, Missouri 65802, State of incorporation: Missouri

1. Parent corporation and address of principal office: General Electric Company, 3135 Easton Turnpike, Fairfield, CT 06431.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:

1. Atlantic Plant Maintenance, Inc., Delaware.

2. Benerson Corporation, Indiana.

3. Midwest Electric Products, Inc., Minnesota.

4. Calma Co., California.

5. Intersil, Inc., Delaware.

6. General Electric Environmental Services, Inc., Delaware.

7. General Electric Trading Co., Delaware.

8. Product Distribution Co., Delaware.

9. General Electric Information Services Co., Delaware.

10. Ladd Petroleum Corporation, Delaware.

11. General Electric Technical Services Co., Delaware.

12. Utah Internation Inc., Delaware.

1. Parent corporation and address of principal office: the Kroger Co., 1014 Vine Street, Cincinnati, OH 45201.

2. Wholly-owned subsidiaries which will participate in the operations, and State of incorporation:

(i) Delight Products Co., 1014 Vine Street, Cincinnati, OH 45201.

(ii) South Atlantic Distributing, 7175 North Wickham Road, Melbourne, FL 32955.

1. Parent corporation and address of principal office: Tenneco Inc., 1010 Milam Street, (P.O. Box 2511), Houston, Texas 77001.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Tenneco Oil Company, 1010 Milam Street, (P.O. Box 2511), Houston, Texas 77001

(b) Operators, Inc., 16630 Imperial Valley Drive, Suite 147, Houston, Texas 77060

(c) B & M Oil, Inc., P.O. Box 1243, Nashville, Tennessee 37202

(d) Blue Flame Gas Corporation, Gal-Ham Building, Bluffton, Indiana 46714

(e) Direct Oil Corporation, Highway 31, (P.O. Box 1243), Nashville, Tennessee 37202

(f) Marlin Drilling Co., Inc., Park Tower South, 1333 West Loop South, Suite 780, Houston, Texas 77027

(g) Mitchell Supreme Fuel Company, 532 Freeman Street, Orange, New Jersey 07050

(h) Petro-Tex Chemical Corporation, 8600 Park Place Boulevard, (P.O. Box 2584), Houston, Texas 77001

(i) Q-S Petroleum, Inc., P.O. Box 1234, Nashville, Tennessee 37202

(j) TLC Oil Company, 92 Walnut Street, (P.O. Box 1867), Hartford, Connecticut 06101

(k) Red Diamond Oil, Inc., P.O. Box 443 Pickens, South Carolina 29671

(l) Tennessee Gas Transmission Company, 1010 Milam Street, (P.O. Box 2511), Houston, Texas 77001

(m) East Tennessee Natural Gas Company, Kingston Pike, (P.O. Box 10245), Knoxville, Tennessee 37919

(n) Midwestern Gas Transmission Company, 1100 Milam Building, (P.O. Box 2511), Houston, Texas 77001

(o) Tennessee Gas Pipeline Company, Tenneco Building, (P.O. Box 2511), Houston, Texas 77001

(p) J. I. Case Company, 700 State Street, Racine, Wisconsin 53404
(q) Case Power & Equipment Limited, 700 State Street, Racine, Wisconsin 53404
(r) David Brown Tractors (Canada), Limited, 17 Vickers Road, Islington, Ontario M9B 1C2, Canada
(s) Drott Manufacturing Corporation, P.O. Box 1087, Wausau, Wisconsin 54401
(t) Pryor Foundry, Inc., P.O. Box 549, Pryor, Oklahoma 74361
(u) Tenneco Automotive, P.O. Box 615, Bannockburn, Illinois 60015
(v) Monroe Auto Equipment Company, International Drive, Monroe, Michigan 48161
(w) Speedy Muffler King, Inc., P.O. Box 615, Bannockburn, Illinois 60015
(x) Walker Manufacturing Company, 1201 Michigan Boulevard, Racine, Wisconsin 53402
(y) Packaging Corporation of America, 1603 Orrington Avenue, Evanston, Illinois 60204
(z) Tennessee River Pulp & Paper Company, P.O. Box 33, Counce, Tennessee 38326
(aa) Tenneco Chemicals, Inc., Park 80, Plaza West–1, Saddlebrook, New Jersey 07662
(bb) Tenneco Chemicals, Organics Division, P.O. Box 365, Piscataway, New Jersey 08854
(cc) Tenneco Chemicals, Polymers & Plastics Division, P.O. Box 365, Piscataway, New Jersey 08854
(dd) Newport News Shipbuilding and Dry Dock Company, 4101 Washington Avenue, Newport News, Virginia 23607
(ee) Greeneville Metal Manufacturing, Inc., 4101 Washington Avenue, Newport News, Virginia 23607
(ff) Newport News Industrial Corporation, 230–41st Street, Newport News, Virginia 23607
(gg) Tenneco West, Inc., 201 New Stine Road, (P.O. Box 9380), Bakersfield, California 93309
(hh) Cal-Date Company, 201 New Stine Road, (P.O. Box 9380), Bakersfield, California 93309
(ii) California Almond Orchards, Inc., 201 New Stine Road, (P.O. Box 9380), Bakersfield, California 93309

1. Parent Corporation: Variety Wholesaler, Inc., P.O. Box 17800, 3401 Greshams Lake Road, Raleigh, NC 27619.

2. Wholly-owned subsidiaries and address:
Variety Wholesale, Inc., P.O. Box 468, 109 Durham St., Fuquay-Varina, NC 27526
Super Dollar Stores, Inc. P.O. Box 17800, 3401 Greshams Lake Rd., Raleigh, NC 27619
Value Mart Stores, Inc., 2610 Lakeview Rd., Hattiesburg, MS 39401

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-22819 Filed 8-19-82; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-226)]

Chicago and Northwestern Transportation Company Exemption for Contract Tariff ICC-CNW-C-0287 (Bituminous Coal)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: A provisional exemption is granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the above-noted contract tariff may become effective on one day's notice. This exemption may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the **Federal Register.**

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275–7278.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in this instance to carry out the transportation policy of 49 U.S.C. 10101(a) or to protect shippers from abuse of market power, moreover, the transaction is of limited scope. Therefore, we find that the exemption request meets the requirements of 49 U.S.C. 10505(a) and is granted subject to the following condition:

The grant neither shall be construed to mean that the Commission has approved the contract for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to determine its lawfulness.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Decided: August 16, 1982.

By the Commission, Division 2, Commissioners Andre, Gilliam, and Taylor. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-22824 Filed 8-19-82; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-220)]

Atchison, Topeka and Santa Fe Railway Company Exemption for Contract Tariff ICC-ATSF-C-0102 (Grain)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: A provisional exemption is granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the above-noted contract tariff may become effective on one day's notice. This exemption may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the **Federal Register.**

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275–7278.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in this instance to carry out the transportation policy of 49 U.S.C. 10101(a) or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption request meets the requirements of 49 U.S.C. 10505(a) and is granted subject to the following condition:

The grant neither shall be construed to mean that the Commission has approved the contract for purposes of 49 U.S.C. 10713(e) nor the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to determine its lawfulness.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Decided: August 13, 1982.

By the Commission, Division 2, Commissioners Andre, Gilliam, and Taylor. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-22826 Filed 8-19-82; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-222)]

Kansas City Southern Railway Company Exemption for Contract Tariff ICC-KCS-C-0018 (Woodpulp)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: A provisional exemption is granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the above-noted contract tariff may become effective on one day's notice. This exemption may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the **Federal Register.**

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275-7278.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in this instance to carry out the transportation policy of 49 U.S.C. 10101(a) or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption request meets the requirements of 49 U.S.C. 10505(a) and is granted subject to the following condition:

The grant neither shall be construed to mean that the Commission has approved the contract for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to determine its lawfulness.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Decided: August 13, 1982.

By the Commission, Division 2, Commissioners Andre, Gilliam and Taylor. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-22825 Filed 8-19-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29995]

Prairie Central Railway Company—Purchase—Illinois Central Gulf Railroad Company Between Kerrick, Freeport, Heyworth, Normal, and Barnes, IL; Intent To Purchase

On July 16, 1982, the Prairie Central Railway Company (PACY) filed a notice of its intent to request the Commission to require the sale of trackage. PACY seeks to acquire the tracks of the Illinois Central Gulf Railroad Company (ICG) between (a) Kerrick (milepost 801.47) and Freeport (East Junction), IL (milepost 934.18), a distance of 132.71 miles, (b) Heyworth (milepost 785.28) and Normal, IL (milepost 797.85), a distance of 12.57 miles; and (c) Barnes (milepost 135.0) and Normal, IL (milepost 139.83), a distance of 4.83 miles, pursuant to the feeder line development provisions of 49 U.S.C. 10910.

PACY's application may be filed after October 14, 1982 (90 days after its notice). When an application is filed, any interested party may submit comments or recommendations to the Commission within 30 days and any financially responsible person may propose to acquire the property through a competing application, also within 30 days. All pleadings should refer to Finance Docket No. 29995 and should be submitted with 10 copies to the Section of Finance, Room 5417, Interstate Commerce Commission, Washington, DC 20423. A copy should also be sent to Thomas F. McFarland, Jr., Belnap, Spencer & McFarland, 20 North Wacker Drive, Chicago, IL 60606, (312) 236-0204.

For further information contact Wayne A. Michel (202) 275-7657 or Louis E. Gitomer (202) 275-7245 at the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-22821 Filed 8-19-82; 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. OP2-188

Decided: August 10, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 113282 (Sub-5), filed July 28, 1982. Applicant: CEMENT DISTRIBUTORS, INC., 815 Olivia Park Rd., Everett, WA 98204. Representative: Jim Pitzer, 15 South Grady Way, Suite 321, Renton, WA 98055-3273, 206-235-1111. Transporting *fly ash, ash sludge, bottom ash, pozzolan, cement, calcium chloride, and reinforcing steel,* between points in WA, OR, ID, and MT.

MC 163053, (correction), filed July 21, 1982, published in the Federal Register issue of August 6, 1982, and republished, as corrected, this issue. Applicant: FRANCIS O. FRIEBE, 1825 Piedmont Ave., Duluth, MN 55811. Representative: Andrew R. Clark, 1600 TCF Tower, Minneapolis, MN 55402, 612-333-1341. The purpose of this republication is to correct the docket number. The commodity description and territory remains the same.

Volume No. OP3-129

Decided: August 13, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 1515 (Sub-313), filed August 2, 1982. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: R. L. Wilson (same address as applicant), (602) 248-5016. Over regular routes, transporting *passengers and their baggage and express and newspapers,* in the same vehicle with passengers, (1) Between junction Interstate Hwy 94 and WI Hwy 67 and WI Hwy 16 and WI Hwy 67: From junction Interstate Hwy 94 and WI Hwy 67 over WI Hwy 67 to junction WI Hwy 16 and return over the same route, serving all intermediate points, (2) Between junction WI Hwy 26 and WI Hwy 16 and junction WI Hwy 26 and WI Hwy 33: From junction WI Hwy 26 and WI Hwy 16 over WI Hwy 26 to junction WI Hwy 26 and WI Hwy 33, and return over the same route, serving all intermediate points, (3) Between junction WI Hwy 73 and U.S. Hwy 51 and junction WI Hwy 73 and WI Hwy 13: From junction WI Hwy 73 and U.S. Hwy 51 over WI Hwy 73 to junction WI Hwy 73 and WI Hwy 13, and return over the same route, serving all intermediate points, (4) Between Milwaukee, WI, and Neenah, WI: From Milwaukee, WI, over U.S. Hwy 41 to Neenah, WI, and return over the same route, serving all intermediate points, (5) Between junction Interstate Hwy 90 and Interstate Hwy 94, east of Billings, MT, and Seattle, WA: From junction Interstate Hwy 90 and Interstate Hwy 94, east of Billings, MT, over Interstate Hwy 90 to Seattle, WA, and return over the same route, serving all intermediate points, (6) Between Milwaukee, WI, and junction Interstate Hwy 94 and Interstate Hwy 90 east of Billings, MT: From Milwaukee, WI, over Interstate Hwy 94 to junction Interstate Hwy 94 and Interstate Hwy 90 east of Billings, MT, and return over the same route, serving all intermediate points, (7) Between junction Interstate Hwy 90 and Interstate Hwy 94, east of Tomah, WI and junction Interstate Hwy 90 and U.S. Hwy 14, north of La Crescent, MN: From junction Interstate Hwy 90 and Interstate Hwy 94, east of Tomah, WI, over Interstate Hwy 90 to junction U.S. Hwy 14, north of La Crescent, MN, and return over the same route, serving all intermediate points, and (8) Between Milwaukee, WI, and Green Bay, WI: From Milwaukee, WI, over Interstate Hwy 43 to Green Bay, WI, and return over the same route, serving all intermediate points.

MC 135364 (Sub-52), filed August 3, 1982. Applicant: MORWALL TRUCKING, INC., Box 76C, R.D. 3, Moscow, PA 18444. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101 (703) 893-3050. 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 Penske Detroit Diesel Allison, Inc., of Philadelphia, PA.

MC 143185 (Sub-9), filed August 4, 1982. Applicant: CHARLES G. LAWSON TRUCKING, INC., P.O. Box 2805, Montgomery, AL 36105. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210 (703) 525-4050. Transporting *food and related products,* between Denver, CO, Miami and Tampa, FL, Atlanta, GA, Shreveport, LA, Boston, MA, Newark and Secaucus, NJ, Charlotte, NC, Cincinnati, OH, Milwaukie, OR, Allentown and Philadelphia, PA, Charleston, SC, Sioux Falls, SD, Memphis, TN, and points in Wayne County, MI, Harrison County, MS, Hamilton County, OH, Gibson County, TN, and points in AL, IL, IA, KS, MN, NY, TX, CA, and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 145994 (Sub-7), filed August 6, 1982. Applicant: PENGUIN POINT ENTERPRISES, INC., P.O. Box 975, Warsaw, IN 46580. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240 (317) 846-6655. Transporting *general commodities* (except commodities in bulk, household goods, and classes A and B explosives) between Chicago, IL, Cincinnati, OH, points in part of IN on and north of U.S. Hwy 40, and Hillsdale County, MI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161435, filed August 6, 1982. Applicant: CABLE TRANSPORT CORPORATION, 421 Ridge St., Rome, NY 13440. Representative: Eugene D. Anderson, 1001 Connecticut Ave. NW., Washington, D.C. 20036 (202) 296-2550. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Rome Cable Corporation, of Rome, NY.

MC 161624, filed August 14, 1982. Applicant: SCOTTY CAPERTON, P.O. Box 1428, Moody, TX 76557. Representative: Henry E. Seaton, 1024 Pennsylvania Bldg., 425 13th St. NW., Washington, D.C. 20004, (202) 347-8862. Transporting (1) *such commodities* as are dealt in or used by building contractors, between points in TX, on the one hand, and, on the other, points in AZ, NM, OK, KS, IA, MO, AR, LA, MS, AL, TN, KY, IL, IN, and OH; and (2) *chemicals and related products,* between points in MI, on the one hand, and, on the other, points in TX.

MC 163274, filed August 5, 1982. Applicant: C. C. DILLION COMPANY, 1342 Lonedell Road, Arnold, MO 63010. Representative: B. W. LaTourette, Jr., 11 South Meramec, Suite 1400, St. Louis, MO 63105, (314) 727-0777. Transporting *petroleum, natural gas and their products,* between points in MO and IL, under continuing contract(s) with (1) Flash Oil Corporation, (2) Site Oil Company, both of St. Louis, MO, (3) Scar Service & Petroleum Company, (4) Bonafide Oil Co., both of Maryland Heights, MO, and (5) HS2D Investors, Ltd, of Hazelwood, MO.

MC 163275, filed August 8, 1982. Applicant: EARL MORGAN BUS TOURS, 28 King Philip Avenue, South Deerfield, MA 01373. Representative: Earl D. Morgan (same address as applicant), (413) 665-2591. As a *broker,* at South Deerfield, MA, in arranging for the transportation of *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, beginning and ending at points in Bershire, Franklin, Hampden, and Hampshire Counties, MA, Cheshire, Hillsboro, Merrimack, and Sullivan Counties, NH; and Bennington, Windham, and Windsor Counties, VT, and extending to points in the U.S.

MC 163294, filed August 6, 1982. Applicant: SHAW TRANSPORT, INC.,

616 E. Walnut Ave., Dalton, GA 30720. Representative: L. M. Gold (same address as applicant), (404) 278–3812. Transporting *carpet,* between points in the U.S., under continuing contract(s) with Shaw Industries, Inc., of Dalton, GA.

MC 163295, filed August 2, 1982. Applicant: Z. V. V., INC., Rt. 7, Box 538, Stafford, VA 22553. Representative: Zelda V. Vines (same address as applicant), (703) 659–6282. Transporting *passengers and their baggage,* in the same vehicle with passengers, in charter operations, between points in FL, MS, TN, PA, NJ, NY, MD, DE, SC, GA, LA, WV, NC, and DC.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–22823 Filed 8–19–82; 8:45 am]

BILLING CODE 7035–01–M

[Volume No. 289]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: August 16, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Canadian Carrier Applicants

In the event an application to transport property, filed by a Canadian domiciled motor carrier, is unopposed, it will be reopened on the Commission's own motion for receipt of additional evidence and further consideration in light of the record developed in Ex Parte No. MC–157, *Investigation Into Canadian Law and Policy Regarding Applications of American Motor Carriers For Canadian Operating Authority.*

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistence with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Shaffer, Ewing, and Williams.

Agatha L. Mergenovich,

Secretary.

FF 464 (Sub-1)X, filed August 11, 1982. Applicant: PARAMOUNT FORWARDERS, INC., P.O. Box 809, DeSoto, TX 75115. Representative: Robert J. Gallagher, 1000 Connecticut Ave., NW., Suite 1200, Washington, DC 20036. Lead permit (1) broaden (a) used household goods to "household goods", and used automobiles to "transportation equipment"; (2) remove (a) restriction limiting transportation to export-import traffic,and (b) Alaska exception.

FF 487 (Sub-2)X, filed August 6, 1982. Applicant: STEVENS FORWARDERS, INC., 121 South Niagara St., Saginaw, MI 48605. Representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, DC 20036. Lead permit (1) broaden used household goods to "household goods"; and used automobiles to "transportation equipment" (2) remove restriction (a) limiting transportation to export-import traffic, (b) against secondary movements in driveaway service, and (c) excluding service to Alaska.

FF 506 (Sub-2)X, filed August 11, 1982. Applicant: ARNOLD INTERNATIONAL MOVERS, INC., 12201 Westport Rd., Louisville, KY 40223. Representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, DC 20036. Lead: (1) broaden used household goods and unaccompanied baggage, and used automobiles to "household goods, and transportation equipment"; and (2) remove the export and import restriction and restriction against traffic moving in and out of Alaska.

FF 489 (Sub-2)X, filed August 10, 1982. Applicant: REBEL FORWARDING, INC., 2150 South Alameda, Compton, CA 90221. Representative: Robert J. Gallagher, Esq., 1000 Connecticut Avenue, NW., Suite 1200, Washington, DC 20036. FF–489 permit. Broaden part (a), used household goods and unaccompanied baggage, to "household goods"; part (b) used automobiles to "transportation equipment"; and remove restriction in (b) to the transportation of import-export traffic.

MC 141989 (Sub-2)X, filed August 2, 1982. Applicant: JERZAK TRUCKING, INC., Route 2, Box 202, Almond, WI 54909. Representative: Daniel R. Dineen, 710 N. Plankinton Ave., Milwaukee, WI 53203. Sub-No. 1 permit: broaden (1) taconite mine tailings, to "commodities in bulk"; (2) to between points in the US (except AK and HI) under continuing contract(s) with a named shipper.

MC 150424 (Sub-4)X, filed July 30, 1982. Applicant: NESHEM PETERSON, INC., Berthold, ND 58718. Representative: Charles E. Johnson, P.O. Box 2056, Bismarck, ND 58502. Sub 1F permit: (A) broaden commodities part(1) to "such commodities as are dealt in or used by agricultural equipment and farm supply dealers," from grain drying and grain handling equipment and supplies: and part (3) to "trailers, machinery and implements, and materials, equipment, and supplies used in the manufacture, assembly, and distribution thereof," from such equipment, materials and supplies as used in the manufacture and assembly of semi-trailers, agricultural machinery, and agricultural implements; (B) broaden to "between points in the U.S.," under continuing contract(s) with named shippers.

MC 155279 (Sub-1)X, filed August 4, 1982. Applicant: ALL COAST TRANSPORTATION SERVICES, INC., Suite 610, #10 Exchange Place, Salt Lake City, UT 84111. Representative: Michael S. Rubin, Suite 410, 100 Bush St., San Francisco, CA 94104. Lead certificate, (1) remove restriction limiting transportation to that "moving on bills of lading of freight forwarders;" and (2) remove all restrictions in general commodities authority "except classes A and B explosives, household goods, and commodities in bulk."

[FR Doc. 82–22822 Filed 8–19–82; 8:45 am]

BILLING CODE 7035–01–M

[Investigation No. 337–TA–127]

Certain Amino Acid Formulations; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Insititution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 12, 1982 under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of American Hospital Supply Corporation, One American Plaza, Evanston, Illinois

60201, and Massachusetts General Hospital, 32 Fruit Street, Boston, Massachusetts 02114. The complaint alleges unfair methods of competition and unfair acts in the importation of certain amino acid formulations into the United States, or in their sale, by reason of alleged direct infringement by said formulations of claims 1, 5 and 14 of U.S. Letters Patent 3,950,529 ("'529 patent") and by reason of the alleged contributory infringement and induced infringement in the sale by respondent of said formulations of claims 1, 5, 6, 7, 9 and 14 of the '529 patent. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainants request the Commission to institute an investigation and, after a full investigation, to issue both a permanent exclusion order and a permanent cease and desist order.

Authority. The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's rules of practice and procedure (19 CFR 210.12).

Scope of Investigation. Having considered the complaint, the U.S. International Trade Commission, on August 11, 1982, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of amino acid formulations into the United States, or in their sale, by reason of alleged direct infringement by said formulations of claims 1, 5 or 14 of U.S. Letters Patent 3,950,529 ("'529 patent") and by reason of the alleged contributory infringement and induced infringement in the sale by respondent of said formulations of claims 1, 5, 6, 7, 9, or 14 of the '529 patent, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

American Hospital Supply Corporation, One American Plaza, Evanston, Illinois 60201.
Massachusetts General Hospital, 32 Fruit Street, Boston, Massachusetts 02114.

(b) The respondent is the following company, alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

Travenol Laboratories, Inc., One Baxter Parkway, Deerfield, Illinois 60015.

(c) Oreste Russ Pirfo, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 126, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer.

Responses must be submitted by the named respondents in accoranced with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein or appended thereto, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202–523–0176.

FOR FURTHER INFORMATION CONTACT: Oreste Russ Pirfo, Esq., Unfair Import Investigations Division, Room 126, U.S. International Trade Commission, telephone 202–523–4693.

Issued: August 17, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–22815 Filed 8–19–82; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

National Advisory Committee for Juvenile Justice and Delinquency Prevention (NAC); Meeting

The second quarterly meeting of the National Advisory Committee for Juvenile Justice and Delinquency Prevention (NAC) will be held in Washington, D.C. on September 20 and 21, 1982. The meeting, which is open to the public, will be held in the 8th Floor Board Room of the National Association of Counties (NACO) Building, 440 First Street, NW., and will run from 9:00 a.m. to 5:00 p.m. on both days.

Agenda items will include Standards and Model Codes, Juvenile Justice System Update, Research, the Federal Coordinating Council, Future Plans of the Office, Alcohol and Drug Abuse, and Family Related Juvenile Programs.

Further information regarding this meeting may be obtained by contacting Nancy L. Kujawski, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, D.C. 20531, (202) 724–7751.

Charles A. Lauer,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

August 12, 1982.

[FR Doc. 82–22848 Filed 8–19–82; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 30, 1982.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 30, 1982.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C., this 9th day of August 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers of former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
ASARCO, Inc., Silver Bell Unit (USWA)	Silver Bell, AZ	8/5/82	8/3/82	TA-W-13,694	Copper—mining and concentrate.
Boss Manufacturing Company (company)	Pine Apple, AL	8/4/82	7/30/82	TA-W-13,695	Gloves, work, cut and sew.
Boss Manufacturing Company (company)	Greenville, AL	8/4/82	7/30/82	TA-W-13,696	Gloves, work, cut and sew.
Cudahy Foods Co. (workers)	Phoenix, AZ	7/30/82	7/21/82	TA-W-13,697	Beef and pork—slaughtering and processing.
Duval Corp., Esperanza Property (USWA)	Tucson, AZ	8/5/82	8/3/82	TA-W-13,698	Copper—mining and concentrate.
Ely & Walker (workers)	Kennel, MO	8/3/82	7/30/82	TA-W-13,699	Shirts—western.
Firestone Synthetic Rubber & Latex Co., Firestone Petro Chemical Center (OCAW).	Orange, TX	8/3/82	7/25/82	TA-W-13,700	Butadine and rubber—polymerized diene
Ford Motor Co. (UAW)	Edison, NJ	7/28/82	7/21/82	TA-W-13,701	Escort/Lynx.
General Motors Corp., Fremont Assembly Plant (workers).	Fremont, CA	8/4/82	7/30/82	TA-W-13,702	Cars—mid-size.
Kaiser Steel Corp., Eagle Mountain Mine (workers)	Eagle Mountain, CA	8/4/82	7/29/82	TA-W-13,703	Iron ore—mining and processing.
Standbuilt Upholstery Corp. (workers)	Brooklyn, NY	8/2/82	7/29/82	TA-W-13,704	Furniture.

[FR Doc. 82-22366 Filed 8-19-82; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 30, 1982.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 30, 1982.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C., this 30th day of July 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
American Motors Corp., Kenosha Manufacturing Facility (UAW).	Kenosha, WI	7/26/82	7/20/82	TA-W-13,672	Automobiles—concord, spirit and eagle.
Armco, Inc., Southwestern Steel Div., Houston Works (USWA).	Houston, TX	7/23/82	7/20/82	TA-W-13,673	Steel plate, wide flange beams, round bars, pipe.
(The) Boeing Co. (IAMAW)	Seattle, WA	7/23/82	7/19/82	TA-W-13,674	Aircraft, commercial.
Crane Co., Chattanooga Valve Plant (workers)	Chattanooga, TN	7/28/82	7/26/82	TA-W-13,675	Steel valves.
Duval Corp., Sierrita Property (USWA)	Sahuarita, AZ	7/28/82	7/22/82	TA-W-13,676	Cooper concentrate and molybdenum products.
General Electric Co., Wiring Device Dept. (workers)	Middletown, RI	7/23/82	7/21/82	TA-W-13,677	Wiring devices.
Hartford Special, Inc. (company)	Simsbury, CT	7/28/82	7/23/82	TA-W-13,678	Machinery—cold heading, thread rolling numerically controlled milling and machining centers.
KMMCO, Inc. (company)	Detroit, MI	7/28/82	7/23/82	TA-W-13,679	Automotive mouldings.
KMMCO, Inc. (company)	Clanton, AL	7/28/82	7/23/82	TA-W-13,680	Automotive mouldings.
Middle Atlantic Precision Steel (workers)	Atco, NJ	7/28/82	7/23/82	TA-W-13,681	Steel bars.
Beckley Coal Mining Co. (UMWA)	Glen Daniel, WV	7/30/82	7/27/82	TA-W-13,682	Coal mining and preparation.
Bethlehem Steel Corp., Seattle Plant (workers)	Seattle, WA	7/29/82	7/27/82	TA-W-13,683	Steel products.
Cities Service Co., Miami East Div. (workers)	Miami, AZ	7/30/82	7/22/82	TA-W-13,684	Mine ore.
Cone Mills Corp., Revolution Plant (workers)	Greensboro, NC	7/30/82	7/28/82	TA-W-13,685	Fabric—shirting, corduroy plaid flannel.
Inspiration Consolidated Copper Co. (workers)	Claypool, AZ	7/29/82	7/24/82	TA-W-13,686	Copper concentrates, silver and gold residues and copper cathodes and rods.
National Broach & Machine Div., Lear Siegler, Inc. (workers).	Detroit, MI	7/28/82	7/20/82	TA-W-13,687	Machinery and tooling and gears.
Slab Fork Coal Co., Slab Fork #10 Mine (UMWA)	Slab Fork, WV	7/30/82	7/27/82	TA-W-13,688	Coal mining.
Slab Fork coal Co., Slab Fork #8 Mine (UMWA)	Slab Fork, WV	7/30/82	7/27/82	TA-W-13,689	Coal mining.
W.T. Armstrong Co. (workers)	Elkhart, IN	7/26/82	7/20/82	TA-W-13,690	Band instruments.

APPENDIX—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Western Nuclear (workers)	Wellpinit, WA	7/23/82	7/15/82	TA-W-13,691	Yellow cake (nuclear power plant fuel).
Wheeling Pittsburgh Steel Corp., Allenport Works (workers).	Allenport, PA	7/30/82	7/26/82	TA-W-13,692	Tubing, steel seamless and coils.
Wilco U.S. Inc. (workers)	Port Sanilac, MI	7/8/82	7/1/82	TA-W-13,693	Electric welded tubing.

[FR Doc. 82-22367 Filed 8-19-82; 8:45 am]

BILLING CODE 4510-30

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Virginia 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 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the 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 September 28, 1976, notice was published in the **Federal Register** (41 FR 42655) of the approval of the Virginia State plan and the adoption of Subpart EE to Part 1952 containing the decision.

The Virginia State plan provides for the adoption of all Federal standards as State standards after comments and public hearings except for those standards found in 29 CFR Parts 1915, 1916, 1917, and 1918 (ship repairing, ship building, ship breaking and longshoring). In addition, the plan provided that the State would retain its existing standard applicable to ionizing radiation in lieu of the comparable Federal standard contained in 29 CFR 1910.96. The State's standard regarding ionizing radiation was reviewed and found to be at least as effective as the Federal standard. A notice of approval was published in the **Federal Register** (43 FR 11274) dated March 17, 1978. Section 1952.370 of Subpart EE sets forth the State's schedule for the adoption of Federal standards. By a letter dated September 17, 1980 from Commissioner Robert F. Beard, Virginia Department of Labor and Industry to David H. Rhone, Regional Administrator and incorporated as part of the plan, the State advised that the State Ionizing Radiation Standard was revoked, and submitted State standards comparable to 29 CFR 1910.96 and 29 CFR 1926.53 for exposure to ionizing radiation in general industry and construction, respectively. These standards, which are contained in the Virginia Occupational Safety and Health Standards, were promulgated after public hearings conducted August 27, 1980, and Resolution adopted by the Virginia Codes Commission effective October 15, 1980, pursuant to Section 40.1-22 and the Administrative Process Act, Code of Virginia. The revocation of the State standard was effected by the same actions.

2. **Decision.** Having reviewed the State submission 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 standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, PA 19104; Office of the Commissioner of Labor and Industry, 205 North Fourth Street, Richmond, VA 23241; and Office of the Director of Federal Compliance and State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3619, Third Street and Constitution Avenue, NW., Washington, DC 20210.

4. **Public participation.** Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Virginia State plan as proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law, including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective August 20, 1982.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Philadelphia, Pennsylvania this 27th day of February 1981.

David H. Rhone,

Regional Administrator.

[FR Doc. 82-22794 Filed 8-19-82; 8:45 am]

BILLING CODE 4510-26-M

Office of the Secretary

Office of the United States Trade Representative

Labor Advisory Committee for Trade Negotiations and Trade Policy; Renewal

The Secretary of Labor and the United States Trade Representative have taken steps to renew the Labor Advisory Committee for Trade Negotiations and Trade Policy. The Committee and subcommittees will be chartered pursuant to Section 135(c) (1-2) of the Trade Act of 1974 (19 U.S.C. 2155(c) (1-2)), as amended, and Executive Order No. 11846, March 27, 1975 (19 U.S.C. 2111 nt). The charter of the Committee will be filed 15 days from the date of this notice.

The Labor Advisory Committee for Trade Negotiations and Trade Policy consults with, and makes recommendations to the Secretary of Labor and to the United States Trade Representative on issues of general policy matters concerning labor and trade negotiations, operations of any trade agreement once entered into, and other matters arising in connection with the administration of the trade policy of the United States.

The Committee will meet at irregular intervals at the call of the Secretary of Labor and the United States Trade Representative. The frequency of committee meetings will be

approximately two or three times per year, depending upon the needs of the Secretary of Labor and the United States Trade Representative. Subcommittees will meet more frequently.

Representatives from the private sector wishing further information or to be considered for appointment to serve on the committee should contact: Mr. Joseph S. Papovich, Executive Secretary, Labor Advisory Committee, Frances Perkins Department of Labor Building, Room S5313, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone: (202) 523–6171.

Signed at Washington, D.C. this 13th day of August 1982.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 82–22795 Filed 8–19–82; 8:45 am]

BILLING CODE 4510–28–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street, NW., Washington, D.C. 20506:

Date: September 16–17, 1982
Time: 8:30 a.m. to 5:30 p.m.
Room: 1134
Program: This meeting will review applications submitted for General Research: Basic Research Panel II, Division of Research Programs, for projects beginning after January 1, 1983.

Date: September 23–24, 1982
Time: 8:30 a.m. to 5:30 p.m.
Room: 1134
Program: This meeting will review applications submitted for General Research: Basic Research Panel III, Division of Research Programs, for projects beginning after January 1, 1983.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 724–0367.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 82–22813 Filed 8–19–82; 8:45 am]

BILLING CODE 7536–10–M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 162
Friday, August 20, 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
Equal Employment Opportunity Commission	1
Federal Maritime Commission	2
Federal Reserve System	3
International Trade Commission	4
National Credit Union Administration	5,6
Tennessee Valley Authority	7

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, August 24, 1982, 9:30 a.m. (eastern time).

PLACE: Commission Conference Room 5240, fifth floor, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Ratification of Notation Vote/s.
2. Freedom of Information Act Appeal No. 82-6-FOIA-018-CT, concerning a request for documents from a charge file.
3. Freedom of Information Act Appeal No. 82-5-FOIA-34-SL, concerning a request for charge file No. 07181057.
4. A report on Commission Operations by the Acting Executive Director.

Closed:

Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

(In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provided recorded announcements a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on the time, place and subject matter of such meetings).

CONTACT PERSON FOR MORE INFORMATION: Treva McCall, Executive Officer, Executive Secretariat at (202) 634-6748.

This Notice Issued August 17, 1982.

[S-1201-82 Filed 8-18-82; 11:41 am]

BILLING CODE 6570-06-M

2

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9 a.m., August 25, 1982.

PLACE: Hearing Room One, 1100 L Street, NW., Washingotn, 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 July 1982.
2. Report of the Secretary on times shortened for submitting comments on section 15 agreements pursuant to delegated authority during July 1982.
3. Report of the Secretary on Applications for Admission to Practice approved during July 1982, pursuant to delegated authority.
4. Agreements Nos. 8220-9 and 8420-10: Modifications of the North Atlantic/Israel Freight Conference Agreement and the Israel/U.S. North Atlantic Ports Westbound Freight Conference Agreement, respectively, to incorporate self-policing provisions and for other administrative purposes.
5. Agreement No. 10435: Establishment of a joint loading agreement between Transconex, Inc. and Tuya International Corp. and Agreement No. 10437: Establishment of a joint loading agreement between Transconex and Econocaribe Consolidators, Inc.
6. Docket No. 82-22: Notice of Intent to Review Certain Portwide Exemptions Granted Pursuant to Section 510.33(e) of General Order 4—Consideration of responses.

Portion closed to the public:

1. Petition of Puerto Rico Maritime Shipping Authority for Relief—Consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-1202-82 Filed 8-18-82; 11:41 am]

BILLING CODE 6730-01-M

3

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: 10 a.m., Thursday, August 26, 1982.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: August 17, 1982.

James McAfee,

Associate Secretary of the Board.

[S-1204-82 Filed 8-18-82; 3:58 pm]

BILLING CODE 6210-01-M

4

INTERNATIONAL TRADE COMMISSION

[USITC SE-82-33]

TIME AND DATE: 2:30 p.m., Tuesday, August 31, 1982.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Parts of this 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. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigation TA-201-46 (Tubeless Tire Valves)—vote.
6. Investigation 701-TA-185 (Preliminary) (Fireplace Mesh Panels from Taiwan)—briefing and vote.
7. Any items left over from previous agenda.

Portions closed to the public:

5. Investigation TA-201-46 (Tubeless Tire Valves)—briefing.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-1200-82 Filed 8-18-82; 10:46 am]

BILLING CODE 7020-02-M

5

NATIONAL CREDIT UNION ADMINISTRATION

Changes in Subject of Meeting

The National Credit Union Administration Board determined that its business required that the previously announced open meeting on July 7, 1982

include an addition item, which was opened to public observation:

Added: Central Liquidity Facility Dividend Rate.

Also, an item on the agenda was corrected, item No. 6 should read:

Correction: 6. Final Regulation to Amend Part 745 of NCUA Rules and Regulations: Clarification and Definition of Account Insurance Coverage.

The previously announced items were:

1. Review of Central Liquidity Facility lending rate.
2. Report on status of National Credit Union Share Insurance Fund.
3. Final Rule to liberalize Section 701.27–2 of NCUA Rules and Regulations: Credit Union Service Corporations.
4. Final Rule to deregulate Sections 701.26 of NCUA Rules and Regulations: Credit Union Service Contracts and 701.36: Ownership of Fixed Assets.
5. Issuance for public comment of the interim Corporate Federal Credit Union Chartering Guidelines.
6. Proposed Regulation to Amend Part 745 of NCUA Rules and Regulations: Clarification and Definition of Account Insurance Coverage.
7. Advance Notice of Proposed Rulemaking, Deregulation of Part 703 of NCUA Rules and Regulations: Investments and Deposits.
8. Proposed standard amendment to Article XII Section 8 of the Federal Credit Union Bylaws regarding late charges.
9. Proposed delegation of authority to Regional Directors to act upon all charter conversion requests.

The meeting was held at 1:00 p.m., in the East Room, Radisson Chicago Hotel, 505 North Michigan Avenue, Chicago, Illinois.

For more information contact: Rosemary Brady, Secretary of the Board, telephone (202) 357–1100.

[S–1205–82 Filed 8–18–82; 4:03 pm]

BILLING CODE 7535–01–M

6

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, August 25, 1982.

PLACE: Seventh floor board room, 1776 G Street NW., Washington D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review of Central Liquidity Facility lending rate.
2. Final Rule: Repeal of Part 742 of NCUA Rules and Regulations and Transfer of Management Responsibilities to Credit Union Boards.
3. Final Rule: Implementing the Equal Access to Justice Act.
4. Charter Applications: Dade-Model Cities Community Federal Credit Union; and Bliss Street Federal Credit Union.

RECESS: 10 a.m.

TIME AND DATE: 10:15 a.m. Wednesday, August 25, 1982.

PLACE: Seventh floor board room, 1776 G Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Central Liquidity Facility Contract Matters. Closed pursuant to exemption (9)(B).
2. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Requests from federally insured credit unions for special assistance to prevent liquidation under Section 208(a)(1) of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Requests for mergers with special assistance under Section 208(a)(2) of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
5. Consideration of the expenditure budgets for the Operating Fund, Insurance Fund, and the Central Liquidity Facility for fiscal year 1983. Closed pursuant to exemptions (2) and (9)(B).
6. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, (202) 357–1100.

[S–1206–82 Filed 8–18–82; 4:02 pm]

BILLING CODE 7535–01–M

7

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1296]

TIME AND DATE: 10:15 a.m. (e.d.t.), Wednesday, August 25, 1982.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Old Business

1. Final rate review including consideration of recommendation to cancel construction on the deferred Phipps Bend units 1 and 2 and Hartsville units B1 and B2.

New Business

A—Project Authorizations

1. Project Authorization No. 3279.1—Amendment to project authorization for automatic data acquisition system for reservoir operations.
2. Project Authorization No. 3627—Exercise of option to purchase Allen Steam Plant in Memphis, Tennessee.
3. Project Authorization No. 3503.2—Amendment to project authorization for decommissioning the Edgemont, South Dakota, uranium mill.

B—Purchase Awards

1. Amendment to Contract No. 78P66–148567 with Silver King Mines, Inc., for management of TVA's uranium/vanadium mill site and properties in Edgemont, South Dakota.
* 2. Req. No. 62–196416—Indefinite quantity term contact for magnetic particle, liquid penetrant and ultrasonic examination at various nuclear plants.

C—Power Items

1. Lease and amendatory agreement with Sheffield, Alabama, covering arrangements for distributor's lease of TVA's Baker Lane 46–kV Substation.
2. Deed and bill of sale to Duck River Electric Membership Corporation, covering conveyance of facilities and properties at TVA's Manchester 46–kV Substation.
*3. Deed and bill of sale to Union City, Tennessee, covering conveyance of facilities and properties at TVA's Union City 161–kV Substation.
*4. Deed and bill of sale to Cleveland, Tennessee, covering conveyance of a portion of TVA's East Cleveland 161–kV Substation, TVA's complete Cleveland district and Lang Street 69–kV substations, and TVA's East Cleveland-Lang Street-Cleveland District 69–kV transmission Line, and associated land and landrights.
*5. Deed and bill of sale to Cumberland Electric Membership Corporation covering conveyance of TVA's compete Pleasant View Substation facilities and properties.
6. Deed and bill of sale to Volunteer Electric Cooperative covering conveyance of facilities and properties at TVA's Byrdstown Substation.
7. Bill of sale and quitclaim deed to Okolona, Mississippi, covering conveyance of section of TVA's Deenergized Okolona-Amory 46–kV Line.
*8. Amendment to agreement with Tennessee Emergency Management Agency covering arrangements for the development and implementation of a radiological emergency plan.
*9. Subagreement for technical support for fuel cell technology development and evaluation under the TVA/Department of Energy memorandum of understanding.
10. Agreement between TVA and the General Electric Company covering the development of nuclear fuel and core systems engineering computer programs.
11. Letter agreement with Kentucky Utilities Company providing for modifications in the settlement provisions for emergency assistance under our interconnection agreement.
12. Letter agreement with Mississippi Power & Light Company providing for TVA to defer the availability of a portion of the seasonal diversity capacity exchange under our interconnection agreement.
*13. Industrial startup power policy.
14. Proposed form agreement covering revised home insulation program.

D—Personnel Items

*1. Renewal of personal services contract with Hartford Steam Boiler Inspection

* Item approved by individual Board members. This would give formal ratification to the Board's action.

and Insurance Company, Hartford, Connecticut, for performance of authorized inspection services at TVA nuclear plant sites, requested by the Office of Engineering Design and Construction.

2. Supplements to personal services contracts with Kenneth L. Penegar, Richard S. Wirtz, and Kenneth D. McCasland, Sr., in connection with contracts disputes appeals.

E—Real Property Transactions

1. Abandonment of easement rights affecting approximately 4.88 acres of Nickajack Reservoir land located in Hamilton County, Tennessee— Tract Nos. HBA–369F, –370F, –371F, –372F, –373F, –347F, –375F, –394F, and –416F.
2. Grant of permanent easement to T. Homer McJunkin, for the operation and maintenance of an existing road affecting approximately 0.05 acre of Watts Bar Reservoir land located in Roane County, Tennessee—Tract No. XWBR–694H.
3. Grant of permanent easement to the State of Tennessee for the construction operation, and maintenance of a highway, affecting 0.09 acre of Lonsdale Substation land in Knox County, Tennessee—Tract No. XLONSS–5H.
4. Grant of permanent easement to city of Oak Ridge for Public recreation purposes affecting approximately 1.5 acres of Melton Hill Reservoir land located in Anderson County, Tennessee—Tract No. XIMHR–14RE.
5. Modification of deed to resolve encroachment on Tanasi Girl Scout Council, Inc., land located in Union County, Tennessee—Tract No. XNR–806.

F—Unclassified

1. Review of plan for management and use of TVA lands on Pickwick Reservoir.
2. Contract with the Tellico Reservoir Development Agency covering arrangements for development of Tellico Project shorelands.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: August 18, 1982.

[S–1203–82 Filed 8–18–82; 3:16 pm]

BILLING CODE 8120–01–M

federal register

Friday
August 20, 1982

Part II

Department of Health and Human Services

Food and Drug Administration

Antiperspirant Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 350

[Docket No. 78N-0064]

Antiperspirant Drug Products for Over-the-Counter Human Use; Tentative Final Monograph (Proposed Rule)

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a proposed regulation in the form of a tentative final monograph that would establish conditions under which over-the-counter (OTC) antiperspirant drug products are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Antiperspirant Drug Products and public comments on an advance notice of proposed rulemaking that was based on those recommendations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs on the proposed regulation by October 19, 1982. New data by August 20, 1983. Comments on the new data by October 20, 1983. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Comments on the agency's economic impact determinations by December 20, 1982.

ADDRESS: Written comments, objections, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. New data and comments on new data should also be addressed to the Dockets Management Branch.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, National Center for Drugs and Biologics (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 10, 1978 (43 FR 46694), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC antiperspirant drug products, together with the recommendations of the Advisory Review Panel on OTC Antiperspirant Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by January 8, 1979. Reply comments in response to comments filed in the initial comment period could be submitted by February 7, 1979.

In a notice published in the **Federal Register** of March 21, 1980 (45 FR 18403), the agency advised that it had reopened the administrative record for OTC antiperspirant drug products to allow for consideration of data and information that had been filed in the Dockets Management Branch after the date the administrative record previously had officially closed. The agency concluded that any new data and information filed prior to March 21, 1980 should be available to the agency in developing a proposed regulation in the form of a tentative final rule.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above) after deletion of a small amount of trade secret information. Data and information received after the administrative record was reopened have also been put on display in the Dockets Management Branch.

The advance notice of proposed rulemaking, which was published in the **Federal Register** on October 10, 1978 (43 FR 46694), was designated as a "proposed monograph" in order to conform to terminology used in the OTC drug review regulations (21 CFR 330.10). Similarly, the present document is designated in the OTC drug review regulations as a "tentative final monograph." Its legal status, however, is that of a proposed rule. In this tentative final monograh (proposed rule) the FDA states for the first time its position on the establishment of a monograph for OTC antiperspirant drug products. Final agency action on this matter will occur with the publication at a future date of a final monograph, which will be a final rule establishing a monograph for OTC antiperspirant drug products.

In response to the proposal, 1 drug manufacturer association, 4 drug manufacturers, 1 research laboratory, 1 medical center, and 17 consumers submitted comments. Copies of the comments received are also on public display in the Dockets Management Branch.

This proposal to establish Part 350 (21 CFR Part 350) constitutes FDA's tentative adoption of the Panel's conclusions and recommendations on OTC antiperspirant drug products as modified on the basis of the comments received and the agency's independent evaluation of the Panel's report. Modifications have been made for clarity and regulatory accuracy and to reflect new information. Such new information has been placed on file in the Dockets Management Branch (address above). These modifications are reflected in the following summary of the comments and FDA's responses to them.

FDA published in the **Federal Register** of September 29, 1981 (46 FR 47730) a final rule revising the OTC procedural regulations to conform to the decision in *Cutler* v. *Kennedy*, 475 F. Supp. 838 (D.D.C. 1979). The Court in *Cutler* held that the OTC drug review regulations (21 CFR 330.10) were unlawful to the extent that they authorized the marketing of Category III drugs after a final monograph had been established. Accordingly, this provision is now deleted from the regulations. The regulations now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph (46 FR 47738).

Although it was not required to do so under *Cutler*, FDA will no longer use the terms "Category I," "Category II," and "Category III" at the final monograph stage in favor of the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III at the tentative final monograph stage.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, no OTC drug products that are subject to the monograph and that contain nonmonograph conditions, i.e., conditions that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of

an approved new drug application. Further, any OTC drug products subject to this monograph that are repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In the advance notice of proposed rulemaking for OTC antiperspirant drug products (published in the **Federal Register** of October 10, 1978; 43 FR 46694), the agency suggested that the conditions included in the monograph (Category I) be effective 30 days after the date of publication of the final monograph in the **Federal Register** and that the conditions excluded from the monograph (Category II) be eliminated from OTC drug products effective 6 months after the date of publication of the final monograph, regardless of whether further testing was undertaken to justify their future use. Experience has shown that relabeling of products covered by the monograph is necessary in order for manufacturers to comply with the monograph. New labels containing the monograph labeling have to be written, ordered, received, and incorporated into the manufacturing process. The agency has determined that it is impractical to expect new labeling to be in effect 30 days after the date of publication of the final monograph. Experience has shown also that if the deadline for relabeling is too short, the agency is burdened with extension requests and related paperwork.

In addition, some products will have to be reformulated to comply with the monograph. Reformulation often involves the need to do stability testing on the new product. An accelerated aging process may be used to test a new formulation; however, if the stability testing is not successful, and if further reformulation is required, there could be a further delay in having a new product available for manufacture.

The agency wishes to establish a reasonable period of time for relabeling and reformulation in order to avoid an unnecessary disruption of the marketplace that could not only result in economic loss, but also interfere with consumers' access to safe and effective drug products. Therefore, the agency is proposing that the final monograph be effective 12 months after the date of its publication in the **Federal Register**. The agency believes that within 12 months after the date of publication most manufacturers can order new labeling and have their products in compliance in the marketplace. However, if the agency determines that any labeling for a condition included in the final monograph should be implemented sooner, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products.

All "OTC" Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the **Federal Register** of September 7, 1973 (38 FR 24391) or to additional information that has come to the agency's attention since publication of the advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Tentative Conclusions on the Comments

A. General Comments.

1. One comment contended that OTC drug monographs are interpretive, as opposed to substantive, regulations. The comment referred to statements on this issue submitted earlier to other OTC rulemaking proceedings.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products, published in the **Federal Register** of May 11, 1972 (37 FR 9464) and in paragraph 3 of the preamble to the tentative final monograph for antacid drug products, published in the **Federal Register** of November 12, 1973 (38 FR 31260). FDA reaffirms the conclusions stated there. Subsequent court decisions have confirmed the agency's authority to issue substantive regulations by rulemaking. See, e. g., *National Nutritional Foods Association* v. *Weinberger*, 512 F. 2d 688, 696–98 (2d Cir. 1975) and *National Association of Pharmaceutical Manufacturers* v. *FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), Affd., 637 F. 2d 877 (2d Cir. 1981).

B. Safety of Antiperspirants.

2. One consumer pointed out that perspiration is a natural body function and questioned the risks of impeding this function by the use of antiperspirants.

The agency points out that the Panel adequately addressed this concern in its report. The Panel recognized that, although cooling of the skin through evaporation of perspiration is often the only effective way of maintaining proper body temperature, even total inhibition of underarm perspiration would not compromise the body's ability to maintain proper thermal regulation. However, the Panel was concerned that use of an antiperspirant over the entire body could affect the thermoregulatory system and for this reason concluded that antiperspirants should not be allowed to be marketed OTC for use over the entire body. The agency concurs with the Panel's conclusions.

3. Four consumers reported side effects they experienced while using OTC aerosol antiperspirant products. These included weeping eyes, sneezing, coughing, gasping for breath, bronchial irritation, and spitting up mucus. One consumer stated that an aerosol powder sprayed under the arms permeated the air in the bathroom and caused her eyes to swell shut.

The Panel concluded that adverse reactions of this type occurring from the use of aerosol antiperspirants constitute an acceptable risk. The Panel also concluded that the acute and subactute toxicity studies adequately document the short-term safety of aluminum chlorhydrate aerosolized products. Because there are equally effective nonaerosol dosage forms available for applying antiperspirants to the axillae, it is a relatively simple matter for consumers to switch to a different dosage form when adverse reactions, such as those reported, occur from the use of aerosols. Based on statements contained in the comments submitted, this is exactly what consumers do. The agency agrees with the Panel that the short-term use of aerosol antiperspirant products poses an acceptable risk to consumers. In addition, recently submitted data indicate that aerosol antiperspirants can generally be recognized as safe and effective for long-term use as well. (See comment 22 below.)

4. Eight consumers reported side effects they experienced while using OTC nonaerosol antiperspirant products. The most common side effects reported were rashes and itching. Two consumers reported having axillary surgical procedures for conditions that they claimed resulted from the use of antiperspirant/deodorant products. One of these individuals included a copy of a medical history that showed the condition to be diagnosed as "hidradenitis suppurativa, chronic state."

The agency points out that, in discussing the safety of antiperspirants, the Panel recognized that some users of these products experience local irritation from applying the product to the underarm area. The major side

effects are rash and irritation, which occur at the site of application and which usually disappear upon discontinuing use of the product. The Panel acknowledged these side effects by recommending a warning to discontinue use if rash occurs.

Hidradenitis suppurativa, a dermatologic condition indigenous to the axillae, is a chronic and indolent disorder of the apocrine sweat glands. The Panel considered this disorder during its review of the safety of antiperspirants (43 FR 46708), but was unable to find any correlation between the disorder and the use of antiperspirants. While treatment of this disorder usually prohibits the use of antiperspirants, current medical thought has not implicated antiperspirants as causative agents.

The Panel concluded that the side effects that occur from the use of Category I antiperspirant active ingredients are an acceptable risk because they are not serious and are readily reversible. The Panel believed that its recommended warnings in § 350.50(c) were adequate to warn consumers to discontinue use of the product should side effects occur. The agency concurs and further believes that expanding the statements in revised § 350.50(c) to include the term "irritation" will adequately warn consumers to discontinue use of the product should rash or irritation occur. This expanded warning will also eliminate the need for the irritation warning recommended in § 350.50(c)(2), and this section can be deleted from the monograph.

C. Effectiveness of Antiperspirants

5. One comment from a research laboratory stated that a "correlation between reduction in axillary odors and reduction in microbial population of the axilla cannot be demonstrated." For this reason, the comment suggested deleting the following statement, which appeared as part of the Panel's discussion of deodorant effectiveness of antiperspirants: "If new antiperspirant products or ingredients are reviewed for deodorancy, data on suppression of bacteria in the axilla should be a part of the data considered and should be correlated with assessments of odor reduction."

The agency points out that the Panel believed that the probable mechanism for the deodorant effect of antiperspirants is due to the antibacterial action of the antiperspirant ingredients. The Panel did not feel it was necessary for this theory to be proven to justify a deodorant claim for the antiperspirant ingredients reviewed, because "sniff tests" that were conducted using representative products substantiated the claim. However, in the interest of science, the Panel made the statement referenced in the comment hoping that data to prove its theory could be developed. Because data on suppression of bacteria in the axilla as it relates to odor reduction are not required for antiperspirant ingredients subject to this monograph, the agency sees no need to delete the Panel's statement or to address the issue further in this document.

6. One comment protested that the Panel went beyond its legal authority in discussing deodorant effectiveness in its report because a deodorant claim is a cosmetic representation, and the cosmetic aspects of an OTC drug are not subject to the OTC drug review. The comment requested that all references made by the Panel to cosmetic claims and deodorant efficacy not be considered further by the agency.

The agency does not believe that the Panel went beyond its legal authority in discussing deodorant effectiveness in its report. The Panel felt that a discussion of deodorant effectiveness was needed to provide information on the activity and overall effects of antiperspirants. The Panel acknowledged that deodorancy is a cosmetic claim and stated that its concern was limited to the effect of antiperspirants on deodorancy as a means of defining the actions of antiperspirants. This statement is consistent with the procedural regulations governing the OTC drug review (published in the **Federal Register** of May 11, 1972; 37 FR 9473) which state "Any product for which only cosmetic claims are made and which is therefore not a drug will not be reviewed." In addition, in the calls for data for those panels reviewing drug products with both drug and cosmetic claims, the agency solicited safety data that may be available as a result of testing related to nondrug products, such as cosmetics, but stated that the panels were charged with reviewing the safety and effectiveness of the active ingredients in drug products and not with reviewing the safety and effectiveness of these same ingredients used in products for cosmetic purposes. (See **Federal Registers** of April 4, 1972 (37 FR 6775); September 7, 1973 (38 FR 24392); and November 16, 1973 (38 FR 31698).) Accordingly, the deodorant effectiveness of antiperspirants is not being considered further in this document.

7. One comment objected to the Panel's determination that a 20-percent reduction in perspiration in at least half the users is the minimum standard of antiperspirant effectiveness, based on the results of user perception tests. The comment argued that the amount of perspiration reduction required or preferred depends upon the individual and that the standard of a 20-percent reduction in half the users tested does not accommodate those individuals who require or prefer less. The comment contended that, for proof of effectiveness, it should be enough to show through well-controlled studies that a product reduces perspiration to a statistically significant degree, rather than by a minimum of 20 percent in half the users tested.

The agency disagrees with the comment. The agency concurs in the Panel's conclusion that, in order for an antiperspirant to be considered effective, the level of perspiration reduction must be such that the majority of users may reasonably expect to perceive it. Merely reducing the level of perspiration to a statistically significant degree will not assure a reduction that will be noticeable to users. The agency concurs with the Panel that data presented from an independent test laboratory (Ref. 1) correlating gravimetric tests with user perception tests establish that 20 percent is the minimum level of reduction required to assure a perceptible effect.

Reference

(1) Majors, P. A., and F. B. Carabello, presentation to the Advisory Review Panel on OTC Antiperspirant Drug Products concerning the Hill Top Research Method of Antiperspirant Evaluations, OTC Volume 140065.

8. Two comments agreed with the Panel's minority opinion that effectiveness testing of final antiperspirant product formulations containing Category I active ingredients is unnecessary. These comments argued that such a requirement is inconsistent with the original intent of the monograph system, namely, to review active ingredients rather than final products. One of the comments stated that no other monograph requires that a finished product containing a Category I active ingredient be tested for effectiveness in humans and that such a test sets an unnecessary requirement, particularly for a product that is not used to treat disease.

The agency agrees with the comments and the Panel's minority opinion that final formulation testing should not be required for antiperspirant drug products. However, as the Panel pointed out in its report, even minor variations in formulation, such as the addition of

emollients or buffers, can alter the effectiveness of an antiperspirant ingredient. Therefore, the agency is making the Panel's recommended testing procedures, with modifications based on the comments, available as guidelines to drug manufacturers. FDA encourages the use of these guidelines to assure the effectiveness of individual products.

D. Combination Policy

9. Two comments objected to the Category II classification of any antiperspirant combinations, i.e., either with other antiperspirant active ingredients or with Category I active ingredients from other pharmacological groups. The comments stated that the combination policy for OTC drugs set forth in § 330.10(a)(4)(iv) (21 CFR 330.10(a)(4)(iv)) allows the combination of two or more safe and effective active ingredients and urged that the Panel's classification of such antiperspirant combinations as Category II be reversed.

The agency points out that the Panel did not receive any data for actual combinations of antiperspirant active ingredients and was not aware of any product that contains more than one identifiable active antiperspirant ingredient. After reviewing the labels of the submitted antiperspirant products, it appeared to the Panel that many products contained combinations of two or more antiperspirant active ingredients. However, in an attempt to clarify the naming of these various antiperspirant ingredients, the Panel was informed that these products were not combinations in the true meaning of the word. Rather, the chemistry involved in the combining of the labeled ingredients in the final product resulted in single identifiable ingredients. One submitted product did contain two ingredients, aluminum sulfate and sodium aluminum lactate. However, the Panel concluded that sodium aluminum lactate is not an active ingredient in the formulation because it is present as a corrective agent to counteract the irritating effects of the aluminum sulfate. In the absence of any information concerning the existence of any such combinations or data to support their safe and effective use, the Panel placed all antiperspirant products containing more than one antiperspirant active ingredient in Category II. The agency concurs with the Panel's conclusion.

The Panel received a submission on a product no longer marketed that contained an antiperspirant and an antibacterial ingredient. The antibacterial ingredient was present in the product to produce a deodorant effect, and the Panel decided early in its review not to review deodorant claims because they have been considered cosmetic claims. The Panel also received data on products containing both antiperspirant and antifungal active ingredients to be used in the treatment of athlete's foot. After evaluating the safety and effectiveness of the antiperspirant ingredients in these products, the Panel deferred the products to the OTC Antimicrobial II Panel for evaluation of the usefulness of such a combination in the treatment of athlete's foot. Hence, the Panel did not classify such a combination.

The Panel, however, recognized that the combination drug policy for OTC drug products set forth in § 330.10(a)(4)(iv) allows an OTC drug product to combine two or more safe and effective active ingredients when each active ingredient makes a contribution to the claimed effect(s) and when combining of the active ingredients does not decrease the safety or effectiveness of any of the individual active ingredients. The Panel acknowledged the possibility of combining a Category I antiperspirant with Category I ingredients from other OTC drug monographs. In fact, the Antimicrobial II Panel has recommended in its report on OTC antifungal drug products, published in the Federal Register of March 23, 1982 (47 FR 12480), that an antiperspirant-antifungal combination be placed in Category I. The agency will address this recommendation in the tentative final monograph for OTC antifungal drug products.

E. Category I Active Ingredients

10. One comment recommended that a statement in the report that glycine is sometimes added to aluminum zirconium chlorhydrates for formulation purposes should be revised to state that the salts of glycine are also added to antiperspirant active ingredients for formulation purposes. The comment explained that, although the statement is correct, it is somewhat misleading because sometimes a glycine salt is used rather than glycine.

The agency agrees with the comment that both glycine and glycine salts are sometimes added to antiperspirant active ingredients for formulation purposes. Accordingly, the statement under part III. paragraph B.1.b. of the Panel's report is amended to read, "Glycine or its salts are sometimes added to aluminum zirconium chlorhydrates for formulation purposes."

11. Two comments requested that the Panel's recommended § 350.10 be amended to clarify that the maximum allowable concentration of active ingredients in an antiperspirant product does not include buffers. The comments stated that buffers such as glycols and glycine do not contribute to the efficacy of antiperspirant formulas. The comments stated that they interpret § 350.10 to mean that glycine and glycol buffers need not be included in calculating the maximum concentration of active ingredients in a finished formula; however, they believe the Panel should have expressly provided for the exclusion of glycine and glycol buffers in the calculation.

The agency concurs with these comments. The Panel noted that antiperspirant active ingredients form complexes with certain glycols and these complexes have higher alcohol solubility than uncomplexed salts. The Panel found that this property is desirable in antiperspirant products and considered these glycols to be formulation necessities that do not substantially alter the safety or antiperspirant activity of the antiperspirant salt from which they were prepared. In addition, the Panel found that glycine or glycine salts are sometimes added to antiperspirant active ingredients for formulation purposes only. Therefore, the agency concludes that glycine and glycol buffers need not be included in calculating the maximum allowable concentration of active ingredients in an OTC antiperspirant product. To allow expressly for the omission of glycine and glycol buffers in calculating the concentration of antiperspirant active ingredients with which these buffers are used, the agency proposes to revise § 350.10(a) and (b) to include the following directions for calculating the concentration of antiperspirant active ingredients:

(a) Aluminum chlorhydrates * * * 25 percent or less concentration (calculated on an anhydrous basis, omitting from the calculation any buffer component present in the compound) of an aerosol and nonaerosol dosage form.

(b) Aluminum zirconium chlorhydrates * * * 20 percent or less concentration (calculated on an anhydrous basis, omitting from the calculation any buffer component present in the compound) of a nonaerosol dosage form.

12. Two comments contended that the concentration of active ingredients in an antiperspirant container has less meaning than the amount of active ingredient actually deposited on the axilla. The comments maintained that factors such as dosage form and size of the orifice of the product container can affect the amount of active ingredient

applied to the skin. For example, although a given antiperspirant salt may be marketed at a 3-percent level in a pressurized aerosol formula and at a 22-percent level in a lotion base, the quantity of active ingredient deposited on the skin during normal use would be similar for both types of products. The comments contended that because irritation resulting from use of a product is in proportion to the amount of antiperspirant active ingredient deposited on the skin, the monograph should be amended to allow higher concentrations of active ingredient, provided that the amount actually delivered to the skin does not exceed that determined by the Panel to be safe.

The agency disagrees with these comments and does not at this time propose to allow higher concentrations of antiperspirant active ingredients than those recommended by the Panel. The topical dosages for antiperspirants recommended by the Panel are based on safety data reviewed by the Panel. The comments included no new data to show that a higher concentration of antiperspirant active ingredients marketed in a particular container would deliver no more than the amount of active ingredient judged safe by the Panel.

F. Category I Labeling

13. Three comments objected to the minimum effectiveness statement which the Panel recommended in the monograph, i.e., "Products described as antiperspirants can be expected to produce at least a 20-percent reduction in underarm perspiration in at least half the users when applied once daily." These comments pointed out that the statement adds no useful information and may even be confusing to consumers.

Two comments stated that, unless the degree of effectiveness of an antiperspirant product is stated in labeling, the consumer has no way to judge the comparative effectiveness of different antiperspirant products.

The agency believes that a minimum effectiveness statement in the labeling does not help consumers compare the effectiveness of different antiperspirants. The minimum effectiveness standard was recommended by the Panel for use in determining the effectiveness of antiperspirant products; but without explanation of the testing method and the reasons for setting this particular standard, the recommended labeling statement is not likely to educate consumers and may become a source of confusion. Accordingly, the minimum effectiveness statement is deleted from the monograph.

14. A comment objected to the limitation of three phrases recommended by the Panel under indications, "Helps reduce wetness," "Helps reduce dampness," and "Helps reduce perspiration," stating that the proposed monograph's reliance on exclusive terminology is unnecessary, arbitrary, and fundamentally unfair. The comment argued that all terminology that indicates that an antiperspirant is effective at reducing perspiration should be permitted in the labeling. Citing "Roget's International Thesaurus" (Ref. 1), the comment offered the following synonyms for the word "reduce" for inclusion in the monograph: "decrease," "diminish," "lessen," "lower," and "mitigate." The comment also argued that there is no evidence that consumers regard "helps reduce underarm wetness" as any different from "decreases underarm wetness." In addition, the comment remarked that the word "helps" is redundant and improper when used together with the word "reduce" in the labeling indications recommended by the Panel because the word "helps" denotes action in concert with other influences; yet, antiperspirants by themselves do reduce perspiration. However, the comment pointed out that the word "helps" is appropriate when used with words such as "stop," "check," "halt," "end," "eliminate," or "protect" because in this instance "help" implies what the comment described as directional benefit, much as "partially stops" would. The comment suggested that this latter group of words should also be allowed in antiperspirant drug labeling.

Since the inception of the OTC drug review, the agency has maintained that a monograph describing the conditions under which an OTC drug will be generally recognized as safe and effective and not misbranded must include both specific active ingredients and specific labeling. (This policy has become known as the "exclusivity rule.") The agency's position has been that it is necessary to limit the acceptable labeling language to that developed and approved through the OTC drug review process in order to ensure the proper and safe use of OTC drugs. The agency has never contended, however, that any list of terms developed during the course of the review literally exhausts all the possibilities of terms that appropriately can be used in OTC drug labeling. Suggestions for additional terms or for other labeling changes may be submitted as comments to proposed or tentative final monographs within the specified time periods or through petitions to amend monographs under 21 CFR § 330.10(a)(12). For example, the labeling proposed in this tentative final monograph has been expanded and revised in response to comments received.

During the course of the review, FDA's position on the "exclusivity rule" has been questioned many times in comments and objections filed in response to particular proceedings and in correspondence with the agency. The agency has also been asked by The Proprietary Association to reconsider its position. To assist the agency in resolving this issue, FDA plans to conduct an open public forum on September 29, 1982, where all interested parties can present their views. The forum will be a legislative type administrative hearing under 21 CFR Part 15 that will be held in response to a request for a hearing on the tentative final monograph for nighttime sleep aids (published in the **Federal Register** of June 13, 1978; 43 FR 25544). Details of the hearing were announced in a notice published in the **Federal Register** of July 2, 1982 (47 FR 29002). In proposed and tentative final monographs issued in the meantime, the agency will continue to state its longstanding policy.

The agency notes that, in recommending indications for the Category I labeling of antiperspirant drug products, the majority of the Panel rejected words that imply the ability to stop underarm perspiration totally and that could mislead the consumer about enhanced antiperspirant effect. The majority view was that exaggerated claims of effectiveness are sometimes made for antiperspirants in the advertising media, and therefore it is especially important for an antiperspirant drug product's label to provide the consumer with accurate information about the product's effectiveness. The agency believes that the words "decrease," "diminish," and "lessen" adequately achieve the intention of the Panel majority of providing the consumer with accurate information about the antiperspirant drug product's effect on perspiration. Accordingly, the agency proposes that any of these words may be substituted for the word "reduce" under "Indications" in the labeling of antiperspirant drug products, as the agency believes there is little chance that they might create confusion or mislead the consumer.

The word "mitigate," not a commonly used word, has been defined as "to cause to become less harsh or hostile or

to make less severe or painful" (Ref. 2). This is not the sense in which the word "reduce" is used in the Panel's labeling, and therefore "mitigate" will not be proposed in the tentative final monograph. The agency believes that the word "lower" also should not be used in the labeling because this word could create confusion among consumers as to whether it was used in the sense of "reduce" or in the sense of physically "lowering" perspiration from the underarm area. Additionally, the agency believes that words such as "stop," "check," "halt," "end," "eliminate," and "protect" should not be used in the labeling of antiperspirant drug products, even if preceded by the word "helps," because these words imply the ability to stop underarm perspiration totally and would therefore mislead the consumer about the effectiveness of antiperspirant drug products. On this point, the agency rejects the argument of two members of the Panel who filed a minority opinion (43 FR 46724) stating that the Panel did not see data to show that a consumer can differentiate between the intent of words such as "halts," "checks," "stops" versus "diminishes" and "reduces," and that if confusion were to occur between these groups of words no harm is done to the consumer. The agency believes that the first group of words does not have the same meaning as the second, and to permit labeling language that is capable of misleading the consumer with respect to the effectiveness of a product is wrong and in conflict with the OTC drug regulations in § 330.10(a)(4)(iv), which state, "Labeling shall be clear and truthful in all respects and may not be false or misleading in any particular * * *" The agency agrees with the comment that the word "helps" is redundant when used with the word "reduce." Therefore, the agency proposes to delete this word from the labeling language in the tentative final monograph, which is revised as follows:

(b) *Indications.* The labeling of the product contains a statement of the indications under the heading "Indications" that is limited to one or more of the following phrases:

(1) (Any one of the following terms may be used: "Reduces," "Decreases," "Diminishes," or "Lessens") "underarm wetness."

(2) (Any one of the following terms may be used: "Reduces," "Decreases," "Diminishes," or "Lessens") "underarm dampness."

(3) (Any one of the following terms may be used: "Reduces," "Decreases," "Diminishes," or "Lessens") "underarm perspiration."

References

(1) "Roget's International Thesaurus," 3d Ed., Thomas Y. Crowell Company, Inc., New York, 1962, s.v. "reduce."

(2) "Webster's New Collegiate Dictionary," G. & C. Merriam Company, Springfield, MA, 1977, s.v. "mitigate."

15. A comment requested revision of the directions for use recommended by the Panel, i.e., "Apply to skin of underarms. Not to be used generally over the body." The comment objected to the second sentence of the directions ("Not to be used generally over the body."), stating that this sentence appears to be a warning and should not be included under the directions for use of antiperspirant drug products. The comments suggested that the directions for use be revised to read as follows: "Apply to underarms only." The comment stated that this statement would adequately inform consumers of the appropriate use of these products. The comment further contended that there is no evidence that antiperspirant products are being used on any part of the body other than the underarms, or that general body use presents any hazard; that warnings should be used sparingly and only where there is a demonstrated need; and that there is no need for such a warning on the label of antiperspirant drug products.

The agency agrees with the comment that the statement "Not to be used generally over the body" is a warning rather than a direction for use. The Panel recommended this statement because of its concern that the use of an antiperspirant over the entire body could possibly interfere with the body's thermal regulatory process. Because of this concern, the Panel concluded that claims for use of antiperspirants over the entire body should not be allowed. The agency agrees with this conclusion. The agency further believes that the specific direction for use recommended by the comment, i.e., "Apply to underarms only," renders the directions, "Apply to skin of underarms. Not to be used generally over the body," unnecessary. Accordingly, the agency has proposed the directions in the tentative final monograph as follows: "Apply to underarms only." The agency notes that the Panel placed claims for the use of antiperspirant products on the hands and feet in Category III and that these claims have the potential to become Category I, at which time the monograph would be revised accordingly.

16. A comment from a consumer, who claimed to be allergic to metal, requested that the label of antiperspirant drug products containing metal compounds, such as aluminum chlorhydrate, include the statement "Contains metal."

Under section 502(e)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(e)(1)) (hereafter referred to as the act), all drug products are required to state the name(s) of the active ingredient(s) on the label. All Category I antiperspirant ingredients contain a metallic substance, aluminum, as part of the chemical entity. The agency believes that the name of the specific metal contained in the product, which will be listed on the label in accordance with the requirements of the act, is more beneficial to the consumer than the statement "Contains metal."

G. Category II Labeling

17. One comment objected to the Panel's placement of the term "extra-strength" in Category II, contending that this term is equivalent to the term "extra-effective," which the Panel placed in Category III. The comment stated that the Panel's assumption that the term "extra-strength" implies improved performance through increased concentration of active ingredient is unfounded. The comment added that the relative concentration of active ingredients in antiperspirants is not of interest to consumers, who judge antiperspirants in terms of the benefits received. Therefore, the comment concluded, the term "extra-strength" should be considered synonymous with the term "extra-effective" and requested that both terms be permitted for eligible antiperspirant products.

The agency agrees with the Panel that the term "extra-strength" on an OTC drug product usually refers to an increased amount of drug per dosage unit, and this increased amount normally correlates to increased effectiveness of the product. However, the Panel concluded that in an antiperspirant drug product an increased amount of active ingredient does not necessarily result in an added effect because minor variations in formulation can alter the product's antiperspirant activity. The comment did not provide any information that would alter the Panel's conclusions, and the agency concurs with the Panel that the term "extra-strength" is Category II. As mentioned below, the claim "extra-effective" is tentatively placed in Category II by the agency. (See comment 19 below.)

H. Category III Active Ingredients

18. One comment suggested that the nomenclature for potassium aluminum sulfate be changed to "potassium alum."

The agency concurs with this comment. The United States Pharmacopeia (Ref. 1) states that aluminium potassium sulfate "should be identified on the label as potassium alum." Section 502(e)(3) of the act (21 U.S.C. 352(e)(3)) provides that the use of a drug name other than the official established name would cause the drug to be misbranded. Therefore, the name "potassium aluminum sulfate" is changed to "potassium alum" in this document. (See part II. paragraph A.1. below—Summary of Ingredient Categories.)

Reference

(1) "The United States Pharmacopeia, 20th Revision," United States Pharmacopeial Convention, Inc., Rockville, MD, p. 22, 1980.

I. Category III Labeling

19. Two comments objected to the Panel's classification of "extra-effective" claims in Category III. One contended that the Panel's definition of "extra-effective" is arbitrary and reduces the incentive to improve product efficacy. The comment pointed out that manufacturers should be allowed to use appropriate descriptive language to inform consumers about the differing effectiveness of antiperspirants and concluded that the extra-effectiveness criterion should be eliminated. The other comment argued that establishing an additional category of labeling for "extra-effective" claims serves no useful function. The comment stated that a product that is "extra-effective" for one person may be only marginally effective for another, adding that consumers will choose those products which best suit them. The comment insisted that it should be the prerogative of the manufacturer to determine the means of conveying product superiority to consumers, as long as comparative claims are honest and scientifically valid.

The agency agrees that there is no useful function in establishing an additional category of "extra-effective," because, as pointed out by one of the comments, a product that is "extra-effective" for one person may be only marginally effective for another person. The claim is an ambiguous one and difficult to quantify for scientific validation. Accordingly, the agency is proposing that the claims "extra effectiveness" or any comparative effectiveness claim be Category II.

20. One comment objected to the Panel's placement of "emotional sweating" claims in Category III. The comment contended that there is no reason to believe that an antiperspirant will not be effective when the perspiration stimulation is emotional rather than thermal. For this reason, the comment argued that the Panel's requirement that a user perception test be performed with sweating induced by emotional rather than thermal stimuli is wasteful and unnecessary.

The agency agrees with the Panel's Category III classification of the claim "for the control of emotional sweating" because there are insufficient data to show that an antiperspirant that is effective in reducing thermally induced sweat is also effective in reducing emotionally induced sweat. The Panel noted that under emotional stress the amount of axillary sweat produced was found to be twice as great as that produced under hotroom conditions. Although data available to the Panel suggest that emotionally induced sweat can be reduced, data were not available to show that such a reduction would be perceptible to the user. The user perception test, as recommended by the Panel for this claim, would determine the point at which reduction of emotionally induced sweat is perceptible to the user. These data are needed before a decision can be made on whether the claim "for the control of emotional sweating" can become Category I.

J. Data Required To Upgrade Category III Conditions to Category I

21. Two comments took issue with specific aspects of the protocol for testing the long-term safety of aerosolized antiperspirants. They disagreed with the Panel's guidelines for the preliminary respirable aluminum assay, the selection of dose levels for the chronic inhalation study, and the number of organs to be prepared for histopathology. The comments recommended that the preliminary assay should be conducted on prototypes representing the vast majority of the marketed products. The comments also objected to the exposure levels of 1, 10, and 100 times the anticipated human exposure levels, stating that this recommendation by the Panel is arbitrary and scientifically unsound. Finally, the comments contended that only the respiratory system organs need to be examined histopathologically. Other organs, they stated, should be retained for examination at some later time if necessary, because these organs have been examined and found free of pathologic lesions in chronic studies involving small animal species (Refs. 1 and 2).

Data and information submitted subsequent to the publication of the Panel's report appear to be adequate to establish general recognition for the safe and effective use of aerosol antiperspirants by consumers (See comment 22 below). Therefore, the long-term inhalation studies recommended by the Panel will not be required, and there is no need for further discussion of the protocal for such studies in this document.

References

(1) Steinhagen, W. H., and F. L. Cavender, "Six Month Inhalation Exposures of Rats and Guinea Pigs to Aluminum Chlorhydrate," *Journal of Environmental Pathology and Toxicology*, 1:267–277, 1978.

(2) Inhalation Toxicology Research Institute, Lovelace Biomedical and Environmental Research Institute, "Inhalation Toxicology Studies of Aerosolized Products," Final Report, Albuquerque, NM, pp. 1–288, 1979, filed as SUP Docket No. 79N–0064, Dockets Management Branch.

22. One comment submitted the final reports (Refs. 1 and 2) of long-term inhalation studies of aerosolized aluminum chlorhydrate in animals (rodents) plus data from other studies (Ref. 3) and concluded that these data justify Category I status for aerosol antiperspirant drug products. In addition, a citizen petition to reopen the administrative record of the OTC antiperspirant drug products rulemaking was submitted to include in the record new data and correspondence with the agency in further support of a Category I status for aluminum chlorhydrate aerosol antiperspirants. The petition was granted on May 7, 1982. (Refs. 16, 17, and 18.)

The agency has evaluated the two reports (Refs. 1 and 2) submitted by the comment, in addition to other information and data that were sent to the agency after the above-mentioned reports (Refs. 4 through 16). Based on the review of this material, the agency has determined that aluminum chlorhydrate aerosol antiperspirants can be generally recognized as safe and effective for use by consumers. The existing safety data provide a broad toxicological profile that can be used to establish general recognition of the safety of aerosolized aluminum chlorhydrate antiperspirants, and are adequate to support including aerosol aluminum chlorhydrate antiperspirants in the tentative final monograph. Therefore, aluminum chlorhydrates in aerosol dosage forms will be placed in Category I rather then Category III as recommended by the Panel. However, in order to prevent misuse of such dosage forms the agency is proposing the following additional label warning for aerosol antiperspirants in § 350.50(c) of the tentative final monograph: "Avoid

excessive inhalation." The agency's evaluation of the data and recommendations for a Category I status for aerosol antiperspirants are on file in the Dockets Management Branch (Refs. 17 and 18).

References

(1) "Inhalation Toxicology Studies of Aerosolized Products, Final Report," Inhalation Toxicology Research Institute, Lovelace Biomedical and Environmental Research Institute, Albuquerque, NM, 1979, Coded "SUP," Docket No. 78N–0064, Dockets Management Branch.

(2) "Final Report on Aluminum Chlorhydrate Study," Becton, Dickinson Research Center, Research Triangle Park, NC, 1978, Coded "SUP," Docket No. 78N–0064, Dockets Management Branch.

(3) Comment No. C00027, Docket No. 78N–0064, Dockets Management Branch.

(4) Hazelton Laboratories America, Inc., "90-Day Inhalation Toxicity Study of Aerosol #769 in Cynomolgus Monkeys, Final Report," Comment No. C00026, Docket No. 78N–0064, Dockets Management Branch.

(5) Hazelton Laboratories America, Inc., "Subacute Toxicity Potential in Monkeys, Project No. 260–120, Final Report," Comment No. C00026, Docket No. 78N–0064, Dockets Management Branch.

(6) Klosterkotter, W., "Effects of Ultramicroscopic Gamma-Aluminum Oxide on Rats and Mice," *Archives of Industrial Health*, 21:458–472, 1960.

(7) Stenback, F. G., et al., "Synergistic Effects of Diethylnitrosamine and Different Dusts on Respiratory Carcinogenesis in Hamsters," *Cancer Research*, 33:2209–2214, 1973.

(8) King, E. J., et al., "The Effect of Aluminum and of Aluminum Containing 5 Percent of Quartz in the Lungs of Rats," *Journal of Pathology and Bacteriology*, 75:429–434, 1958.

(9) Englebrecht, F. M., et al., "Tissue Reactions to Injected Aluminum and Alumina in the Lungs and Livers of Mice, Rats, Guinea-Pigs and Rabbits," *Journal of Pathology and Bacteriology*, 77:407–416, 1959.

(10) Stacy, B. D., et al., "Tissue Changes in Rat's Lungs Caused By Hydroxides, Oxides, and Phosphates of Aluminum and Iron," *Journal of Pathology and Bacteriology* 77:417–426, 1959.

(11) Weller, W., "On the Increased Incidence of Tumors Following Inhalation of Poly-2-Vinylpyridin-N-Oxid," *Zeitschrift fur die Gesamte Experimentelle Medizin*, 154:235–246, 1971.

(12) Kobayashi, N., et al., "Inhibitory Effect of Aluminum on the Development of Experimental Lung Tumor in Mice Induced By 4-Nitroquinoline-1-Oxide," GANN, 61:239–244, 1970.

(13) Kano, R., "Experimental Studies of Occupational Lung Cancer," *Bulletin of the Tokyo Medical and Dental University*, 9:440–441, 1962.

(14) "Toxicology of Metals—Volume II," Report of the Office of Research and Development, Environmental Protection Agency, Publication No. EPA–600/1–77–022, 1977.

(15) Sorenson, John, R. J., et al., "Aluminum in the Environment and Human Health," *Environmental Health Persepctives*, 8:3–95, 1974.

(16) Citizen Petition, CP, Docket No. 78N–0064, Dockets Management Branch.

(17) Letter from William F. Randolph, FDA, to James H. Merritt, CTFA, dated May 7, 1982 Docket No. 78N–0064.

(18) Letter from William E. Gilbertson, FDA, to James H. Merritt, CTFA, dated May 12, 1982, Docket No. 78N–0064.

23. A comment suggested that the Panel's guidelines for skin irritation tests be revised to permit all equivalent tests that use comparative controls in evaluating the tendency of antiperspirant active ingredients to irritate the skin. The comment stated that tests equivalent to the Lanman technique that use comparative controls and that have a demonstrated ability to distinguish among antiperspirant active ingredients as well as dose levels should be allowed. The comment included five references to support its position (Refs. 1 through 5).

The agency wishes to clarify that the Panel's discussion of the Lanman techique was intended only to provide guidance to manufacturers on the type of data the Panel considered necessary before an ingredient placed in Category III because of questions of skin irritancy could be reclassified into Category I. The agency will not limit manufacturers to the Lanman technique of comparative testing. It is the responsibility of the manufacturers to use whatever technique they believe is appropriate. The agency will evaluate the data on their own merit, including the methodology used.

References

(1) Draize, J. H., G. Woodard, and H. O. Calvery, "Methods for the Study of Irritation and Toxicity of Substances Applied Topically to Skin and Mucous Membrances," *Journal of Pharmacology and Experimental Therapeutics*, 82:377–390, 1944.

(2) Draize, J. H., "Dermal Toxicity," *in* "Appraisal of the Safety of Chemicals in Foods, Drugs, and Cosmetics," Association of Food and Drugs Officials of the United States, Austin, TX. pp. 46–59, 1959.

(3) Kligman, A. M., and W. M. Wooding, "A Method for the Measurement and Evaluation of Irritants on Human Skin," *Journal of Investigative Dermatology*, 40:78–94, 1967.

(4) Schwartz, L., and S. M. Peck, "The Patch Test in Contact Dermatitis," *Public Health Reports*, 59:546–557, 1944.

(5) Shelanski, H. A., and M. V. Shelanski, "A New Technique of Human Patch Tests," *Proceedings of Scientific Section, Toilet Goods Association*, 19:46–49, 1953.

24. Three comments suggested deletion of the user perception test required to substantiate certain Category III claims, such as "extra-effective", "problem" or "especially troublesome" perspiration, and "emotional sweating." One comment stated that user perception tests of differences between a reference formulation and a proposed "extra-effective" formulation are impractical for individual product evaluations. The comment submitted an approach for a one-time perception test for the "extra-effective" class. It suggested comparing a standard antiperspirant to a series of potentially "extra-effective" products. The individual responses to a wetness perception questionnaire would be compared to individual sweating differences obtained between axillae treated with the 20-percent formula and the "extra-effective" formulations. From the responses and sweating values, a graph would be used to determine what level of difference in hotroom tests would be required for subjective perception of difference. Another comment stated that the cosmetic attributes of a product can appear to enhance or reduce its antiperspirant effects, depending upon the cosmetic effect desired. The comment added that a product that demonstrates its effects by objective methods might be disqualified because it is so formulated that consumers may not readily perceive its true effects.

The third comment objected to the user perception test because it is unreliable, has not been tried, and is not generally recognized or accepted. The comment stated that there is no perception test that manufacturers can routinely follow. This comment also complained that perception testing would be influenced by product attributes.

As noted in comment 19 above, the claim of "extra-effective," has been proposed as Category II by the agency. The agency agrees with the Panel's decision to include user perception testing for the Category III claims of "problem or especially troublesome" perspiration, and "emotional sweating." Although the Panel postulated that a 30-percent reduction in perspiration would be necessary to support these claims, the agency believes that the user perception tests will determine the actual level of perspiration reduction necessary to support each of these claims. In this regard, user perception testing was not intended to be required for each individual product, but rather for each class of "problem perspiration," or "emotional sweating" products. Once the level of activity that is perceivable by users has been established for each of these claims, using the Panel's recommended guidelines, it will not be necessary to perform user perception

testing on individual products. The agency points out that the Panel considered the problem of cosmetic attributes on user perception testing and suggested a method for minimizing this problem as part of its guidelines at 43 FR 46730.

25. One comment suggested that "the Panel's requirement that a 'problem perspiration' claim may only be used if a product passes a consumer perception test using the upper five percent of 'sweaters' and a gravimetric test showing 30% reduction in perspiration should be changed to allow the 'problem perspiration' claim to be used if a consumer panel made up of people who consider themselves to be problem sweaters experience a 20% reduction in perspiration." The comment added that the Panel's requirements are apparently based on the premise that problem perspiration is defined as a large volume of sweat and that only the very heaviest of perspirers suffer from it, and to arbitrarily define problem perspiration as only heavy perspiration is unrealistic and improper. The comment stated that its suggestion would require smaller test panels and would accomplish the result of claim substantiation (i.e., effectiveness) for problem perspiration using a more meaningful standard.

The agency points out that the Panel received no data that would support claims of "problem" or "especially troublesome" perspiration, nor were any data submitted with the comment. The Panel defined problem perspiration as that afflicting the upper 5 percent of perspirers. The comment has not presented any convincing argument to change this definition. The agency concurs with the Panel that in order for a product to contain a "problem" or "especially troublesome" perspiration claim it should be shown to reduce perspiration by a greater amount than a standard antiperspirant in those persons who perspire heavily. The user perception test is necessary to determine at what level reduction in perspiration will be perceptible to the upper 5 percent of perspirers. The comment's suggestion is not being adopted because it could potentially allow a minimally standard antiperspirant to make a claim for "problem" or "especially troublesome" perspiration.

K. Final Formulation Testing Procedures

26. One comment suggested that testing procedures recommended in the monograph should be clarified to state that suitable temperature and humidity conditions for the hotroom test procedure are tempertures around 100° F and between 30 and 35 percent relative humidity. The comment contended that it is difficult, if not impossible, to maintain an exact temperature of 100° F and a relative humidity of 35 percent or greater.

As noted in comment 8 above, the Panel's recommended formulation testing procedures are no longer included in the monograph, but will be available as guidelines to drug manufacturers. As for the content of these guidelines, the agency is in partial agreement with the comment. The Panel stated in its report that temperatures around 100° F and humidities in excess of 35 percent will elicit sufficient axillary sweat from test subjects in reasonable lengths of time so that gravimetric measurements can be made of the axillary perspiration rate. The Panel stated in its report that a temperature of 100° F, plus or minus 2°, was acceptable; apparently an error was made in transposing this information to the monograph. Because it is difficult to maintain an exact temperature of 100° F and a relative humidity of 35 percent with currently used equipment, the agency believes that the controlled environment described in the testing guidelines should be changed to read: "* * * (temperatures at 100° F, plus or minus 2°, and relative humidity of 35 to 40 percent) * * *." This would provide a degree of latitude that is practical for a test procedure of this nature.

27. Three comments were made regarding the control formulation in the Panel's recommended testing procedures. One comment suggested that the control formulation should be "as identical as possible" rather than "identical to" the test formulation without the active ingredient. The comment added that the production of the control formulation is difficult because the active ingredient in some products is an integral part of the vehicle and removal of the active ingredient often results in an unstable formula. Another comment stated that the control formulation should be a careful selection because it should have no effect on sweating. The comment further suggested that evaluation for antiperspirants should be based on the activity of the complete formulations when compared to no treatment or to treatment with a true placebo. This comment suggested water or water plus "Cab-o-sil" as a thickening agent for the inactive control. The comment further suggested that if a vehicle control is used it should be determined in a test compared to no treatment that the control is inactive. The third comment stated that the requirement for using a control product for product evaluation and pretreatment evaluations is unnecessary. The comment stated "by using an untreated control, rather than a control product, a more realistic estimate of benefit derived from formulated products as opposed to the active ingredient per se will be obtained."

The agency disagrees with the comment that stated that using a control product for product evaluations and pretreatment evaluations is unnecessary. Because the effect of antiperspirants is pharmacological, the agency believes that a control should be used in testing antiperspirant products to achieve unbiased results. The purpose of the test must be to establish whether an antiperspirant has a useful effect in the reduction of sweat and to conclude that the product is effective and the adverse effects are minimal. A control is desirable in a test of this kind and is important for differentiating between a true antiperspirant effect or adverse effect and psychological effects, or effects that might be attributed to fragrance, feel, color, etc. The Panel, in its report, listed many factors affecting antiperspirant evaluation and realized the difficulties occurring from variations in formulation. Therefore, the agency agrees with the comments that suggested that the control formulation should be inactive and as similar as possible to the test formulation without the active antiperspirant ingredient. In view of this, the agency proposes to amend the testing guidelines to state that "* * * [The control formulation is as similar as possible to the test formulation and devoid of any antiperspirant activity. Its inactivity is determined in a test compared to no treatment.]"

28. One comment requested that the proposed test procedures be changed to allow for a preconditioning period requiring test subjects to be placed in the controlled environment for a 10- to 40-minute warmup period. The comment stated that this warmup period is necessary for a practical and efficient hotroom test and is consistent with standard test protocols and procedures that have been used to test antiperspirants in the past. The comment suggested the test procedures be changed to read: "Test subjects are placed in the controlled environment for a 10 to 40 minute warmup period."

The agency agrees with the comment that a warmup period should be required for test subjects in a hotroom test. The Panel also stated, in its report, that "since thermal stimulation of sweating requires a latent period before a constant sweat rate is established, the

usual procedure is to allow a 40-minute warmup period after hotroom entry before beginning the actual sweat collection." The warmup period eliminates extreme variations in individual sweating patterns and provides more reproducible data for a more precise evaluation of antiperspirant activity. The warmup period also provides time for the subject's emotional adjustment to the conditions of testing.

Therefore, the agency proposes to revise the testing guidelines to allow for the test subjects to be placed in the controlled environment for a 40-minute warmup period.

29. One comment recommended changing the following statement in the proposed testing procedures: "The quantity of each formulation applied to all the test subjects must reflect the amount that a typical person would apply under normal use conditions." The comment stated that "most of the efficacy data reviewed by the Advisory Panel was based upon an informal industry standard of 0.50 g of solid and roll-on forms and a 2-second spray, or approximately 120 mg of an aerosol." The comment therefore recommended that these amounts or similar standard amounts of an antiperspirant product for application to the test subjects should be specified in this section to allow comparison and correlation of test results among antiperspirant manufacturers. The comment contended that such standards would also lessen the possibility that minimally effective products could, by being liberally applied in unlimited amounts, achieve the established standard of effectiveness and qualify as antiperspirants.

The agency disagrees with the comment and concurs with the Panel's recommendation that the quantity of formulation applied to each test subject during gravimetric testing should reflect the amount that a typical person would apply under normal use conditions. The agency also concurs with the Panel's conclusion that "additional amounts of antiperspirant active ingredient do not necessarily result in improved product effectiveness."

For these reasons, the agency is not persuaded that it would be useful to standardize the amount of different antiperspirant formulations applied during gravimetric testing. Accordingly, the agency proposes not to change the statement in the testing guidelines regarding the quantity of formulation to be applied to test subjects.

30. One comment, made by a research laboratory that has conducted extensive research with antiperspirant products, disagreed with the statement in the Panel's report under part II. Paragraph H.3., "Completely normal axillary eccrine sweating is resumed usually within a week after antiperspirant use is discontinued." The comment submitted data demonstrating that complete washout of antiperspirants occurred in 17 days. The laboratory conducted many crossover studies in which the panelists participated in a series of test periods separated by 2-week recovery periods. In attempts to shorten the time required to complete these studies, some studies were attempted using a 1-week recovery period. In these instances, most individuals who showed high levels of reduction in sweating continued to show a significant reduction in sweating 10 days following the final application of the antiperspirant. The laboratory also found that collections made 17 days following applications of antiperspirant showed sweating ratios essentially equal to the initial baseline values, indicating that complete washout of antiperspirant effects is usually accomplished within this period. The data also indicated that deodorant products that were tested and claimed to have no antiperspirant effect did, indeed, have some antiperspirant effect. Based on these data and experience in testing antiperspirant products, the comment recommended that the subject selection criteria in the recommended testing procedures be changed to require that test subjects not use any antiperspirant or deodorant materials (except deodorants, furnished by the investigator, which have been tested and found to have no antiperspirant effect on axillary sweating) for a minimum of 17 days, rather than 1 week, prior to entering an antiperspirant test.

The agency concurs with the comment. Based on the data submitted, the agency believes that 17 days would be a more accurate length of time than 1 week to allow for antiperspirant washout to occur. These data also show that deodorants may have some effect on axillary sweating; therefore, an abstinence from deodorants (except those furnished by the investigator and which have been tested and found to have no antiperspirant effect), as well as antiperspirants, should be required as a criterion for a subject entering an antiperspirant test. The agency believes that these requirements will produce more accurate results in the effectiveness qualification test. The agency proposes to revise the testing guidelines accordingly.

L. Data Treatment

31. For comments objected to the methods of data treatment recommended by the Panel for the final formulation testing of antiperspirant products. One comment objected to the method of handling the percent of sweat reduction and also the power of the binomial test conditioned by the method of handling the ratio between the values obtained from the control axilla and the test axilla. The comment stated that this ratio is lognormal, and standard techniques exist for testing hypotheses. It suggested that the test of the median and confidence bands for the median should be used which would be valid and more efficient. The comment stated that it calculated the power of the proposed binomial procedure and appended power curves showing its lack of power. The comment further contended that the proposed test procedure is based on the assumption that the median is equal to one and this is incorrect, and the bias is such that it would require a percent reduction greater than 20 percent in order to give the appearance of a 20-percent reduction. Three comments stated that a parametric statistical analysis should be recognized in the monograph as an equivalent and acceptable alternative to the binomial test. One of these comments submitted a protocol for a parametric statistical analysis and stated that the binomial test fails to make use of much of the information provided by the quantitative measurements, whereas the parametric approach relies upon the original quantitative measurements. The binomial test, it stated, has a lower statistical efficiency and requires much larger sample sizes than the parametric analysis. All of these comments remarked that the parametric approach can test the same hypotheses as the binomial test, and with the same degree of confidence, but that it is more sensitive, precise, and statistically efficient. They believe that all valid statistical techniques should be permitted by the monograph and the monograph should be modified to accept the parametric method as an alternative to the binomial test for the statistical testing of antiperspirants.

The agency has carefully reviewed the binomial test recommended by the Panel and the parametric test suggested by the comments. The binomial test recommended by the Panel is very conservative, making no distributional assumptions and making no correction for the asymmetry of individual perspiration rates. The binomial test fails to make use of the information provided by the actual percent of reduction in perspiration, reducing everything to greater than 20 percent or

less than 20 percent. The parametric tests rely on an assumption of lognormality that does not appear to be always valid. The parametric tests also lead to inference about population means only indirectly addressing the question posed by the definition of an antiperspirant product, which is a question about the population median. In addition, the error rates for the parametric tests cannot be interpreted in terms of the probability of allowing an ineffective product, as defined by the agency, to be marketed.

In view of the above-mentioned weaknesses of both the binomial and the parametric tests, the agency recommends a statistical test based on ranks that will have none of the deficiencies noted above. The goal is a statistical test which will provide assurance that the product produces a median reduction in perspiration of at least 20 percent. The agency believes that the statistical test based on ranks will provide a better method for the treatment of data than the binomial or the parametric method.

Therefore, the agency proposes to revise the testing guidelines by describing two different test procedures: one for the case of a single observation of each axilla, with one axilla receiving the test formulation while the other is receiving the control formulation, and one for the case of a pretreatment observation to determine the ratio of right-to-left axillary sweating rate before applying test and control formulations. These guidelines are on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and are available on request to that office.

II. The Agency's Tentative Adoption of the Panel's Report

A. Summary of Ingredient Categories and Testing of Category II and Category III Conditions

1. *Summary of ingredient categories.* The agency has reviewed all claimed active ingredients submitted to the Panel, as well as other data and information available at this time, and concurs with the Panel's categorization of ingredients. For the convenience of the reader the following table is included as a summary of the categorization of OTC antiperspirant active ingredients.

Active ingredient	Category	
	Nonaerosol dosage form	Aerosol dosage form
Aluminum bromohydrate[1]	II (S, E)[2]	II (S, E).
Aluminum chlorhydrates[3]	I	I.
Aluminum chlorohydrate		
Aluminum dichlorohydrate		
Aluminum sesquichlorohydrate.		
Aluminum chlorohydrex PG[4]		
Aluminum dichlorohydrex PG		
Aluminum sesquichlorohydrex PG.		
Aluminum Chlorohydrex PEG[5].		
Aluminum dichlorohydrex PEG.		
Aluminum sesquichlorohydrex PEG.		
Aluminum chloride (15 percent or less aqueous solutions).	I	III (S).
Aluminum chloride (alcoholic solutions).	II (S)	II (S).
Aluminum sulfate	III (S, E)	III (S, E).
Aluminum zirconium chlorhydrates.	I	II (S).
Aluminum zirconium trichlorohydrate.		
Aluminum zirconium tetrachlorohydrate.		
Aluminum zirconium pentachlorohydrate.		
Aluminum zirconium octachlorohydrate.		
Aluminum zirconium trichlorohydrex Gly[6].		
Aluminum zirconium tetrachlorohydrex Gly.		
Aluminum zirconium pentachlorohydrex Gly.		
Aluminum zirconium octachlorohydrex Gly.		
Buffered aluminum sulfate	I	III (S).
Potassium alum	III (S, E)	III (S, E).
Sodium aluminum chlorohydroxy lactate.	III (E)	III (S, E).

[1] This ingredient has not been marketed in this country for a material extent or material time and, therefore, cannot receive general recognition of safety and effectiveness.
[2] (S) refers to safety considerations. (E) refers to effectiveness considerations.
[3] The Panel designated this term as the generic term for the various aluminum chlorhydrate compounds. Because the chemical properties of the various aluminum chlorhydrates are similar, and the available data on the toxicity of these materials suggest that they have the same risk potential, the agency will treat these ingredients as a group in this document. This same reasoning is applicable to the aluminum zirconium chlorhydrate compounds.
[4] Propylene glycol complex.
[5] Polyethylene glycol complex.
[6] Glycine complex.

2. *Testing of Category II and Category III conditions.* The Panel recommended data required to upgrade Category III antiperspirant conditions to Category I. (See the **Federal Register** of October 10, 1978—"Data Required for Evaluation" at 43 FR 46728). The agency is offering these guidelines as the Panel's recommendations, with some revisions based on the comments, but without adopting them or making any formal comment on them except as otherwise noted in this document. (See comments 23 through 25 above.)

Interested persons may communicate with the agency about the submission of data and information to demonstrate the safety or effectiveness of any antiperspirant drug product ingredient or condition included in the review by following the procedures outlined in the agency's policy statement published in the **Federal Register** of September 29, 1981 (46 FR 47740). This policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

B. Summary of the Agency's Changes in the Panel's Recommendations.

FDA has considered the comments and other relevant information and concludes that it will tentatively adopt the Panel's report and recommended monograph with the changes described in FDA's response to the comments above and with other changes described in the summary below. A summary of the changes made in the Panel's conclusions and recommendations follows.

1. The Panel included in its recommended monograph procedures for testing effectiveness of final antiperspirant formulations. The Panel believed such testing should be required because it is possible for even minor variations in formulation to alter the effectiveness of an antiperspirant ingredient. The agency proposes to delete these testing procedures from the monograph and to make them available, with modifications based on the comments, as guidelines to manufacturers. (See comments 8 and 26 through 30 above.)

2. The agency is redesignating proposed Subpart D of the monograph as Subpart C, placing the labeling sections under Subpart C and information relating to the testing guidelines under Subpart D.

3. The agency proposes to revise the sections of the monograph which specify the maximum allowable concentration of active ingredients in antiperspirant products to allow for the omission of buffers such as glycine or glycine salts in calculating the concentration of antiperspirant active ingredients. (See comment 11 above.)

4. The labeling requirements in the Panel's recommended monograph stipulated that a minimum effectiveness statement must appear on the label. The agency, believing that such a statement would not serve its intended purpose, proposes to delete it from the monograph. (See comment 13 above.) Furthermore, the agency proposes to expand the labeling to provide for other allowable statements in addition to the phrase: "Reduces underarm perspiration." (See comment 14 above.) Also, the agency is deleting the statement: "Not to be used generally over the body," and is amending the

directions for use to read: "Apply to underarms only." (See comment 15 above.) In addition, one of the label statements in the recommended monograph warns consumers to discontinue use of the antiperspirant if a rash develops. The agency proposes to expand this statement to include "irritation" in addition to "rash." (See comment 4 above.) For aerosol antiperspirant drug products the agency is adding the following warning: "Avoid excessive inhalation." (See comment 22 above.)

5. The agency proposes to move the claim "extra effective" from Category III to Category II. (See comment 19 above.)

6. In view of the fact that the directions statement has been amended to read "Apply to underarms only," the agency is also amending the definition in § 350.3 to read, "Antiperspirant. A drug product that, when applied topically to the underarm, will reduce the production of perspiration (sweat) at that site." (See comment 15 above.)

7. Although no comments were received on the Panel's recommended nomenclature for antiperspirant ingredients, the agency realizes that many of these ingredient names are not recognized in the official compendia. For this reason the agency proposes to incorporate pertinent portions of the Panel's nomenclature table (43 FR 46697) into the proposed monograph.

8. The agency is proposing a Category I status for aluminum chlorhydrate aerosol antiperspirants rather than the Category III status recommended by the panel. This resulted from the submission of additional data including a citizen petition to reopen the administrative record for the consideration of additional data.

The agency has examined the economic consequences of this proposed rulemaking and has determined that it does not require either a Regulatory Impact Analysis, as specified in Executive Order 12291, or a Regulatory Flexibility Analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Specifically, it would move aerosol antiperspirants from Category III to Category I, making the Panel's recommended long-term inhalation studies unnecessary, and would delete final formulation testing procedures from the monograph. Instead of being required, these procedures would be made available to manufacturers as optional guidelines. Minor relabeling would be necessary, but could be done in the normal course of reordering, keeping costs to a minimum. Additionally, the costs associated with reformulations are expected to be minimal because so few products will be affected. Therefore, the agency concludes 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 economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC antiperspirant drug products. Types of impact may include, but are not limited to, costs associated with product testing, relabeling, repackaging, or reformulating. Comments regarding the impact of this rulemaking on OTC antiperspirant drug products should be accompanied by appropriate documentation. Because the agency has not previously invited specific comment on the economic impact of the OTC drug review on antiperspirant drug products, a period of 120 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined that under 21 CFR 25.24(d)(9) (proposed in the **Federal Register** of December 11, 1979; 44 FR 71742) this proposal 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.

List of Subjects in 21 CFR Part 350

OTC drugs: Antiperspirants.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371)), and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)), and under 21 CFR 5.11 as revised (see 47 FR 16010; April 14, 1982), it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended by adding new Part 350 to read as follows:

PART 350—ANTIPERSPIRANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

Sec.
350.1 Scope.
350.3 Definitions.

Subpart B—Active Ingredients

350.10 Antiperspirant active ingredients.

Subpart C—Labeling

350.50 Labeling of antiperspirant drug products.

Subpart D—Guidelines for Effectiveness Testing

350.60 Guidelines for effectiveness testing of antiperspirants.

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704).

Subpart A—General Provisions

§ 350.1 Scope.

(a) An over-the-counter antiperspirant drug product in a form suitable for topical administration is generally recognized as safe and effective and is not misbranded if it meets each of the conditions in this part in addition to each of the general conditions established in § 330.1.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 350.3 Definition.

As used in this part:

Antiperspirant. A drug product that, when applied topically to the underarm, will reduce the production of perspiration (sweat) at that site.

Subpart B—Active Ingredients

§ 350.10 Antiperspirant active ingredients.

The active ingredients of the product consist of any of the following within the established concentration and dosage formulation. Where applicable, the ingredient must meet the described aluminum to chloride and/or aluminum to zirconium ratio.

Active ingredient	Concentration	Ratio range	
		Al:Cl	Al:Zr
(a) Aluminum chlorohydrate	25 percent or less concentration (calculated on an anhydrous basis, omitting from the calculation any buffer component present in the compound) of an aerosol and nonaerosol dosage form.	2.1 down to, but not including 1.9:1	
(b) Aluminum dichlorohydrate	....do	1.25 down to and including 0.9:1	
(c) Aluminum sesquichlorohydrate	....do	1.9 down to, but not including 1.25:1	
(d) Aluminum chlorohydrex propylene glycol complex.	....do	2.1 down to, but not including 1.9:1	
(e) Aluminum dichlorohydrex propylene glycol complex.	....do	1.25 down to and including 0.9:1	
(f) Aluminum sesquichlorohydrex propylene glycol complex.	....do	1.9 down to, but not including 1.25:1	
(g) Aluminum chlorohydrex polyethylene glycol complex.	....do	2.1 down to, but not including 1.9:1	
(h) Aluminum dichlorohydrex polyethylene glycol complex.	....do	1.25 down to and including 0.9:1	
(i) Aluminum sesquichlorohydrex polyethylene glycol complex.	....do	1.9 down to, but not including 1.25:1	
(j) Aluminum zirconium trichlorohydrate	20 percent or less concentration (calculated on an anhydrous basis, omitting from the calculation any buffer component present in the compound) of a nonaerosol dosage form.	2.1 down to, but not including 1.5:1	2.0 up to, but not including 6.0:1
(k) Aluminum zirconium tetrachlorohydrate.	....do	1.5 down to and including 0.9:1	2.0 up to, but not including 6.0:1
(l) Aluminum zirconium pentachlorohydrate.	....do	2.1 down to, but not including 1.5:1	6.0 up to and including 10.0:1
(m) Aluminum zirconium octachlorohydrate.	....do	1.5 down to and including 0.9:1	6.0 up to and including 10.0:1
(n) Aluminum zirconium trichlorohydrex glycine complex.	....do	2.1 down to, but not including 1.5:1	2.0 up to, but not including 6.0:1
(o) Aluminum zirconium tetrachlorohydrex glycine complex.	....do	1.5 down to and including 0.9:1	2.0 up to, but not including 6.0:1
(p) Aluminum zirconium pentachlorohydrex glycine complex.	....do	2.1 down to, but not including 1.5:1	6.0 up to and including 10.0:1
(q) Aluminum zirconium octachlorohydrex glycine complex.	....do	1.5 down to and including 0.9:1	6.0 up to and including 10.0:1
(r) Aluminum chloride	15 percent or less concentration (calculated on the hexahydrate form) of an aqueous solution nonaerosol dosage form.		
(s) Aluminum sulfate buffered	8 percent concentration of aluminum sulfate buffered with 8 percent concentration of sodium aluminum lactate in a nonaerosol dosage form.		

Subpart C—Labeling

§ 350.50 Labeling of antiperspirant drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "antiperspirant."

(b) *Indications.* The labeling of the product contains a statement of the indications under the heading "Indications" that is limited to one or more of the following phrases:

(1) (Any one of the following terms may be used: "Reduces," "Decreases," "Diminishes," or "Lessens") "underarm wetness."

(2) (Any one of the following terms may be used: "Reduces," "Decreases," "Diminishes," or "Lessens") "underarm dampness."

(3) (Any one of the following terms may be used: "Reduces," "Decreases," "Diminishes," or "Lessens") "underarm perspiration."

(c) *Warnings.* The labeling of the product contains the following statements under the heading "Warnings":

(1) "Do not apply to broken skin. If rash or irritation develops, discontinue use."

(2) For products in an aerosolized dosage form. "Avoid excessive inhalation."

(d) *Directions.* The labeling of the product contains the following statement under the heading "Directions": "Apply to underarms only."

Subpart D—Guidelines for Effectiveness Testing

§ 350.60 Guidelines for effectiveness testing of antiperspirants.

An antiperspirant in finished dosage form may vary in degree of effectiveness because of minor variations in formulation. To assure the effectiveness of an antiperspirant, the Food and Drug Administration is providing guidelines that manufacturers may use in testing for effectiveness. These guidelines are on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and are available on request to that office.

Interested persons may, on or before October 19, 1982, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before December 19, 1982. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register.**

Interested persons, on or before August 20, 1983 may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before October 20, 1983. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA–305)

(address above). Received data and comments may also be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on October 20, 1983. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register** unless the Commissioner finds good cause has been shown that warrants earlier consideration.

Dated: June 25, 1982.

Mark Novitch,

Acting Commissioner of Food and Drugs.

Dated: July 29, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

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federal register

Friday
August 20, 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 beings modified and their dates of publication in the **Federal Register** are listed with each State.

Arizona: AZ82–5109	Apr. 23, 1982.
Colorado: CO82–5103	Feb. 12, 1982.
Hawaii: HI82–5105	Mar. 12, 1982.
Idaho: ID81–5157	Oct. 9, 1981.
Indiana: IN82–2030	May 14, 1982.
Iowa: IA82–4030	June 18, 1982.
Louisiana: LA82–4020	May 7, 1982.
Texas:	
TX82–4001	Jan. 29, 1982.
TX82–4002	Jan. 15, 1982.
TX82–4024	Jan. 18, 1982.
TX82–4026	June 18, 1982.
TX82–4027	June 18, 1982.
TX82–4028	June 18, 1982.
TX82–4029	June 18, 1982.
TX82–4033	June 18, 1982.
Utah: UT81–5156	Oct. 2, 1981.

Supersedeas Decisions To General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions beings superseded.

California:	
CA81–5129(CA82–5118)	July 7, 1981.
CA81–5154(CA82–5118)	Sept. 25, 1981.
Ohio: OH81–2039 (OH82–2044	July 6, 1981.
Texas:	
TX81–4004(TX82–4034)	Jan. 6, 1981.
TX81–4004(TX82–4042)	June 26, 1981.

Please note that we are changing the format for Federal Register wage decisions to coincide with the provisions of All Agency Memorandum No. 132 dated January 29, 1980, which provides that the Department of Labor will discontinue identifying fringe benefits separately. Rather, they will be stated as a composite figure which is the total hourly equivalent value of fringe benefits found to be prevailing. Fringe benefits which can not be stated in monetary terms will be shown in footnotes. This procedure is being phased in gradually.

Signed at Washington, D.C., this 13th day of August 1982.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

DECISION NO. AZ82-5109 - Mod. #2
(47 FR 17723 - April 23, 1982)
Statewide, Arizona

Change:	Basic Hourly Rates	Fringe Benefits
Asbestos Workers:		
Zone 1	$18.79	$2.27
Zone 2	20.79	2.27
Zone 3	22.79	2.27
Bricklayers; Stonemasons:		
Northern Area:		
Zone A	15.68	2.75
Zone B	16.93	2.75
Zone C	17.72	2.75
Zone D	18.50	2.75
Zone E	19.13	2.75
Zone F	20.38	2.75
Drywall Tapers:		
Zone A	14.49	1.20
Zone B	15.49	1.20
Zone C	16.99	1.20
Electricians:		
Area 1:		
Electricians	16.81	2.43
Cable Splicers	18.16	2.48
Area 3:		
Electricians; Technicians; Cable Splicers	18.24	2.99
Area 4:		
Electricians	17.95	2.68
Area 5:		
Electricians	17.00	2.56
Cable Splicers	17.25	2.58
Glaziers:		
Statewide excluding Bullhead City	15.39	1.78
Lathers	15.61	1.06
Marble, Tile, and Terrazzo Finishers	11.77	1.89
Marble Workers:		
Area 1	14.31	2.19
Painters:		
Area 3: - Zone A:		
Brush	12.02	1.62
Spray; Sandblaster	12.62	1.62
Paperhangers	12.15	1.62
Swing Stage, under 40 ft.:		
Brush	12.32	1.62
Spray	12.92	1.62
Swing Stage, over 40 ft.:		
Brush	12.77	1.62
Spray	13.37	1.62
Structural Steel and Tanks:		
Brush	$13.02	$1.62
Spray and Sandblasters	13.62	1.62
Creosote Base and Bituminous Material	12.42	1.62
Zone B:		
Brush	12.79	1.62
Spray and Sandblasters	13.37	1.62
Paperhangers	12.90	1.62
Swing Stage, under 40 ft.:		
Brush	13.07	1.62
Spray	13.67	1.62
Swing Stage, over 40 ft:		
Brush	14.12	1.62
Spray	14.12	1.62
Structural Steel and Tanks:		
Brush	13.77	1.62
Spray and Sandblasters	14.37	1.62
Creosote Base and Bituminous Materials	13.17	1.62
Zone C:		
Brush	13.52	1.62
Spray	14.12	1.62
Paperhangers	13.65	1.62
Swing Stage, under 40 ft.:		
Brush	13.82	1.62
Spray	14.42	1.62
Swing Stage, over 40 ft:		
Brush	14.27	1.62
Spray	14.87	1.62
Structural Steel and Tanks:		
Brush	14.52	1.62
Spray and Sandblasters	15.12	1.62
Zone D:		
Brush	14.77	1.62
Spray	15.37	1.62
Paperhangers	14.90	1.62
Swing Stage, under 40 ft.:		
Brush	15.07	1.62
Spray	15.67	1.62
Swing Stage, over 40 ft:		
Brush	15.52	1.62
Spray	16.12	1.62

DECISION NO. AZ82-5109 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Structural Steel and Tanks:		
Brush	$15.77	$1.62
Spray and Sandblasters	16.37	1.62
Plumbers:		
Zone 1	19.84	3.13
Zone 2	20.24	3.13
Zone 3	20.69	3.13
Zone 4	22.84	3.13
Sprinkler Fitters	18.17	2.83
Terrazzo Workers; Tile Setters:		
Area 1	14.31	2.19

DECISION NO. CO82-5103 - Mod. #6
(47 FR 6549 - February 12, 1982)

	Basic Hourly Rates	Fringe Benefits
Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Eagle, Elbert, Gilpin, Grand, Jefferson, Lake, Larimer, Morgan, Park, Summit, and Weld Counties, Colorado		
Change:		
Drywall Installers	$14.87	$3.16

DECISION NO. H182-5105 - Mod. #5
(47 FR 10948 - March 12, 1982)
Statewide, Hawaii

Change:	Basic Hourly Rates	Fringe Benefit
Electricians:		
Electricians; Linemen	$14.45	$4.07+ 2.66%
Technicians	14.88	4.07+ 2.66%
Cable Splicers	15.90	4.07+ 2.66%
Line Construction:		
Electricians; Linemen	14.45	4.07+ 2.66%
Technicians	14.88	4.07+ 2.66%
Heavy Equipment Operator	13.01	4.07+ 2.66%
Groundmen	10.84	4.07+ 2.66%
Cable Splicers	15.90	4.07+ 2.66%
Marble Setters	13.48	5.15
Painters:		
Brush	15.05	4.94
Tapers	15.30	4.94
Spray; Sandblaster	15.55	4.94
Terrazzo Workers and Tile Setters:		
Terrazzo Base Grinder	12.13	5.15
Terrazzo Floor Grinder and Finisher	10.78	5.15
Terrazzo Workers and Tile Setters	13.48	5.15

DECISION NO. ID81-5157 - Mod #12
(46 FR 50223 - Oct. 9, 1981)
Statewide Idaho

CHANGE:	Basic Hourly Rates	Fringe Benefits
CARPENTERS (Area 1):		
Fringe Benefits Only		$3.32
PAINTERS (Area 1):		
Brush	$15.97	2.46
Drywall Taper	16.22	2.46
Spray; Steel; Steam Cleaning	16.47	2.46
Swing Stage or High Work over 30 ft.	16.67	2.46
Bitumastic; Sandblast; Bridge; Towers; Stacks; Steeples; Tanks on Legs	16.77	2.46
PLASTERERS (Area 1)	15.88	3.20
PLUMBERS (Area 1)	19.74	6.21
ROOFERS (Area 1)	14.56	4.10
CEMENT MASONS (Area 2) Remaining Counties and Idaho County South of the 46th Parallel		
Group 1	12.52	4.39
Group 2	12.72	4.39
Zone 2: Add $1.50		
Zone 3: Add $1.75		
LABORERS (Area 2) Remaining Counties and Idaho County South of the 46th Parallel		
Group 1	10.70	4.38
Group 2	10.80	4.38
Group 3	10.90	4.38
Group 4	11.00	4.38
Group 5	11.05	4.38
Group 6	11.30	4.38
Group 7	11.55	4.38
Group 8	10.85	4.38
Group 9	11.00	4.38
Group 10	11.30	4.38
Zone 2: Add $1.50		
Zone 3: Add $1.75		
POWER EQUIPMENT OPERATORS (Area 2) Remaining Counties and Idaho County South of the 46th Parallel		
Group 1	13.11	3.65
Group 2	13.27	3.65
Group 3	13.64	3.65
Group 4	13.95	3.65
Group 5	14.12	3.65
POWER EQUIPMENT OPERATORS (Continued)		
Group 6	$14.30	$3.65
Group 7	14.66	3.65
Group 8	14.89	3.65
Group 9	15.12	3.65
Group 10	15.36	3.65
Zone 2: Add $1.50		
Zone 3: Add $1.75		
TRUCK DRIVERS (Area 2) Remaining Counties and Idaho County South of the 46th Parallel		
Group 1	12.49	4.09
Group 2	12.55	4.09
Group 3	12.61	4.09
Group 4	12.67	4.09
Group 5	12.72	4.09
Group 6	12.98	4.09
Group 7	13.04	4.09
Group 8	13.10	4.09
Group 9	13.21	4.09
Group 10	13.27	4.09
Group 11	13.33	4.09
Group 12	13.39	4.09
Group 13:		
Class A	12.87	4.09
Class B	13.08	4.09
Class C	13.21	4.09
Class D	13.39	4.09
Class E	13.50	4.09
Class F	13.62	4.09
Class G	13.90	4.09
Class H	14.13	4.09
Class I	14.36	4.09
Group 14	13.78	4.09
Zone 2: Add $1.50		
Zone 3: Add $1.75		

DECISION NO. IN82-2030 - MOD. #1
(47 FR 20986 - May 14, 1982)

Adams, Allen, Bartholomew, Benton, Blackford, Boone, Cass, Clinton, DeKalb, Delaware, Fountain, Fulton, Grant, Hamilton, Hancock, Hendricks, Howard, Huntington, Jay, Johnson, Madison, Marion, Miami, Monroe, Montgomery, Morgan Noble, Shelby, Steuben, Tippecanoe, Tipton, Wabash, Warren, Wells, White, & Whitley Cos., Indiana

Change:	Basic Hourly Rates	Fringe Benefits
Electricians: Clinton, Grant, Howard, Miami, Tipton, & Wabash	$16.35	1.67

DECISION NO. IA82-4030 - MOD. #3
(47 FR 26537 - 6/18/82)
Black Hawk, Cerro Gordo, Clinton, Des Moines, Dubuque, Johnson, Linn & Polk Cos., Iowa

CHANGE:	Basic Hourly Rates	Fringe Benefits
Electricians - Zone 4	$16.32	1.55+ 3-3/4%
Plumbers & pipefitters: Zones 6 & 7	15.85	1.87
OMIT ALL RATES & CLASSIFICATIONS FOR LABORERS ZONE 5 & PAINTERS ZONE 1 & 2		
ADD:		
Laborers:		
Zone 5 - All laborers	10.65	.90
Painters:		
Zone 1:		
Brush & roller	12.68	.83
Paper & vinyl hanging	13.28	.83
Sandblasting	13.43	.83
Spray	13.58	.83
Zone 2:		
Brush or roller	13.55	.80
Spray	14.05	.80
Paperhanging, vinyl	14.15	.80
Sandblasting	14.15	.80

DECISION NO. LA82-4020 - MOD. #5
(47 FR 19880 - 5/7/82)
Statewide Louisiana

CHANGE:	Basic Hourly Rates	Fringe Benefits
Asbestos workers - Zone 4	$13.79	1.36
Bricklayers & stonemasons: Zone 1	15.10	2.20
Electricians:		
Zone 2 - Electricians	15.00	3%+.82
Cable splicers	15.50	3%+.82
Ironworkers - Zone 2	14.99	1.69
Painters:		
Zone 5 - Group 1	10.75	
Group 2	11.60	
Group 3	12.10	

DECISION NO. TX82-4001 - MOD. #6 (47 FR 4463 - 1/29/82) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Painters - Group 1	$11.95	.50
Group 2	12.07	.50
Group 3	12.70	.50
Group 4	12.20	.50

DECISION NO. TX82-4002 - MOD. #5 (47 FR 2472 - 1/15/82) Wichita County, Texas		
CHANGE:		
Laborers - Group 4	8.35	.57

DECISION NO. TX82-4024 - MOD. #3 (47 FR 26548 - 6/18/82) Travis County, Texas		
CHANGE:		
Asbestos workers	15.20	2.94
Soft floor layers	14.90	2.06

DECISION NO. TX82-4026 - MOD. #3 (47 FR 26547 - 6/18/82) Lubbock County, Texas		
CHANGE:		
Carpenters	12.30	1.68

DECISION NO. TX82-4027 - MOD. #3 (47 FR 26551 - 6/18/82 Bexar County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos workers	$15.20	2.94
Electricians: Electricians	14.89	.80+6%
Cable splicer	15.14	.80+6%
Elevator constructors:		
Mechanics	14.455	2.69+a
Helpers	70%JR	2.69+a
Helpers (Prob.)	50%JR	
Line construction:		
Lineman	15.25	.80+3⅛%
Cable splicer	15.50	.80+3⅛%
Groundman	8.39	.80+3⅛%
Painters:		
Brush; paperhanger; taper & floater; roller	10.95	.65
Brush on all structural steel; spray on any other surface other than steel	11.20	.65

DECISION NO. TX82-4028 - MOD. #2 (47 FR 26553 - 6/18/82) Jefferson & Orange Cos., Texas		
CHANGE:		
Power equipment operators:		
Group 1	16.085	1.40
Group 2	13.46	1.40
Group 3	12.34	1.40
Group 4	12.09	1.40

DECISION NO. TX82-4029 - MOD. #3 (47 FR 26552 - 6/18/82) Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas		
CHANGE:		
Building construction:		
Asbestos workers - Zone 1	15.20	2.94

DECISION NO. TX82-4033 - MOD. #3 (47 FR 26549 - 6/18/82) Galveston & Harris Cos., Texas		
CHANGE:		
Painters (Remainder of Harris Co.):		
Group 1	15.285	2.375
Group 2	15.66	2.375
Group 3	15.41	2.375
Group 4	15.91	2.375
Soft floor layers	14.90	2.06

DECISION NO. UT81-5156 - Mod. #9

(46 FR 48870 - October 2, 1981)

Statewide, Utah

Change: Truck Drivers:	Basic Hourly Rates AREA 1	Basic Hourly Rates AREA 2
Dump Trucks - water level capacity (bottom, end, and side) (including Dumpster Truck, Turnawagons, Turnarockers and Dumpcrete):		
Less than 8 cu. yds.	$13.55	$16.06
8 cu. yds. and less than 14 cu. yds.	13.70	16.20
14 cu. yds. and less than 35 cu. yds.	13.85	16.35
35 cu. yds. and less than 55 cu. yds.	14.05	16.55
55 cu. yds. and less than 75 cu. yds.	14.25	16.75
75 cu. yds. and less than 95 cu. yds.	14.45	16.95
95 cu. yds. and less than 105 cu. yds.	14.65	17.15
105 cu. yds. and less than 130 cu. yds.	14.77	17.27
All 130 cu. yds. and over to be paid one-half cent ($0.005) per cu. yd capacity per hour in addition to rate for 105 yds. and less than 130 yds.		
Flat Rack Trucks, Bulk Cement Trucks, Transport Trucks, Semi-trailer (carrying capacity):		
Pickup	13.375	15.875
Less than 10 tons	13.45	15.95
10 tons and less than 15 tons	13.60	16.10
15 tons and less than 20 tons	13.70	16.20
20 tons and over	13.85	15.35

	Basic Hourly Rates AREA 1	Basic Hourly Rates AREA 2
Transit Mix Trucks;		
Less than 8 cu. yds.	$13.775	$16.275
Over 8 to 14 cu. yds.	13.875	16.375
Concrete Pumping Trucks	13.775	16.275
Water, Fuel and Oil Trucks:		
Less than 1200 gallons	13.425	15.925
1200 gallons to less than 2500 gallons	13.55	16.05
2500 gallons to less than 4000 gallons	13.70	16.20
4000 gallons to less than 6000 gallons	14.00	16.50
6000 gallons to less than 10,000 gallons	14.25	16.75
10,000 gallons to less than 15,000 gallons	14.50	17.00
15,000 gallons to less than 20,000 gallons	14.75	17.25
20,000 gallons to less than 25,000 gallons	15.00	17.50
25,000 gallons and over	15.25	17.50
Oiler Spreader Operator (on single man operation where Boot Man is not required)	14.25	16.75
Fork Lift, Straddle Truck	13.75	16.25

FRINGE BENEFITS PAYMENTS:
$4.17

SUPERSEDEAS DECISION

STATE: California

COUNTIES: Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura

DECISION NUMBER: CA82-5118

DATE: Date of Publication

Supersedes Decision Nos. CA81-5129 dated July 7, 1981, in 46 FR 34961; and CA81-5154 dated September 25, 1981 in 46 FR 47384

DESCRIPTION OF WORK: Building, Heavy, and Highway Projects; and Residential Projects (excluding Inyo and Mono Counties, California) and Dredging

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$20.25	$2.84
BOILERMAKERS	20.01	3.59
BRICKLAYERS: Stonemasons:		
Area 1	19.09	3.59
Area 2	17.19	3.96
Area 3	18.30	3.22
Area 4	17.65	4.00
Area 5	16.79	4.40
Area 6	16.72	4.06
BRICK TENDERS	13.47	7.28
CARPENTERS:		
Area 1:		
Carpenters	18.29	6.53
Shinglers, Piledrivermen, Bridge or Dock Carpenters	18.42	6.53
Hardwood Floorlayers	18.49	6.53
Millwrights	18.79	6.53
Area 2:		
Carpenters	16.29	6.53
Shinglers; Piledrivermen, Bridge or Dock Carpenters	16.42	6.53
Hardwood Floorlayers	16.49	6.53
Millwrights	16.79	6.53
CEMENT MASONS:		
Area 1:		
Cement Masons	18.56	6.10
Cement Floating and Troweling Machine Operators	18.75	6.10
Area 2:		
Cement Masons	16.56	6.10
Cement Floating and Troweling Machine Operators	16.81	6.10
DRYWALL INSTALLERS:		
Area 1	16.63	5.42
Area 2	14.63	5.42
DIVERS:		
Diver, wet	$37.84	$6.53
Diver, stand-by	18.92	6.53
Diver, tender	17.92	6.53
ELECTRICIANS:		
Area 1:		
Electricians	20.32	4.22
Cable Splicers	20.77	4.23
Area 2:		
Electricians; Technicians	20.65	4.67
Cable Splicers	22.72	4.73
Area 3:		
Electricians; Technicians; Cable Splicers	19.57	4.81
Area 4:		
Electricians	22.12	2.97
Cable Splicers	23.14	3.00
Area 5:		
Electricians	19.79	4.72
Area 6:		
Electricians	18.20	5.25
Cable Splicers	18.70	5.26
Area 7:		
Electricians	20.98	3.99
Cable Splicers	23.08	4.05
Residential Electricians	10.15	3.66
Area 8:		
Electricians	20.55	3.45
Cable Splicers	22.05	3.49
Area 9:		
Electricians	19.11	4.04
Cable Splicers	21.02	4.10
Area 10:		
Electricians	23.55	3.54
Cable Splicers	25.05	3.58
Area 11:		
Electricians	24.40	4.78
Cable Splicers	26.47	4.84

	Basic Hourly Rates	Fringe Benefits
ELEVATOR CONSTRUCTORS:		
Area 1:		
Mechanics	$18.67	$2.465+a
Helpers	13.07	2.645+a
Probationary Helpers	9.34	
Area 2:		
Mechanics	24.22	2.465+a
Helpers	16.95	2.465+a
Probationary Helpers	12.11	
GLAZIERS:		
Area 1	16.12	4.27
Area 2	16.02	2.65
IRONWORKERS:		
Fence Erectors	16.41	7.03
Structural, Ornamental, Reinforcing	17.30	7.03
IRRIGATION and LAWN SPRINKLERS	13.52	5.44
LATHERS:		
Area 1	14.94	3.95
Area 2	15.50	3.88
Area 3	17.78	6.53
Area 4	14.80	4.58
Area 5	15.87	3.35
LINE CONSTRUCTION:		
Area 1:		
Groundman	15.85	3.60
Lineman	20.59	3.74
Cable Splicers	20.89	3.75
Area 2:		
Groundman	15.46	4.51
Lineman	20.65	4.67
Cable Splicers	22.72	4.73
Area 3:		
Groundman	14.73	2.72
Lineman; Equipment Operators	18.09	2.82
Cable Splicers	18.92	2.85
Area 4:		
Lineman	19.32	5.05
Cable Splicers	19.57	4.81
Area 5:		
Lineman	18.22	5.25
Cable Splicers	18.70	5.26
LINE CONSTRUCTION: (Cont'd)		
Area 6:		
Groundman	$13.17	$4.18
Lineman; Equipment Operators	17.56	4.31
Cable Splicers	18.06	4.32
Area 7:		
Groundman	15.07	3.81
Lineman; Equipment Operators	20.23	3.97
Cable Splicers	22.25	4.03
Area 8:		
Groundman	17.69	4.00
Lineman; Equipment Operators	19.11	4.04
Cable Splicers	21.02	4.10
Area 9:		
Groundman	18.36	3.38
Lineman; Equipment Operators	23.55	3.54
Cable Splicers	25.05	3.58
Area 10:		
Groundman	19.24	4.63
Lineman	24.40	4.78
Cable Splicer	26.47	4.84
Area 11:		
Groundman	15.41	3.29
Lineman; Equipment Operators	20.55	3.45
Cable Splicers	22.05	3.49
MARBLE SETTERS:		
Area 1	14.89	5.96
Area 2	17.81	2.95
MARBLE FINISHERS:		
Area 1	13.29	2.30
PAINTERS:		
Area 1:		
Brush; Painter Burners	16.74	3.83
Paperhangers	17.24	3.83
Sandblaster; Iron, steel and Bridge (swing stage)	17.74	3.83
Sheet Rock Tapers	16.05	3.83
Brush (swing stage); Spray	16.99	3.83
Steeplejack	18.39	3.83

PAINTERS: (Cont'd)	Basic Hourly Rates	Fringe Benefits
Area 2:		
Brush	$18.27	$4.10
Brush Painter, structural steel, Paint Burner	18.39	4.10
Swing Stage, under 13 stories; Sandblaster; Pressure Roller Operator; Paperhanger	18.52	4.10
Swing Stage, over 13 stories	18.64	4.10
Paste Machine Operator	18.77	4.10
Spray Painter; Steeplejack	19.52	4.10
Taper	19.31	4.10
Area 3:		
Brush	13.70	3.82
Brush or Roller (swing stage); Paperhangers; Tapers (sheet rock)	14.20	3.82
Spray; Sandblaster	14.70	3.82
Steeplejack	15.70	3.82
Area 4:		
Brush, Pot Tender	17.48	3.61
Paperhangers, Paste Machine Operators; Iron and Steel	17.73	3.61
Spray, Taper; Sandblaster	17.98	3.61
Sign Painter	18.13	3.61
Iron and Steel Spray Painter	18.23	3.61
Steeplejack	18.48	3.61
Drywall Taper and Spray Texture	19.81	3.61
Parking Lot Striping Work and/or Highway Markers:		
Traffic Delineating Device Applicator	12.42	b+1.55
Wheel Stop Installer, Traffic Surface Sandblaster; Striper	11.96	b+1.55
Slurry Seal Operation:		
Mixer Operator	11.96	b+1.55
Squeegee Man, Applicator Operator and Shuttleman	10.60	b+1.55
Top Man	8.91	b+1.55
PLASTERERS:		
Area 1	18.59	4.905
Area 2	23.90	
Area 3	18.28	
Area 4	16.92	3.25
Area 5	18.56	5.02
Area 6	16.955	2.32
Area 7	12.77	3.86

PLASTERERS' TENDERS:	Basic Hourly Rates	Fringe Benefits
Area 1	$16.16	$7.36
Area 2	12.75	6.10
Area 3	16.015	7.31
Area 4	14.14	7.16
Area 5	17.59	5.72
Area 6	16.25	6.10
PLUMBERS; Steamfitters:		
Area 1	18.69	7.43
Area 2	17.59	5.21
Area 3	22.59	5.21
Area 4	18.85	6.71
REFRIGERATION and AIR CONDITIONING:		
Area 1	15.30	3.79
Area 2	17.40	6.40
ROOFERS:		
Area 1	14.79	4.80
Area 2	14.30	1.55
Area 3	16.20	4.00
Area 4	16.82	3.385
Area 5	17.055	2.435
Area 6	16.12	2.135
SHEET METAL WORKERS:		
Area 1	20.35	4.16
Area 2	18.80	3.33
Area 3	18.12	4.62
Area 4	14.16	3.87
Area 5	17.11	3.24
Area 6	17.82	3.83
Area 7	23.80	3.33
SOFT FLOOR LAYERS:		
Area 1	15.40	4.79
Area 2	17.67	3.59
Area 3	15.57	3.49
SPRINKLER FITTERS:		
Area 1	21.87	2.43
Area 2	20.42	2.57
TERRAZZO WORKERS:		
Area 1	17.81	2.95
Area 2	16.50	4.30
TILE SETTERS:		
Area 1	17.81	2.95
Area 2	16.43	3.16
Area 3	15.89	3.95
Area 4	16.30	3.25
Area 5	15.95	1.40
TILE FINISHERS:		
Area 1	12.66	3.65
Area 2	12.80	3.30

LABORERS:	Basic Hourly Rates	Fringe Benefits
AREA 1: Remainder of Counties:		
Group 1	$12.82	$7.28
Group 2	12.97	7.28
Group 3	13.17	7.28
Group 4	13.47	7.28
Group 5	13.67	7.28
(GUNNITE):		
Group 1	15.31	7.16
Group 2	14.36	7.16
Group 3	13.10	7.16
(TUNNEL):		
Group 1	14.73	7.16
Group 2	14.85	7.16
Group 3	15.01	7.16
Group 4	15.29	7.16
AREA 2: Point Arguello, Camp Roberts, Edwards Air Force Base, Naval Ordnance Test Center, Vandenberg Air Force Base:		
Group 1	14.82	7.28
Group 2	14.97	7.28
Group 3	15.17	7.28
Group 4	15.47	7.28
Group 5	15.67	7.28
(TUNNEL):		
Group 1	16.73	7.16
Group 2	16.85	7.16
Group 3	17.01	7.16
Group 4	17.29	7.16
POWER EQUIPMENT OPERATORS: DREDGING		
(Hydraulic Suction Dredges):		
Leverman	18.60	5.91
Watch Engineer; Welder; Deckmate	18.02	5.91
Winchman (stern winch or Dredge)	17.47	5.91
Bargeman; Deckhand; Fireman; Oiler; Leveehand	16.93	5.91
Dozer	18.13	5.91
(Clamshell Dredges)		
Leverman	18.60	5.91
Watch Engineer; Deckmate	18.02	5.91
Barge Mate	17.54	5.91
Bargeman; Deckhand; Fireman; Oiler	16.93	5.91

POWER EQUIPMENT OPERATORS (Cont'd):	Basic Hourly Rates	Fringe Benefits
Group 1	$16.75*	$5.81
Group 2	17.03*	5.81
Group 3	17.32*	5.81
Group 4	17.46*	5.81
Group 5	17.68*	5.81
Group 6	17.79*	5.81
Group 7	17.91*	5.81
Group 8	18.08*	5.81
Group 9	18.21*	5.81
*When the home of any employee is over 30 road miles from the center of the job or project on Vandenberg Air Force Base, a rate of $22.00 per scheduled work day shall be added to the base pay.		
TRUCK DRIVERS:		
Group 1	16.48*	4.61
Group 2	16.56*	4.61
Group 3	16.62*	4.61
Group 4	16.71*	4.61
Group 5	16.74*	4.61
Group 6	16.76*	4.61
Group 7	16.80*	4.61
Group 8	16.81*	4.61
Group 9	16.86*	4.61
Group 10	16.89*	4.61
Group 11	16.94*	4.61
Group 12	16.96*	4.61
Group 13	17.01*	4.61
Group 14	17.26*	4.61
Group 15	17.51*	4.61
Group 16	17.61*	4.61
Group 17	17.71*	4.61
Group 18	18.01*	4.61
Group 19	18.51*	4.61
*When the home of an employee is over 30 road miles from the center of the job or project on Vandenberg Air Force Base, a rate of $20.00 per scheduled work day shall be added to the Base Pay.		

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 $.23 per hour to Holiday Fund plus $.14 per hour to Vacation Fund for the first year of employment, 1 year but less than 5 years $.34 per hour to Vacation Fund, 5 years but less than 10 years $.44 per hour to Vacation Fund, over 10 years $.54 per hour to Vacation Fund.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

AREA DESCRIPTIONS

BRICKLAYERS; Stonemasons:
Area 1: Imperial County
Area 2: Inyo, Kern, and Mono Counties
Area 3: Los Angeles and Orange Counties
Area 4: Riverside and San Bernardino Counties
Area 5: Santa Barbara and San Luis Obispo Counties
Area 6: Ventura County

CARPENTERS:
Area 1: Camp Roberts, Edwards Air Force Base, Naval Ordnance Test Station, Point Arguello and Vandenberg Air Force Base
Area 2: Remaining Counties

CEMENT MASONS:
Area 1: Camp Roberts, Edwards Air Force Base, Naval Ordnance Test Station, Point Arguello and Vandenberg Air Force Base
Area 2: Remaining counties

DRYWALL INSTALLERS:
Area 1: Camp Roberts, Edwards Air Force Base, Naval Ordnance Test Station, Point Arguello and Vandenberg Air Force Base
Area 2: Remaining Counties

DIVERS:*
Shall receive a minimum of 8 hours pay for any day or part thereof.

ELECTRICIANS:
Area 1: Imperial County
Area 2: Kern County (Remainder of County)
Area 3: Los Angeles County
Area 4: Orange County
Area 5: Riverside County
Area 6: Inyo, Mono, and San Bernardino Counties

AREA DESCRIPTIONS (Cont'd)

ELECTRICIANS: (Cont'd)
Area 7: San Luis Obispo County
Area 8: Santa Barbara (Remainder of County)
Area 9: Ventura County
Area 10: Point Arguello and Vandenberg Air Force Base
Area 11: China Lake Naval Ordnance Test Station and Edwards Air Force Base

ELEVATOR CONSTRUCTORS:
Area 1: Imperial and Inyo Counties; Kern County (south of Tehachapi Range); Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura Counties
Area 2: Kern County (north of Tehachapi Range)

GLAZIERS:
Area 1: Los Angeles, Orange, Riverside, San Bernardino, Santa Barbara, San Luis Obispo, and Ventura Counties
Area 2: Imperial County

IRONWORKERS:
Where the project is located 60 miles or more from the City Halls indicated below, the following amount shall be added to the Base Pay:
60 miles to 100 miles - $18.00 per day
100 miles and over - $24.00 per day

City Hall of San Francisco, Oakland, San Jose, Sacramento, Stockton, Fresno, Barkersfield, Eureka, Redding, Napa, Los Angeles, San Diego, San Bernardino, Ventura, and El Centro

LATHERS:
Area 1: Inyo, Kern, and Mono Counties
Area 2: Los Angeles County (except City of Lancaster)
Area 3: Ventura County
Area 4: Orange County
Area 5: Riverside County

LINE CONSTRUCTION:
Area 1: Imperial County
Area 2: Kern County (Rmmainder of County)
Area 3: Orange County
Area 4: Los Angeles County
Area 5: Inyo, Mono, and San Bernardino Counties
Area 6: Riverside County
Area 7: San Luis Obispo County
Area 8: Ventura County
Area 9: Point Arguello and Vandenberg Air Force Base
Area 10: China Lake Naval Ordnance Test Station and Edwards Air Force Base
Area 11: Santa Barbara (Remainder of County)

AREA DESCRIPTIONS (Cont'd)

MARBLE SETTERS:
Area 1: Inyo and Mono Counties
Area 2: Imperial County

MARBLE FINISHERS:
Area 1: Imperial County

PAINTERS:
Area 1: Imperial, Orange, and Riverside Counties; Los Angeles County (Pomona Area); San Bernardino County (excluding western portion)
Area 2: Inyo County; Los Angeles County (except Pomona Area); Mono County; San Bernardino County (west of a line north of Trono including China Lake Area, Johannesburg, Boron, south including the Wrightwood Area); Kern County east of the Los Angeles Aqueduct)
Area 3: Kern County (except the portion lying east of the Los Angeles Aqueduct)
Area 4: San Luis Obispo, Santa Barbara, and Ventura Counties

PLASTERERS:
Area 1: Los Angeles and Orange Counties
Area 2: Imperial, Riverside, and San Bernardino Counties
Area 3: San Luis Obispo County
Area 4: Santa Barbara County
Area 5: Ventura County
Area 6: Point Arguello and Vandenberg Air Force Base
Area 7: Kern, Inyo, and Mono Counties

PLASTERERS' TENDERS:
Area 1: Imperial, Inyo, Mono, Riverside, and San Bernardino Counties
Area 2: Kern County
Area 3: Los Angeles and Orange Counties
Area 4: San Luis Obispo and Santa Barbara Counties
Area 5: Ventura County
Area 6: China Lake Naval Ordnance Test Station and Edwards Air Force Base

PLUMBERS: Steamfitters:
Area 1: Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura Counties
Area 2: Inyo, Kern, and Mono Counties
Area 3: Edwards Air Force Base, Naval Weapons-Center and China Lake Naval Ordnance Test Center
Area 4: Point Arguello and Vandenberg Air Force Base

AREA DESCRIPTIONS (Cont'd)

REFRIGERATION and AIR CONDITIONING:
Area 1: Riverside and San Bernardino Counties
Area 2: Los Angeles and Orange Counties

ROOFERS:
Area 1: Imperial County
Area 2: Inyo, Kern, and Mono Counties
Area 3: Riverside and San Bernardino Counties
Area 4: Los Angeles, Orange, and Ventura Counties
Area 5: San Luis Obispo and Santa Barbara Counties
Area 6: Point Arguello and Vandenberg Air Force Base

SHEET METAL WORKERS:
Area 1: Imperial County
Area 2: Kern County and all of Inyo and Mono Counties; Los Angeles County (that portion north of a straight line drawn between Gorman and Big Pines)
Area 3: Los Angeles County (remaining portion)
Area 4: Orange County
Area 5: Riverside and San Bernardino Counties
Area 6: San Luis Obispo, Santa Barbara, and Ventura Counties
Area 7: Edwards Air Force Base and China Lake Naval Weapons Base

SOFT FLOOR LAYERS:
Area 1: Imperial County
Area 2: Los Angeles, Orange, Riverside, Santa Barbara, San Luis Obispo, San Bernardino, and Ventura Counties
Area 3: Kern, Inyo and Mono Counties

SPRINKLER FITTERS:
Area 1: Imperial, Inyo, Kern, and Mono Counties; Orange County (except Santa Ana); Riverside County, San Bernardino County (except Ontario); San Luis Obispo, Santa Barbara and Ventura Counties
Area 2: Los Angeles City and area within 25 miles and Pomona Area; Orange County (Santa Ana); San Bernardino County (Ontario); and Ventura County (Santa Paula, Point Mugu and Port Hueneme)

TERRAZZO WORKERS:
Area 1: Imperial County
Area 2: Remaining Counties

TILE SETTERS:
Area 1: Imperial County
Area 2: Los Angeles, Orange, and Ventura Counties
Area 3: San Luis Obispo and Santa Barbara Counties
Area 4: Riverside and San Bernardino Counties
Area 5: Inyo, Kern, and Mono Counties

TILE FINISHERS:
Area 1: Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties
Area 2: Kern, Inyo and Mono Counties

LABORERS

Group 1: Cleaning and handling of panels forms; Concrete Screeding for rough strike-off; Concrete, water curing; Demolition Laborer, the cleaning of brick and lumber; Dry packing of concrete, plugging, filling or Shee-bolt Holes; Fire Watcher, Limber, Brush Loaders, Pilers and Debris Handlers; Gas, oil and/or water pipeline Laborer; Laborer, general or construction; Laborer, general cleanup; Laborer, landscaping; Laborer, jetting, temporary water and air lines; Material Hoseman (walls, slabs, floors, and decks); Rigging and signaling; Scaler; Slip Form Raisers; Slurry Seal Crews (Mixer Operator, Applicator Operator, Squeegee Man, Shuttle Man, Top Man); Striper, Concrete or other paved surfaces; Tarman and Mortar Man; Tool Crib or Tool House Laborer; Traffic Delineating Device Applicator; Window Cleaner; Wire Mesh, pulling all concrete pouring operations

Group 2: Asphalt Shoveler; Cement Dumper (on 1 yard or larger Mixer and handling bulk cement); Cesspool Digger and Installer, Chucktender; Chute Man, pouring concrete, the handling of the Chute from Ready Mix Trucks, such as walls, slabs, decks, floors, foundations, footings, curb, gutters, and sidewalks; Concrete Curer, Impervious Membrane and Form Oiler; Cutting Torch Operator (demolition); Fine Grader, highways and street paving, airport, runways, and similar type heavy construction; Gas, oil and/or water Pipeline Wrapper; Pot Tender and Form Man; Guinea Chaser; Headerboard Man, asphalt; Laborer, packing rod steel and pans; Power Broom Sweepers (small); Riprap Stonepaver, placing stone or wet sacked concrete; Roto Scraper and Tiller; Sandblaster (Pot Tender); Septic Tank Digger and Installer (leadman); Tank Scaler and Cleaner; Tree Climber, Faller, Chain Saw Operator, Pittsburgh Chipper and similar type Brush Shredders; Underground Laborer, including Caisson Bellower

Group 3: Asphalt Raker, Luteman, Ironer and Asphalt Spreader Boxes (all types); Buggymobile Man; Concrete Core Cutter, Grinder or Sander; Concrete Cutting Torch; Concrete Saw Man, cutting, scouring old or new concrete; Driller, Jackhammer, 2½ ft. drill steel or longer; Dri Pak-it Machine; Gas, oil and/or water Pipeline Wrapper, 6" pipe and over, by any method, inside and out; Hydro Seeder and similar type; Impact Wrench Multi-plate; Kettlemen, Potmen and Men applying asphalt, Lay-kold, creosote, lime caustic and similar type materials ("applying" means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operators or pneumatic, gas, electric tools; Vibrating Machines, Pavement Breakers, Air Blasting, Come-alongs, and similar mechanical tools not separately classified herein; Pipelayer's Backup Man, coating, grouting, making of joints, sealing, caulking, diapering and including Rubber Gasket Joints, pointing and any and all other services; Rock Slinger; Rotary Scarifier or Multiple Head Concrete Chipping Scarifier; Steel Headerboard Man and Guideline Setter; Tampers; Barko, Wacker, and similar type; Trenching Machine, hand propelled

LABORERS (Cont'd)

Group 4: Cribber, Shorer, Lagging, Sheeting and Trench Bracing, hand-guided Lagging Hammer; Head Rock Slinger; Laser Beam; Oversize Concrete Vibrator Operator, 70 lbs. and over; Pipelayer, including water, sewage, solid, gas or air; Prefabricated Manhole Installer; Sandblaster (Nozzleman), water blasting; Welding in connection with Laborers' work

Group 5: Blaster Powderman, all work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Driller; All power drills, excluding Jackhammer, whether Core, Diamond, Wagon, Track, Multiple Unit, and any and all types of mechanical drills

GUNNITE

Group 1: Nozzlemen and Rodmen

Group 2: Gunmen

Group 3: Reboundmen

TUNNEL

Group 1: Batch Plant Laborers; Bull Gang Mucker, Trackman; Concrete Crew, including Rodders and Spreaders; Changehouseman; Dumpman; Dumpman (outside); Swamper (Brakeman and Switchman on tunnel work); Tunnel materials handling Man; Tool Man

Group 2: Cable Tender; Chuck Tender; Nipper; Steel Form Raiser and Setter's Tender; Vibratorman, Jackhammer, pneumatic tools (except Driller); Loading and unloading Agitator Cars; Pot Tender, using mastic or other materials

Group 3: Blaster, Driller, Powderman; Chemical Grout Jetman; Cherry Pickerman; Grout Gunman; Grout Mixerman; Grout Pumpman; Jackleg Miner; Jumbo Man; Kemper and other pneumatic concrete Placer Operator; Miner, tunnel (hand or machine); Powderman (Primer House); Primer Man; Shotcrete Man; Steel Form Raiser and Setter; Timberman; Retimber (wood or steel); Tunnel Concrete Finisher; Nozzleman; Operating Troweling and/or Grouting Machine; Sandblaster

Group 4: Shaft, Raise Miner; Diamond Driller

POWER EQUIPMENT OPERATORS

Group 1: Brakeman; Compressor (less than 600 C.F.M.); Engineer Oiler; Generator; Heavy Duty repairman; Tender; Pump; Signalman; Switchman

Group 2: Compressor (600 C.F.M. or larger); Concrete Mixer, Skip type, Conveyor; Fireman; Hydrostatic Pump; Oiler Crusher (asphalt or concrete plant); Plant Operator; Generator, Pump or compressor; Rotary Drill Helper (Oilfield); Skiploader, wheel type up to 3/4 yard without attachments; Soils Field Technician; Tar Pot Fireman; Temporary Heating Plant; Trenching Machine Oiler; Truck Crane Oiler

Group 3: A-Frame or Winch Truck; Elevator Operator (inside); Equipment Greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter Radioman (ground); Power Concrete Curing Machine; Power Concrete Saw; Power driven Jumbo Form Setter; Ross Carrier (job site); Stationary Pipe Wrapping and Cleaning Machine

Group 4: Asphalt Plant Fireman; Boring Machine; Boxman or Mixerman (apshalt or concrete); Chip Spreading Machine; Concrete Pump (small portable); Bridge type Unloader and Turntable; Dinkey Locomotive or Motorman (up to and including 10 tons); Equipment Greaser (Greaser Truck); Helicopter Hoist; Highline Cableway Signalman; Hydra-Hammer-Aero Stomper; Power Sweeper; Roller (compacting); Screed (asphalt or concrete); Trenching Machine (up to 6 feet)

Group 5: Asphalt Plant Engineer; Backhoe (up to and including 3/4 yard); Batch Plant; Bit Sharpener; Concrete Joint Machine (canal and similar type); Concrete Planer; Deck Engine; Derrick Man (Oilfield type); Drilling Machine Operator (including water wells); Forklift (under 5 ton capacity); Hydrographic Seeder Machine (straw, pulp or seed); Machine Tool Operator; Maginnis Internal Full Slab Vibrator; Mechanic Berm, Curb or Gutter (asphalt or concrete); Mechanical Finisher (concrete-Clary, Johnson, Bidwell, or similar); Pavement Breaker (truck mounted); Road Oil Mixing Machine; Roller (asphalt or finish); Rubber-tired Earth Moving Equipment (single engine, up to and including 25 yards struck); Self-propelled Tar Pipelining Machine; Slip Form Pump (power driven hydraulic lifting device for concrete forms); Skip-loader (Crawler and wheel type, over 3/4 yard and up to and including 1½ yards); Stinger Crane (Austin-Western or similar type); Tractor, Bulldozer, Tamper Scraper (single engine, up to 100 HP, flywheel and similar types, up to and including D-5 and similar types); Tugger Hoist, 1 drum; Tunnel Locomotive (over 10 tons up to and including 30 tons); Welder-general

POWER EQUIPMENT OPERATORS (Cont'd)

Group 6: Asphalt or Concrete Spreading (tamping or finishing); Asphalt Paving Machine (Barber Greene or similar type); Bridge Crane Operator; Cast-in-place Pipe Laying Machine; Combination Mixer and Compressor (Gunite work); Compactor, self-propelled; Concrete Mixer - paving; Concrete Pump (truck mounted); Crane Operator up to and including 25 ton capacity) (Long-boom pay applicable); Crushing Plant; Drill Doctor; Elevating Grader; Forklift (over 5 tons); Grade Checker; Grade-all; Grouting Machine; Heading Shield; Heavy Duty Repairman; Hoist Operator (Chicago Boom and similar type); Kolman Belt Loader and similar type; LeTourneau Blob Compactor or similar type; Lift Mobile; Lift Slab Machine (Vagtborg and similar types); Loader (Athey, Euclid, Sierra and similar type); Material Hoist, Mucking Machine (1/4 yard rubber tired, rail or track or similar type); Pneumatic Heading Shield (tunnel); Pumpcrete Gun; Rotary Drill (excluding Caisson type); Rubber-tired Earth Moving Equipment (single engine, Caterpillar, Euclid, Athey, Wagon and similar types with any and all attachments, over 25 yards struck); Rubber-tired Scraper (self-loading paddle wheel type, John Deere, 1040 and similar single unit); Skip-loader (Crawler and wheel type, over 1½ yds., up to and including 6½ yds.); Surface Heaters and Planer; Trenching Machine (over 6 ft. depth capacity); Tower Crane; Tractor Compressor Drill Combination; Tractor (any type larger than D-5-100 flywheel HP and over, or similar); Bulldozer, Tamper, Scraper and Push Tractor (single engine); Tractor (boot attachments); Traveling Pipe Wrapping, Cleaning and Bending Machine; Tunnel Locomotive (over 30 tons); Shovel, Backhoe, Dragline, Clamshell (over 3/4 yd. and up to 5 cu. yds. M.R.C.) (Long-boom pay applicable); Self-propelled Curb and Gutter Machine

Group 7: Crane, over 25 ton up to and including 100 tons M.R.C. (Long boom pay applicable); Derrick Barge (Long boom pay applicable); Dual Drum Mixer; Heavy Duty Repairman, Welder combination; Hoist, Stiff-legs, Guy Derrick or similar type, up to and including 100 tons (Long boom pay applicable); Monorail Locomotive (diesel, gas or electric); Motor Patrol-blade Operator (single engine); Multiple Engine Tractor (Euclid and similar type, except Quad 9 Cat); Rubber-tired Earth Moving Equipment (single engine, over 50 yds. struck); Rubber-tired Earth Moving Equipment (multiple engine, Euclid, Caterpillar and similar) (over 25 yards and up to 5 cu. yds. struck); Shovel, Backhoe, Dragline, Clamshell (over 5 cu. yds. M.R.C.) (Long boom pay applicable); Tower Crane Repairman; Tractor Loader (Crawler and wheel type, over 6½ yards); Welder, certified; Woods Mixer and similar Pugmill Equipment

POWER EQUIPMENT OPERATORS (Cont'd)

Group 8: Auto Grader; Automatic Slip Form; Crane-over 100 tons (Long-boom pay applicable); Hoist, Stiff Legs, Guy Derrick or similar types (capable of hoisting 100 tons or more) (Long boom pay applicable); Mass Excavator, less than 750 cu. yds.; Mechanical Finishing Machine; Mobile Form Traveler; Motor Patrol, multi-engine; Pipe Mobile Machine; Rubber-tired Earth Moving Equipment (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck); Rubber-tired Self-loading Scraper (paddle wheel, auger type self-loading, 2 or more units); Rubber-tired Scraper, pushing one another without Push Cat. Push-pull (50¢ per hour additional to base rate); Tandem Equipment (2 units only); Tandem Tractor (Quad 9 or similar type); Tunnel Mole Boring Machine

Group 9: Canal Liner; Canal Trimmer; Helicopter Pilot; High-line Cableway; Remote Controlled Earth Moving Equipment ($1.00 per hour additional to base rate); Wheel Excavator (over 750 cu. yds.)

TRUCK DRIVERS

Group 1: Warehouseman and Teamster

Group 2: Driver of vehicle or combinations of vehicles of 2 axles (including all vehicles less than 6 tons); Traffic Control Pilot Car, excluding moving heavy equipment permit load

Group 3: Truck mounted power Broom

Group 4: Drivers of vehicles or combination of vehicles of 3 axles

Group 5: Bootman; Cement Distributor; Fuel Truck; Road Oil Spreader Truck; Water Truck, 2 axle

Group 6: Dump, or less than 16 yards

Group 7: Transit-mix, under 3 yards, Dumpcrete, less than 6½ yards

Group 8: Truck Repairman Helper

Group 9: Water Truck, 3 or more axles

TRUCK DRIVERS (Cont'd)

Group 10: PB and similar type truck when performing within the Teamsters' jurisdiction; Pipeline and Utility working Truck including Winch, but limited to truck applicable to Pipeline and Utility work, where a composite crew is used; Slurry Driver; Truck Greaser and Tireman (50¢ per hour addition for Tireman)

Group 11: Transit-Mix, 3 yards or more; Dumpcrete, 6½ yards and over

Group 12: Driver or vehicle or combination of vehicles of 4 or more axles

Group 13: Dump, 16 yards but less than 25 yards

Group 14: A-Frame or Swedish Crane, or similar type of equipment Driver; Fork Lift Driver; Ross Carrier, highway

Group 15: All off-highway equipment (off highway combination of vehicles or equipment with multiple power sources, $1.00 per hour additional); Dump, 25 yds. or more; Truck Repairman

Group 16: Truck Repairman Welder

Group 17: Low Bed Driver, 9 axle or over

Group 18: Water Pull, single engine with attachments

Group 19: Water Pull, twin engine with attachments

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: OHIO
COUNTY: LUCAS
DECISION NO. OH82-2044
DATE: Date of Publication
Supersedes Decision No. OH81-2039, dated July 6, 1981 in 46 FR 35017
DESCRIPTION OF WORK: Building and Residential Construction Projects

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$16.85	2.42
BOILERMAKERS	17.90	3.055
BRICKLAYERS; Marble Setters; & Stonemasons	16.135	2.99
CARPENTERS; Millwrights & Piledrivermen	16.81	2.41
CEMENT MASONS	15.50	2.12
ELECTRICIANS:		
Commercial:		
Electricians	19.00	2.427
Cable Splicers	21.85	2.52
Residential	9.14	2.10
ELEVATOR CONSTRUCTORS:		
Mechanics	16.57	2.465 +a+b
Helpers	70%JR	2.465 +a+b
Helpers (Prob.)	50%JR	
GLAZIERS	15.89	1.97
IRONWORKERS	16.58	2.97
LATHERS	15.51	2.41
LINE CONSTRUCTION:		
Linemen	17.24	2.165 +c
Cable Splicers	19.83	2.385 +c
Technicians	16.72	1.42 +c
Operator - Class I	13.79	1.87 +c
Operator - Class II	12.07	1.725 +c
Groundmen	10.34	1.58 +c
MARBLE SETTERS' FINISHERS; Terrazzo Workers' Finishers; & Tile Setters' Finishers	14.42	1.06
PAINTERS:		
Commercial:		
Brush; Drywall Tapers & Finishers; & Paperhangers	14.70	2.06
Bridge; Railings; Powerhouse; Refinery Tanks	14.95	2.06
Pressure Cleaning; Sandblasting; & Spray	15.25	2.06
Residential Work	13.56	2.06
PLASTERERS	18.02	.71
PLUMBERS; Stemafitters; & Pipefitters	16.90	2.82
ROOFERS	15.95	3.09
SHEET METAL WORKERS	16.145	3.315
SOFT FLOOR LAYERS:		
Commercial	15.14	2.36
Residential	13.41	2.36
SPRINKLER FITTERS	17.67	2.83
TERRAZZO WORKERS; & Tile Setters	17.00	1.36
LABORERS:		
Unskilled	14.08	2.56
Mason Tenders	14.16	2.56
Gunnite Pot Men	14.28	2.56
Mortar Mixers	14.23	2.56
Concrete Pump Nozzle Men; All Power Driven Tools; & Power Buggies	14.235	2.56
Pipe Layers; Bellmen; Bottom Men for Fire Brick Work Only; Bottom Man over 6 ft.; Shoring & Cribbing	14.335	2.56
Nozzle Operators for Gunnite Work; Miners w/o pressure	14.99	2.56
Plasterer' Tenders & Mixers	14.10	2.56
Car Pushers	14.42	2.56
Winch Operators	14.21	2.56
Caisson over 25 ft.	14.54	2.56
Muckers w/o pressure	14.52	2.56

DECISION NO. OH82-2044

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits
GROUP A	17.24	3.02
GROUP B	17.08	3.02
GROUP C	16.73	3.02
GROUP D	15.92	3.02
GROUP E	15.59	3.02
GROUP F	13.38	3.02

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Well & Pump Work (Incl. Drilling & Repair of All Water Wells; Test Holes & Wells; & Installation & Repair of Deep Well Type of Shallow Well Pumps on Water Wells)		
Well Driller & Pump Installer	8.10	.61 +d+e

CLASSIFICATION DEFINITIONS - POWER EQUIPMENT OPERATORS:

GROUP A - A-Frame; Rotary Drills Used on Caisson Work for Foundations and Sub-Structure Work; Boiler or Compressor Operator Mounted on Crane (Piggyback Operation); Boom Truck (All Types); Cableways; Cherry Pickers; Combination Concrete Mixer and Tower; Concrete Pumps; Cranes (All Types); Derricks (All Types); Draglines; Dredge (Dipper, Clam or Suction) 3 Man Crew; Elevating Grader or Euclid Loader; Floating Equipment; Gradalls; Helicopter Operator and Helicopter Winch Operator when Hoisting Builders Materials; Hoes (All Types) Hoisting Engines (Two or More Drums); Lift Slab or Panel Jack Operator; Locomotives (All Types); Maintenance Engineer (Mechanic or Welder); Mixers Paving (multiple Drum); Mobile Concrete Pumps with Boom; Panelboard (All Types on Site); Pile Driver; Power Shovels; Side Booms; Slip Form Pavers; Straddle Carriers (Building Construction on Site); Hammerhead Tower Cranes; Trench Machines (over 24" Wide); Tug boat

GROUP B - Asphalt Paver; Bulldozer; C.M.I. Type Equipment; Endloaders; Kohlman Type Loaders (Dirt Loading); Lead Greaseman; Mucking Machines; Power Grader; Power Scoops; Power Scrapers; Push Cat

Group C - Air Compressor (Pressurizing Shafts or Tunnels); Asphalt Rollers; Fork Lifts; Hoist (One Drum); House Elevators; Man Lift; Power Boilers (Over 15 lbs. Pressure); Pump Operators Installing Well Points or Other Type of Dewatering System; Pumps (4" and over discharge); Submersible Pumps (4" and over discharge); Trenchers 24" and under

GROUP D - Compressors on Building Construction; Conveyors (Building Material) Generators; Gunnite Machines; Mixers (Capacity more than one Bag); Mixers (One Bag Capacity, Side Loader); Post Driver; Post Hole Diggers; Pavement Breaker (Hydraulic or Cable); Road Widening Trencher; Rollers; Welder Operator

DECISION NO. OH82-2044

CLASSIFICATION DEFINITIONS - POWER EQUIPMENT OPERATORS (CONT'D)

GROUP E - Backfillers & Tampers; Batch Plant; Bar and Joint Installing Machines; Bullfloats; Burlap and Curing Machines; Clefplanes; Concrete Spreading Machines; Crushers; Deck Hands; Drum Firemen (Asphalt); Farm Type Tractors Pulling Attachments; Finishing Machines; Form Trenchers; High Pressure Pumps Over ½" Discharge; Hydro Seeders; Self-Propelled Power Spreader; Self-Propelled Sub-grader; Tire Repairmen; Tractors Pulling Sheeps Foot Roller or Grader; Vibratory Compactors (with Integral Power)

GROUP F- Oiler; Tenders; Inboard & Outboard Motor Boat Launch; Light Plant Operator; Power Driven Heaters (oil Fired); Power Boilers (less than 15 lbs. Pressure); Pumps Under 4" Discharge; Submersible Pumps Under 4" Discharge

PAID HOLIDAYS:
A- New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; & F-Christmas Day

FOOTNOTES:
a. Seven Paid Holidays: A through F, & Day after Thanksgiving
b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.
c. Ten Paid Holidays: A through F, Good Friday, Day after Thanksgiving Day, Christmas Eve, & New Year's Eve
d. 9 Paid Holidays: New Year's Day; Good Friday; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving; Christmas Eve; & Christmas Day
e. Employees who have been in continuous employment of the company for less than 1 year as of January 1 will receive pro-rated vacation based on 5/12 day per full month of employment, but not exceeding 5 days' vacation; 3rd continuous calendar year - 2 weeks' paid vacation; 11th continuous calendar year - 3 weeks' paid vacation

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Texas COUNTY: Bexar
DECISION No.: TX82-4034 DATE: Date of Publication
Supersedes Decision No. TX81-4004, dated 1/6/81, in 46 FR 1545.
DESCRIPTION OF WORK: Residential Projects consisting of single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits		Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING MECHANICS	$ 5.39		PLASTERERS	$ 8.00	
BRICKLAYERS	7.92		PLUMBERS & PIPEFITTERS	7.70	
CARPENTERS	6.02		ROOFERS	5.48	
CEMENT MASONS	8.42		SHEETROCK INSTALLERS	8.73	
DUCT INSTALLERS	4.60		SOFT FLOOR LAYERS	6.12	
ELECTRICIANS	9.66		TILE SETTERS	7.74	
FORM SETTERS	4.50		TRUCK DRIVERS	4.66	
INSULATION INSTALLERS	4.50		POWER EQUIPMENT OPERATORS:		
LABORERS	3.65		Backhoes	7.50	
LATHERS	9.65		Front end loaders	5.49	
PAINTERS	6.21		Graders	7.50	
			Tractors	5.17	

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Texas COUNTY: Bowie
DECISION NO.: TX82-4042 DATE: Date of Publication
Supersedes Decision No. TX81-4044, dated June 26, 1981, in 46 FR 33194.
DESCRIPTION OF WORK: Building Projects (does not include single family homes & apartments up to & including 4 stories). (Use current heavy & highway general wage determination for paving & utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$14.71	2.475
BOILERMAKERS	16.25	2.415
BRICKLAYERS	8.15	.79
CARPENTERS:		
Carpenters	12.20	.05
Millwrights	15.15	.05
Piledrivermen	13.25	.05
CEMENT MASONS	6.82	
ELECTRICIANS	14.52	1.30+3½%
ELEVATOR CONSTRUCTORS:		
Mechanics	14.99	2.465+a
Helpers	70%JR	2.465+a
Helpers (Prob.)	50%JR	
GLAZIERS	5.30	
IRONWORKERS	13.60	2.36
LABORERS, UNSKILLED	3.70	
LINE CONSTRUCTION:		
Linemen	15.20	3.5%
Cable splicers	15.66	3.5%
Hole digger op., heavy equip. ops. (or pole cat equivalent); powderman	13.83	3.5%
Line truck driver (winch op.)	12.46	3.5%
Jackhammer man	11.40	3.5%
Groundman	10.18	3.5%
Truck driver (flat bed, ton & half & under)	10.79	3.5%
PAINTERS	$ 5.50	
PLUMBERS & PIPEFITTERS:		
Within a 25 mile radius of Texarkana	14.28	1.60
Outside a 25 mile radius of Texarkana	15.40	1.60
ROOFERS	5.71	
SHEET METAL WORKERS	5.99	
SOFT FLOOR LAYERS	7.50	
SPRINKLER FITTERS	16.17	2.83
TRUCK DRIVERS	5.00	
POWER EQUIPMENT OPERATORS:		
GROUP 1	7.265	2.30
GROUP 2	14.18	2.30
GROUP 3	14.58	2.30

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.

FOOTNOTE FOR ELEVATOR CONSTRUCTORS
a - 1st 6 mos. - none; 6 mos. to 5 yrs - 6%; over 5 yrs. - 8% of basic hourly rate. Also following 7 Paid Holidays: New Years' Day, Memorial Day; Independence Day; Labor Day; Thanksgiving Day; the Friday after Thanksgiving Day; Christmas Day

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS
GROUP 1 - Oiler-Fireman
GROUP 2 - Air compressor, Pumps, Welding Machines, Throttle Valves, Light Plants; Conveyor; Wagon Drill, Elevators Building; Form Graders; Hoist, Single Drum; Ford Tractor including blade & mower on rear; Mixers, less than 14 cu. ft.; Screening Plants; Crushing Plants; Fork Lifts (short under 25 ft.); Concrete Pumps (all types); Bobcat type equipment
GROUP 3 - Ford Tractor or like with any attachment (except blade & mower on rear); Drilling Machine (all types); Scoopmobile; Hoist, two drums or more; Forklifts (over 25 ft.); Winch truck; Six Wheel Truck, when used continuously for 5 days; Mixermobile; Locomotives; Mixer, 14 cu. ft. or over; Blade Graders, self-propelled; Cableways; Crane-power operated to 100 ft.; Derricks, power operated (all types); Gradall; Hy-Ho; Hop-To; Paving Mixers (all types); Pile Drivers; Mobile Concrete Mixers over 14 cu. ft.; Bulldozers; Loaders, Tractovators; Scrapers & Pulls; Welders; Trenching Machines; Roller, ten tons or over; Air Compressors & Air Tugger; Boilers, two or more fired by one man

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)).

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federal register

Friday
August 20, 1982

Part IV

Department of Agriculture

Food and Nutrition Service

Child Care Food Program; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: Public Law 97–35, The Omnibus Budget Reconciliation Act of 1981, enacted August 13, 1981, makes a number of substantive changes in the administration and operation of the Child Care Food Program (CCFP). This final rule makes several changes in the CCFP regulations in order to implement nondiscretionary provisions contained in Pub. L. 97–35. Provisions mandated by this statute and contained in this regulation are as follows: A reduction in the upper age limit for children eligible to participate in the program; a limitation on the number of meal types per child for which an institution may be reimbursed; the termination of food service equipment assistance; the elimination of the tiering method of reimbursement; the elimination of the requirement for submission of a State Plan of Program operations by State agencies which administer the Program; a prohibition on participation in the Special Milk Program if an institution is participating in the Child Care Food Program; the reduction of food service payment rates for meals served in day care homes; the implementation of an annual, rather than semiannual, adjustment in program reimbursement rates, including food service payment rates for day care homes; a change in the rates of reimbursement for supplements served in child care centers, outside-school-hours care centers, and proprietary Title XX centers; modifications in procedures and guidelines to be used in determining the eligibility of enrolled children for free and reduced-price meals in the Program; reimbursement changes for meals served to children of day care home providers; and a prohibition on the administration of the Program in any State by the Food and Nutrition Service (FNS) if FNS has not administered the program in the State continuously since October 1, 1980.

EFFECTIVE DATE: This rule became effective September 1, 1981, except changes to the following sections became effective October 1, 1981: §§ 226.2; 226.3 (b) and (c); 226.6 (b) and (c)(11); 226.7(e); 226.10(c); 226.11 (b) and (c); 226.15 (a), (b)(1), (b)(4), (b)(5), (b)(6), and (i); 226.16(k); 226.17 (a), (b)(2), and (b)(4); 226.18(b); 226.19 (a), (b)(2), and (b)(6) and former § 226.25. Also, on January 1, 1982, the changes to the following sections became effective: §§ 226.4(b)(7)–(9); 226.6(b)(3); 226.15(e)(3); and 226.18 (e) and (f). References to tiering formerly included in §§ 226.2 and 226.10 were eliminated effective January 1, 1982.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the recordkeeping or reporting provisions that are included in this final rule will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

ADDRESSES: Copies of all written comments on the proposed rule are available for review during normal business hours at the office of Ms. Beverly Walstrom, Child Care and Summer Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 416, 3101 Park Center Drive, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Beverly Walstrom, Child Care and Summer Programs Division, Food and Nutrition Service, at the above address or telephone (703) 756–3880.

SUPPLEMENTARY INFORMATION: On November 27, a final rule was published at 46 FR 58006 implementing provisions of Pub. L. 96–499 (The Omnibus Reconciliation Act of 1980) and Pub. L. 97–35 regarding participation of proprietary Title XX Centers which receive compensation under Title XX of the Social Security Act. The requirements of that final rule have been included in this rule.

On November 10, 1981, the Department issued a final rule, 7 CFR Part 3015, the Uniform Federal Assistance Regulations. This rule impacts on several areas of the CCFP regulations. Appropriate references have been made to the Uniform Federal Assistance Regulations in § 226.2; 226.3; 226.4(i); 226.7(a), (b), and (m); 226.10(e); and 226.25(a). The Department is considering issuing a proposed rule which will address additional aspects of the Uniform Federal Assistance Regulations as it impacts on the CCFP.

An interim rule revising administrative rates for sponsors of day care homes was published at 47 FR 3539 on January 26, 1982. Comments were solicited and considered. A final rule was issued at 47 FR 27540 on June 25, 1982. A lawsuit in Federal District Court, *Petry, et al.* v. *Block, et al.* (D.D.C., Civil No. 82–1682, June 16, 1982) is currently in litigation making the status of reimbursement rates from July 1982 forward uncertain at this time. Reimbursement rates for January through June remain in effect as published in the January 26, 1982, interim rule.

On May 11, 1982, the Department published at 47 FR 20144 a proposed rule on elimination of cost as a criterion for reimbursement. Comments were solicited on the provisions of this rule. A final rule will be issued by the Department shortly. Therefore, references to current Program procedures concerning the applicability of costs in the reimbursement process have been retained in this rule pending their elimination at a future date.

Classification

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

Background

The Child Care Food Program is authorized by Section 17 of the National School Lunch Act, as amended. Comprehensive final Program regulations were last published on January 22, 1980, (45 FR 4960). Since that time several amendments have been published. The first, published on January 2, 1981, implemented the legislatively mandated three-cent reduction in the reimbursement rate for supplements served in child care centers and outside-school-hours care centers. On January 16, 1981, an amendment was published exempting American Samoa and the Northern Mariana Islands from the general matching requirement for food service equipment assistance funds.

On August 13, 1981, the Omnibus Reconciliation Act of 1981, was enacted as Pub. L. 97–35, altering the Program in a number of ways. Regulations implementing two requirements of that law have already been published. A notice was published on August 25, 1981, in the **Federal Register** at 46 FR 42891 which announced the new rates for all meals served in centers and homes in all

States and in Alaska and Hawaii. Those rates were effective September 1, 1981, except for the rates for supplements in centers, which were effective January 1, 1982, as required by statute. On November 27, 1981, a final rule was published authorizing the participation of certain proporietary Title XX centers.

An interim rule implementing the nondiscretionary legislative changes was published on November 27, 1981, at 46 FR 57980–58006. Additional conforming changes were made so that the regulations were internally consistent. Those changes were purely technical in nature and did not affect the regulation in a substantive manner.

A total of 43 comments were received from advocacy groups, State agencies, Food and Nutrition Service (FNS) Regional Offices, local government entities, institutions, day care home providers, and others. All comments were studied, and were summarized and catalogued according to the regulatory section to which they referred so that comments could be systematically considered during the development of the final rule. Comments on regulatory issues are presented by issue in this preamble.

In addition, a variety of comments were received on a number of provisions which remained unchanged in the interim rule from prior regulations. The Department did not solicit comment on all areas of the regulation since the public has had ample opportunity to make comment on the various provisions in the past. Further, additional changes are anticipated in future rules to implement discretionary provisions of Pub. L. 97–35 and the recommendations of the USDA Task Force on Regulatory Form. Comments dealing with provisions which have remained unchanged have not influenced the development of this final rule and, therefore, and not discussed in this preamble.

The Department also received a small number of technical and editorial comments from the public. Although it is not possible to list each one of the comments of this nature, some of these recommendations have been incorporated in the final rule.

1. Definition of Children

The interim rule revised the definition of children in accordance with the provisions of Pub. L. 97–35 to include, as eligible for participation, children 12 years of age and under, and in the case of children of migrant workers, those children 15 years of age or less. No change was made in the eligibility requirement for mentally or physically handicapped persons, as defined by each State. They remain eligible for participation in the Program so long as they are enrolled in an institution which serves a majority of persons 18 years of age and under. The effective date for this change was October 1, 1981.

Five comments were received concerning this provision. Although three comments disapproved of this Program modification because of its financial impact, the Department does not have any discretion regarding the implementation of the definition. This change was mandated by Section 810(a) of Pub. L. 97–35 (§ 226.2).

2. Reimbursement for Meals in the Program

(a) In order to implement Section 810(d) of Pub. L. 97–35, the interim rule amended the appropriate sections in the regulation to include the limitation that no institution could be reimbursed for the service of more than two meals and one supplement per day per child. This requirement did not restrict an institition or facility from being approved to serve up to 5 different meal types (breakfast, a.m. supplement, lunch, p.m. supplement, or supper), as long as the meal limitation of not more than two meals and one supplement per child per day is not violated.

Twenty-five comments were received concerning this provision. Twenty commenters were opposed to this provision because of the financial impact it would have on the child care centers and day care home provider. One commenter was in favor of the rate reductions. The remaining four commenters used their comment letters as a vehicle to discuss their concerns about policy clarifications. We intend to address their concerns at later time. However, the Department had no discretion in implementing this provision as it was mandated by Pub. L. 97–35, Section 810(d)(2)(B) [(§ 226.17(b)(3), 226.17(b)(5), 226.19(b)(5), and 226.19(b)(6)]].

(b) Section 810(d) of Pub. L. 97–35 requires the Secretary to reduce by 10 percent the food service payment rates for day care homes that were in effect on the date of enactment of the law. The 10 percent reduction was incorporated into the interim rule. Twenty-eight comments were received opposing the rate reduction. However, this reduction was mandated by Pub. L. 97–35 § 810(d)(3)(A). Therefore, the Department has no discretion in implementing this provision [§ 226.13(b)].

(c) Section 810(c) of Pub. L. 97–35 prescribes national average payment rates for free, reduced-price, and paid supplements served in child care centers and outside-school-hours care centers. It also requires that the national average payment rates for free, reduced-price and paid breakfast, lunches and suppers in the CCFP be the same as those prescribed for the National School Lunch Program and the School Breakfast Program. These rates were incorporated in the interim rule. A total of 32 comments were received. Although 31 comments opposed the implementation of the reduced rates, the Department does not have any discretion regarding their implementation. These rates have been mandated by Section 810(c) of Pub. L. 97–35.

(d) Section 810(d) of Pub. L. 97–35 requires that, as a condition of eligibility for reimbursement for meals served to children of day care home providers, such children must meet the income standards for free or reduced-price meals. In the interim rule, modifications were made to the regulations to incorporate this requirement. Seven comments were received concerning this provision. Although four comments disapproved of this Program modification, the Department has no discretion regarding implementation as the requirement is mandated by Section 810(d)(3)(B) of Pub. L. 97–35. [(§ 226.6(b)(3), 226.15(e)(3), 226.18(e) and (f))]

(e) Section 810(d) of Pub. L. 97–32 eliminated the tiering method of reimbursement for centers. Therefore, the interim rule deleted all references to the tiering method. The Department received one comment opposing this provision. Again, this change was legislatively mandated by Section (d)(1) of Pub. L. 97–35; and therefore, the tiering method is eliminated in the final rule.

3. Free and Reduced-Price Meals

Section 810(c) and Section 803 of Pub. L. 97–35 make a number of important changes in the procedures used for determining the eligibility of children for free and reduced-price meals. Substantative comments were received concerning only one of the changes: the collection, by institutions, of social security numbers for all adult members of a household on the application for free and reduced-price meals.

Section 9(d) of the National School Lunch Act, as amended by section 803 of Pub. L. 97–35 requires, as a condition of eligibility for free and reduced-price meals, that adult family members disclose their social security numbers. Because this requirement is applicable to the CCFP through operation of section 17(c)(4) of the National School Lunch Act, the Department has no discretion

regarding this condition of eligibility. This final regulation also provides that if an adult household member does not have a social security number, then "NONE" must be indicated on the application. The final regulations also clarify the relationship between certain requirements of the Privacy Act of 1974 and the collection of social security numbers in the CCFP. Section 7 of the Privacy Act of 1974 imposes certain requirements concerning notice to persons asked to disclose their social security numbers to federal, State, or local governments. Such persons should be informed of the statutory authority under which social security numbers are requested, whether disclosure of the numbers is mandatory or voluntary, and to what uses the numbers will be put. The regulations have been amended to clarify these requirements. The regulations also contain a prototype notice.

4. State Plan of Child Care Food Program Operations

Pub. L. 97–35 eliminates the requirements for State agencies to submit annually a State Plan of Child Care Food Program Operations to FNS. Although the statute eliminates the State Plan, State agencies must still submit annually a plan for the use of State administrative expense funds to FNS. This requirement, formerly included in the State Plan provision of the regulations, has been added to § 226.7(e).

Two comments were received concerning this provision. One commenter suggested that the plan for use of the CCFP State administrative expense (SAE) funds should be submitted to FNS at the same time as the SAE plan for the School Programs, i.e. National School Lunch, School Breakfast, and Special Milk Programs. The interim regulation required that the plan be submitted by October 1. The School Programs require that the SAE plan be submitted by August 15 since the SAE plan is on a fiscal year basis. The August 15 SAE plan submission date will give the State agencies enough time to plan their fiscal year's activities. We agree that it would simplify administration if the CCFP SAE plan was due at the same time as the School Programs' plan. Therefore, we have revised § 226.7(e) to require that the SAE plan for the Child Care Food Program be submitted by August 15, the same date the School Programs' plan is due. State agencies may submit the CCFP plan as part of the School Programs SAE plan.

5. Food Service Equipment Assistance

Section 810(f) of Pub. L. 97–35 repeals the availability of food service equipment assistance funds (FSEA) to institutions participating in the Program. Two commenters were opposed to the repeal; however, the Department has no discretion in this matter as it was mandated by Pub. L. 97–35. Although provisions which prescribed procedures for administering and distributing FSEA to institutions in the CCFP have been deleted in this final rule, the definition of FSEA and the property management requirements contained in § 226.24 have been retained since the management and disposition of property which has been acquired in whole or in part with FSEA funds must continue to be carried out in accordance with the provisions of that section.

6. Implementation

The effective dates for implementation of these provisions correspond to those mandated by Pub. L. 97–35.

(a) The following changes were effective September 1, 1981:

(1) The food service payment rates for meals and supplements served in day care homes, specified in § 226.4(c) and § 226.13(c), are in effect from September 1, 1981, through June 30, 1982;

(2) Food service payment rates for meals served in day care homes, administrative payments to day care home sponsoring organizations, and rates for supplements served in child care centers, outside-school-hours care centers, and proprietary Title XX centers shall be adjusted annually, each July 1, in accordance with the provisions of § 226.4(g);

(3) Rates of reimbursement for breakfasts, lunches, and suppers served in child care centers, outside-school-hours care centers, and proprietary Title XX centers shall be the same as the national average payment rates for breakfasts and lunches in the School Breakfast Program and the National School Lunch Program, respectively, in accordance with the provisions of § 226.4(b) and shall be adjusted annually to reflect changes in the Consumer Price Index, beginning July 1, 1982;

(4) Effective September 1, 1981, for centers which charge separately for meals, the charge imposed for reduced-price breakfasts, lunches, and suppers shall be less than the full price of the meal, but in no case shall exceed the amounts specified in the definition of "Reduced-price meal" in § 226.2 as mandated by Pub. L. 97–35. On January 1, 1982, this pricing restriction was effective for supplements served by centers which charge separately for meals.

(5) No institution may be reimbursed for more than two meal services and one supplement service per child per day. Accordingly, § 226.17(b)(3), § 226.17(b)(5), § 226.19(b)(5) and § 226.19(b)(6) have been revised to include this limitation; and

(6) Pub. L. 97–35 requires a variety of changes in the procedures used to collect family size and income information and determine the eligibility of enrolled children for free and reduced-price meals. These changes include the use of the Secretary's income standards, the announcement of the Secretary's income standards for free and reduced-price meals by institutions, the collection of social security numbers for all adult members of a household on the application for free and reduced-price meals by institutions, and the requirement that only the Secretary's standards of eligibility for reduced-price meals be included in the application or any other materials distributed to the parents or guardians of enrolled children. Accordingly, the definition of "income standards" in § 226.2, and § 226.6(e)(7), § 226.15(e)(2) and (3), § 226.23(c)(1) and § 226.23 (e) and (f) have been revised to reflect these requirements.

(b) The following changes were effective October 1, 1981:

(1) No institution may participate in the Special Milk Program if it is participating in the Child Care Food Program. This prohibition has been included in § 226.15(i);

(2) The revision in the definition of children eligible for participation in the Child Care Food Program, as provided in the definition of "children" in § 226.2;

(3) The termination of food service equipment assistance;

(4) The elimination of the requirement for States to submit a State Plan of Child Care Program Operations. However, as provided in § 226.7(e), State agencies which administer the Program are required to submit annually a plan for the use of State administrative expense funds;

(5) The provisions of §§ 226.3(b) and 226.3(c), which prohibit the Food and Nutrition Service from administering the Program in any State in which it has not administered the Program continuously since October 1, 1980; and

(6) The provisions permitting participation of proprietary Title XX centers, specified in §§ 226.2; 226.6(b) and (c)(11); 226.10(c); 226.11(b) and (c); 226.15(a), (b)(1), (b)(4), (b)(5), and (b)(6); 226.16(k); 226.17(a), (b)(2), and (b)(4);

226.18(b); and 226.19(a), (b)(2), and (b)(6).

(c) The following changes are effective January 1, 1982;

1. The elimination of the tiering method of reimbursement and all definitions and references to the tiering method;

2. The requirement that, as a condition of eligibility for reimbursement for meals served to children of day care home providers, such children must meet the eligibility standards for free or reduced-price meals. Accordingly, revisions have been made in §§ 226.6(b)(3), 226.15(e)(3), 226.18(f); and

3. The reimbursement rates for supplements in centers specified in § 226.4(b)(7)–(9), shall be in effect from January 1, 1982, until June 30, 1982.

Additional proposed, interim, and final rules have been and will be issued by the Department to implement other provisions of Pub. L. 97–35 that affect the CCFP. These rules will address the verification and documentation requirements. The Department is also considering a rulemaking addressing increased flexibility and simplification of the CCFP.

Listing of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, Infants and children, Surplus agricultural commodities.

Accordingly, the Department is revising and reissuing 7 CFR Part 226 as follows:

PART 226—CHILD CARE FOOD PROGRAM

Subpart A—General

Sec.

226.1 General purpose and scope.
226.2 Definitions.
226.3 Administration.

Subpart B—Assistance to States

226.4 Payments to States and use of funds.
226.5 Donation of commodities.

Subpart C—State Agency Provisions

226.6 State agency administrative responsibilities.
226.7 State agency responsibilities for financial management.
226.8 Audits.

Subpart D—Payment Provisions

226.9 Assignment of rates of reimbursement for centers.
226.10 Program payment procedures.
226.11 Program payments for child care centers and outside-school-hours care centers.
226.12 Administrative payments to sponsoring organizations for day care homes.
226.13 Food service payments to sponsoring organizations for day care homes.
226.14 Claims against institutions.

Subpart E—Operational Provisions

226.15 Institution provisions.
226.16 Sponsoring organization provisions.
226.17 Child care center provisions.
226.18 Day care home provisions.
226.19 Outside-school-hours care center provisions.
226.20 Requirements for meals.
226.21 Food service management companies.
226.22 Procurement standards.
226.23 Free and reduced-price meals.

Subpart F—Food Service Equipment Provisions

226.24 Property management requirements.

Subpart G—Other Provisions

226.25 Other provisions.
226.26 Program information.

Authority: Secs. 810 and 820, Pub. L. 97–35, the Omnibus Reconciliation Act of 1981; Sec. 2, Pub. L. 95–627, 92 Stat. 3603 (42 U.S.C. 1766); Sec. 10, Pub. L. 89–642, 80 Stat. 889 (42 U.S.C. 1779).

Subpart A—General

§ 226.1 General purpose and scope.

This part announces the regulations under which the Secretary of Agriculture will carry out the Child Care Food Program. Section 17 of the National School Lunch Act, as amended, authorizes assistance to States through grants-in-aid and other means to initiate, maintain, and expand nonprofit food service programs for children in nonresidential institutions which provide child care. The Program is intended to enable child care institutions to integrate a nutritious food service with organized child care services for enrolled children. Payments will be made to State agencies or FNS Regional Offices to enable them to reimburse institutions for food service to children.

§ 226.2 Definitions.

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

"Administrative costs" means costs incurred by an institution related to planning, organizing, and managing a food service under the Program, and allowed by the State agency financial management instruction.

"Advanced payments" means financial assistance made available to an institution for its Program costs prior to the month in which such costs will be incurred.

"CCFP child care standards" means the Child Care Food Program child care standards developed by the Department for alternate approval of child care centers, outside-school-hours care centers, and day care homes by the State agency under the provisions of § 226.6(d)(2)–(4).

"Child care center" means any public or private nonprofit organization, or any proprietary Title XX center, as defined in this section ("Proprietary Title XX center"), licensed or approved to provide nonresidential child care services to enrolled children, primarily of preschool age, including but not limited to day care centers, settlement houses, neighborhood centers, Head Start centers and organizations providing day care services for handicapped children. Child care centers may participate in the Program as independent centers or under the auspices of a sponsoring organization.

"Child care facility" means a licensed or approved child care center, day care home, or outside-school-hours care center under the auspices of a sponsoring organization.

"Children" means (a) persons 12 years of age and under, (b) children of migrant workers 15 years of age and under, and (c) mentally or physically handicapped persons, as defined by the State, enrolled in an institution or a child care facility serving a majority of persons 18 years of age and under.

"Claiming percentage" means the ratio of the number of enrolled children in an institution in each reimbursement category (free, reduced-price or paid) to the total of enrolled children in the institution.

"Day care home" means an organized nonresidential child care program for children enrolled in a private home, licensed or approved as a family or group day care home and under the auspices of a sponsoring organization.

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

"Enrolled child" means a child whose parent or guardian has submitted to an institution a signed document which indicates that the child is enrolled for child care.

"Fiscal Year" means a period of 12 calendar months beginning October 1 of any year and ending with September 30 of the following year.

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

"FNSRO" means the appropriate Regional Office of the Food and Nutrition Service.

"Food service equipment assistance" means Federal financial assistance formerly made available to State agencies to assist institutions in the purchase or rental of equipment to enable institutions to establish, maintain or expand food service under the Program.

"Food service management company" means an organization other than a public or private nonprofit school, with which an institution may contract for preparing and, unless otherwise provided for, delivering meals, with or without milk for use in the Program.

"Free meal" means a meal served under the Program to a child from a family which meets the income standards for free school meals and for which neither the child nor any member of his family pays or is required to work in the food service program.

"Income standards" means the family-size and income standards prescribed annually by the Secretary for determining eligibility for free and reduced-price meals under the National School Lunch Program and the School Breakfast Program.

"Income to the program" means any funds used in an institution's food service program, including, but not limited to all monies, other than Program payments, received from other Federal, State, intermediate, or local government sources; children's payments for meals and food service fees; income from any food sales to adults; and other income, including cash donations or grants organizations or individuals.

"Independent center" means a child care center or outside-school-hours center which enters into an agreement with the State agency to assume final administrative and financial responsibility for Program operations.

"Infant cereal" means any iron-fortified dry cereal specially formulated for and generally recognized as cereal for infants that is routinely mixed with formula or milk prior to consumption.

"Infant formula" means any iron-fortified infant formula, intended for dietary use as a sole source of food for normal, health infants, served in liquid state at manufacturer's recommended dilution.

"Institution" means a sponsoring organization, child care center, or outside-school-hours care center which enters into an agreement with the State agency to assume final administrative and financial responsibility for Program operations.

"Meals" means food which is served to enrolled children at an institution or child care facility and which meets the nutritional requirements set forth in this part.

"Milk" means pasteurized fluid types of unflavored or whole flavored milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk except that, in the meal pattern for infants (8 months up to 1 year of age), "milk" means unflavored whole fluid milk or an equivalent quantity of reconstituted evaporated milk which meets such standards. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands if a sufficient supply of such types of fluid milk cannot be obtained, "milk" shall include reconstituted or recombined milk. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration and be consistent with State and local standards for such milk.

"Nonexpendable personal property" means tangible personal property having a useful life of more than *two* years and an acquisition cost of *$500* or more per unit. The State agency may use its own definition of nonexpendable personal property provided that such a definition at least includes all tangible personal property as defined herein.

"Nonresidential" means that the same children are not maintained in care for more than 24 hours on a regular basis.

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

"Operating costs" means expenses incurred by an institution in serving meals to children under the Program, and allowed by the State agency financial management instruction.

"Outside-school-hours care center" means a public or private nonprofit organization, or a proprietary Title XX center, as defined in this section ("Proprietary Title XX center"), licensed or approved to provide organized nonresidential child care services to enrolled children outside of school hours. Outside-school-hours care centers may participate in the Program as independent centers or under the auspices of a sponsoring organization.

"Personal property" means property of any kind except real property. It may be tangible—having physical existence—or intangible—having no physical existence such as patents, inventions, and copyrights.

"Program" means the Child Care Food Program authorized by Section 17 of the National School Lunch Act, as amended.

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

"Proprietary Title XX center" means any private, for profit center (a) providing nonresidential day care services for which it receives compensation from amounts granted to the States under Title XX of the Social Security Act and (b) in which Title XX beneficiaries were not less than 25 percent of the enrolled children during the calendar month preceding initial application or annual reapplication for Program participation.

"Reduced-price meal" means a meal served under the Program to a child from a family which meets the income standards for reduced-price school meals. Any separate charge imposed shall be less than the full price of the meal, but in no case more than 40 cents for a lunch or supper, 30 cents for a breakfast, and 15 cents for a supplement, and for which neither the child nor any member of his family is required to work in the food service program.

"Reimbursement" means Federal financial assistance paid or payable to institutions for Program costs within the rates assigned by the State agency.

"School year" means a period of 12 calendar months beginning July 1 of any year and ending June 30 of the following year.

"Sponsoring organization" means a public or nonprofit private organization which is entirely responsible for the administration of the food program in: (a) one or more day care homes; (b) a child care center or outside-school-hours care center which is a legally distinct entity from the sponsoring organization; (c) two or more child care centers or outside-school-hours care centers; or (d) and combination of child care centers, day care homes, and outside-school-hours care centers. The term "sponsoring organization" also includes a for-profit organization which is entirely responsible for administration of the Program in any combination of two or more care centers and outside-school-hours care centers which are part of the same legel entity as the sponsoring organization, and which are proprietary Title XX centers, as defined in this section ("Proprietary Title XX center").

"Start-up payments" means financial assistance made available to a sponsoring organization for its administrative expenses associated with developing or expanding a food service program in day care homes and initiating successful Program operations.

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

"State agency" means the State educational agency or any other State agency that has been designated by the Governor or other appropriate executive, or by the legislative authority of the State, and has been approved by the Department to administer the

Program within the State or in States in which FNS administers the Program, FNSRO.

"Title XX" means Title XX of the Social Security Act.

"Uniform Federal Assistance Regulations" means the Department's regulations, 7 CFR Part 3015, establishing Department-wide policies and standards for administration of grants and cooperative agreements.

§ 226.3 Administration.

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

(b) Within the States, responsibility for the administration of the Program shall be in the State agency, except that if FNS has continuously administered the Program in any State since October 1, 1980, FNS shall continue to administer the Program in that State. A State in which FNS administers the Program may, upon request to FNS, assume administration of the Program.

(c) Each State agency desiring to take part in the Program shall enter into a written agreement with the Department for the administration of the Program in the State in accordance with the provisions of this part. This agreement shall cover the operation of the Program during the period specified therein and may be extended by consent of both parties.

(d) FNSRO shall, in each State in which it administers the Program, have available all funds and assume all responsibilities of a State agency as set forth in this part.

Subpart B—Assistance to States

§ 226.4 Payments to States and use of funds.

(a) *Availability of funds.* For each fiscal year based on funds provided to the Department, FNS shall make funds available to each State agency to reimburse institutions for their costs in connection with food service operations, including administrative expenses, under this part. Funds shall be made available in an amount no less than the sum of the totals obtained under paragraphs (b), (c), (d), (e) and (h) of this section. However, in any fiscal year, the aggregate amount of assistance provided to a State under this part shall not exceed the sum of the Federal funds provided by the State to participating institutions within the State for that fiscal year and any funds used by the State under paragraphs (h) and (j) of this section.

(b) *Center funds.* For meals served to children in child care centers and outside-school-hours care centers, funds shall be made available to each State agency in an amount no less than the sum of the products obtained by multiplying:

(1) The number of breakfasts served in the Program within the State to children from families that do not satisfy the income standards for free and reduced-price school meals enrolled in institutions by the national average payment rate for breakfasts for such children under section 4 of the Child Nutrition of Act of 1966;

(2) The number of breakfasts served in the Program within the State to children from families that satisfy the income standards for free school meals enrolled in institutions by the national average payment rate for free breakfasts under section 4 of the Child Nutrition Act of 1966;

(3) The number of breakfasts served to children from families that satisfy the income standard for reduced-price school meals enrolled in institutions by the national average payment rate for reduced-price school breakfasts under section 4 of the Child Nutrition Act of 1966;

(4) The number of lunches and suppers served in the Program within the State by the national average payment rate for lunches under section 4 of the National School Lunch Act. (All lunches and suppers served in the State are funded under this provision);

(5) The number of lunches and suppers served in the Program within the State to children from families that satisfy the income standard for free school meals enrolled in institutions by the national average payment rate for free lunches under section 11 of the National School Lunch Act;

(6) The number of lunches and suppers served in the Program within the State to children from families that satisfy the income standard for reduced-price school meals enrolled in institutions by the national average payment rate for reduced-price lunches under section 11 of the National School Lunch Act;

(7) The number of supplements served in the Program within the State to children from families that do not satisfy the income standards for free and reduced-price school meals enrolled in institutions by 2.75 cents;

(8) The number of supplements served in the Program within the State to children from families that satisfy the income standard for free school meals enrolled in institutions by 30 cents;

(9) The number of supplements served in the Program within the State to children from families that satisfy the income standard for reduced-price school meals enrolled in institutions by 15 cents.

(c) *Day care home funds.* For meals served to children in day care homes, funds shall be made available to each State agency in an amount no less than the sum of products obtained by multiplying:

(1) The number of breakfasts served in the Program within the State by 47.75 cents;

(2) The number of lunches and suppers served in the Program within the State by 93.5 cents;

(3) The number of supplements served in the Program within the State by 28 cents.

(d) *Administrative funds.* For administrative payments to day care home sponsoring organizations, funds shall be made available to each State agency in an amount not less than the product obtained each month by multiplying the number of day care homes participating under each sponsoring organization within the State by the applicable rates specified in § 226.12(a)(3).

(e) *Start-up funds.* For start-up payments to eligible sponsoring organizations, funds shall be made available to each State agency in an amount equal to the total amount of start-up payments made in the most recent period for which reports are available for that State or on the basis of estimates by FNS.

(f) *Funding assurance.* FNS shall ensure that, to the extent funds are appropriated, each State has sufficient Program funds available for providing start-up and advance payments in accordance with this part.

(g) *Rate adjustments.* FNS shall publish a notice in the **Federal Register** to announce each rate adjustment. FNS shall adjust the following rates on the specified dates:

(1) The rates for meals served in day care homes shall be adjusted annually, on July 1, on the basis of changes in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Department of Labor. Such adjustments shall be made to the nearest $.0025 based on changes measured over the most recent twelve-month period for which data are available.

(2) The rate for supplements served in child care centers and outside-school-hours care centers shall be adjusted annually, on July 1, on the basis of changes in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Department of Labor. Such adjustments shall be made to the nearest $.0025

based on changes measured over the most recent twelve-month period for which data are available.

(3) The rate for administrative payments to day care home sponsoring organizations shall be adjusted annually, on July 1, on the basis of changes in the series for all items of the Consumer Price Index for All Urban Consumers published by the Department of Labor. Such adjustments shall be made to the nearest dollar based on changes measured over the most recent twelve-month period for which data are available.

(h) *Audit funds.* For the expense of conducting audits and reviews under § 226.8, funds shall be made available to each State agency in an amount equal to two percent of the Program reimbursement provided to institutions within the State during the second fiscal year preceding the fiscal year for which these funds are to be made available. The amount of assistance provided to a State under this paragraph in any fiscal year may not exceed the State's expenditures under § 226.8 during such fiscal year.

(i) *Method of Funding.* FNS shall authorize funds for State agencies in accordance with the Uniform Federal Assistance Regulations.

(j) *Special Developmental Projects.* The State agency may use in carrying out special developmental projects an amount not to exceed one percent of Program funds used in the second prior fiscal year. Special developmental projects shall conform to FNS guidance and be approved in writing by FNS.

§ 226.5 Donation of commodities.

(a) USDA foods available under section 6 of this Act, section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431) or purchased under section 32 of the Act of August 24, 1935 (7 U.S.C. 1431), section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a–1), or other authority, and donated by the Department shall be made available to each State.

(b) The value of such commodities (or cash-in-lieu of commodities) donated to each State for each school year shall be, at a minimum, the amount obtained by multiplying the number of lunches and suppers served in participating institutions, other than sponsoring organizations for day care homes which are not receiving commodities, in that State during that school year by the rate for commodities or cash-in-lieu thereof established for that school year under the provisions of section 6(e) of this Act.

Subpart C—State Agency Provisions

§ 226.6 State agency administrative responsibilities.

(a) *State agency personnel.* Each State agency shall provide sufficient consultative, technical and managerial personnel to administer the Program, provide sufficient training and technical assistance to institutions and monitor performance to facilitate expansion and effective operation of the Program.

(b) *Application approval.* Each State agency shall establish an application procedure to determine the eligibility under this part of applicant institutions, and facilities for which applications are submitted by sponsoring organizations. State agencies, by written consent of the State agency and the institutions, shall renew agreements with institutions not less frequently than annually. A State agency may not execute an agreement to be effective during two fiscal years but may nevertheless establish an ongoing renewal process for the purpose of reviewing and approving applications from participating institutions throughout the fiscal year. As a minimum, such application approval process shall include:

(1) Renewal of the Program agreement;

(2) For child care centers and outside-school-hours care centers, submission of current family size and income information on enrolled children;

(3) For sponsoring organizations of day care homes, submission of the current total number of children enrolled, and an assurance that day care home providers' children enrolled in the Program are eligible for free or reduced-price meals;

(4) Issuance of a nondiscrimination policy statement and media release;

(5) For sponsoring organizations, submission of a management plan;

(6) Submission of an administrative budget;

(7) Submission of documentation that all child care centers, outside-school-hours care centers, and day care homes for which application is made are in compliance with Program licensing/approval provisions;

(8) For proprietary Title XX centers, submission of documentation that they are currently providing nonresidential day care services for which they receive compensation under Title XX of the Social Security Act, and certification that not less than 25 percent of enrolled children in each such center during the most recent calendar month were Title XX beneficiaries;

(9) Statement of institutional preference to receive commodities or cash-in-lieu of commodities;

(10) Institutional choice to receive all, part, or none of advance payment. Any institution applying for participation in the Program shall be notified of approval or disapproval by the State agency in writing within 30 calendar days of filing a complete and correct application. If an institution submits an incomplete application, the State agency shall notify the institution within 15 calendar days of receipt of the application and shall provide technical assistance, if necessary, to the institution for the purpose of completing its application. Any disapproved applicant shall be notified of its right to appeal under paragraph (j) of this section.

(c) *Denial of applications and termination of institutions.* The State agency shall not enter into an agreement with any applicant institution identifiable through its corporate organization, officers, employees, or otherwise, as an institution which participated in any Federal child nutrition program at any time during the previous three fiscal years, including the fiscal year of its application to the Program, and which was seriously deficient in its operation of any such program. The State agency shall terminate the Program agreement with any institution which it determines to be seriously deficient. Following such termination, the institution shall not be eligible to participate in the Program during the remainder of the fiscal year of its termination and the subsequent two fiscal years, unless the State agency, with FNS concurrence, determines that the institution has taken appropriate corrective actions to prevent recurrence of the deficiencies that led to a termination from the Program. However, the State agency shall afford an institution every reasonable opportunity to correct problems before terminating the institution for being seriously deficient. Serious deficiencies, which are grounds for disapproval of applications and for termination include, but are not limited to, any of the following:

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

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

(3) Failure to return to the State agency any advance payments which exceeded the amount earned for serving eligible meals, or failure to return disallowed start-up payments;

(4) Failure to maintain adequate records;

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

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

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

(8) Continued use of food service management companies that are in violation of health codes;

(9) Failure of a sponsoring organization to disburse payments to its facilities in accordance with its management plan;

(10) A history of administrative or financial mismanagement in any Federal child nutrition program;

(11) The claiming of Program payment for meals served by a proprietary Title XX center during a calendar month in which less than 25 percent of enrolled children were Title XX beneficiaries.

(d) *Licensing/Approval.* This section prescribes State agency responsibilities to ensure that child care centers and day care homes meet the licensing/approval criteria set forth in this part. Sponsoring organizations shall submit to the State agency documentation that facilities under their jurisdiction are in compliance with licensing/approval requirements. Independent centers shall submit such documentation to the State agency on their own behalf.

(1) *General.* Each State agency shall establish procedures to annually review information submitted by institutions to ensure that all participating child care centers, day care homes, and outside-school-hours care centers either:

(i) Are licensed or approved by Federal, State, or local authorities; or

(ii) Are complying with applicable procedures to renew licensing or approval in situations where the State agency has no information that licensing or approval will be denied; or

(iii) Receive Title XX funds for providing child care, if licensing or approval is not available; or

(iv) Demonstrate compliance with applicable State or local child care standards to the State agency, if licensing is not available and Title XX funds are not received; or

(v) Demonstrate compliance with CCFP child care standards to the State agency, if licensing or approval is not available and Title XX funds are not received.

(2) *CCFP child care standards.*

(i) When licensing or approval is not available, independent child care centers, and sponsoring organizations on behalf of their child care centers or day care homes, may elect to demonstrate compliance, annually, with the following CCFP child care standards or other standards specified in paragraph (d)(3) of this section:

(A) *Staff/Child Ratios.* (*1*) Day care homes provide care for no more than 12 children at any one time. One home caregiver is responsible for no more than 6 children ages 3 and above, or no more than 5 children ages 0 and above. No more than 2 children under the age of 3 are in the care of 1 caregiver. The home provider's own children who are in care and under the age of 14 are counted in the maximum ratios of caregivers to children.

(*2*) Child care centers and outside-school-hours care centers do not fall below the following staff/child ratios:

(*i*) For children under 6 weeks of age—1:1

(*ii*) For children ages 6 weeks up to 3 years—1:4

(*iii*) For children ages 3 years up to 6 years—1:6

(*iv*) For children ages 6 years up to 10 years—1:15

(*v*) For children ages 10 and above—1:20

(B) *Nondiscrimination.* Day care services are available without discrimination on the basis of race, color, national origin, sex, or handicap.

(C) *Safety and Sanitation.* (*1*) A current health/sanitation permit or satisfactory report of an inspection conducted by local authorities within the past 12 months shall be submitted.

(*2*) A current fire/building safety permit or satisfactory report of an inspection conducted by local authorities within the past 12 months shall be submitted.

(*3*) Fire drills are held in accordance with local fire/building safety requirements.

(D) *Suitability of Facilities.* (*1*) Ventilation, temperature, and lighting are adequate for children's safety and comfort.

(*2*) Floors and walls are cleaned and maintained in a condition safe for children.

(*3*) Space and equipment, including rest arrangements for preschool age children, are adequate for the number of age range of participating children.

(E) *Social Services.* Independent centers, and sponsoring organizations in coordination with their facilities, have procedures for referring families of children in care to appropriate local health and social service agencies.

(F) *Health Services.* (*1*) Each child is observed daily for indications of difficulties in social adjustment, illness, neglect, and abuse, and appropriate action is initiated.

(*2*) A procedure is established to ensure prompt notification of the parent or guardian in the event of a child's illness or injury, and to ensure prompt medical treatment in case of emergency.

(*3*) Health records, including records of medical examinations and immunizations, are maintained for each enrolled child. (Not applicable to day care homes.)

(*4*) At least one full-time staff member is currently qualified in first aid, including artifical respiration techniques. (Not applicable to day care homes.)

(*5*) First aid supplies are available.

(*6*) Staff members undergo initial and periodic health assessments.

(G) *Staff Training.* The institution provides for orientation and ongoing training in child care for all caregivers.

(H) *Parental Involvement.* Parents are afforded the opportunity to observe their children in day care.

(I) *Self-Evaluation.* The institution has established a procedure for periodic self-evaluation on the basis of CCFP child care standards.

(ii) When licensing or approval is not available, independent outside-school-hours care centers, and sponsoring organizations on behalf of their outside-school-hours care centers, may elect to demonstrate compliance with child care standards developed by the State agency which shall include, as a minimum, information on: (A) fire/safety, (B) sanitation, (C) organized activities, (D) kitchen and restroom facilities, (E) appropriateness of games and materials, (F) availability of emergency medical care, and (G) child-staff ratios as indicated in § 226.6(d)(2)(i)(A). For items (A) and (B), above, appropriate State or local permits are required.

(3) *Alternate approval procedures.* Each State agency shall establish procedures to review information submitted by institutions for centers or homes for which licensing or approval is not available in order to establish eligibility for the Program. Licensing or approval is not available when (i) no Federal, State, or local licensing/approval standards have been established for child care centers, outside-school-hours care centers, or day care homes; or (ii) no mechanism exists to determine compliance with licensing/approval standards; or (iii) licensing authorities do not make a determination on an application for licensing/approval within a reasonable period of time (as specified in § 226.6(d)(4)). In these situations, independent centers, and sponsoring organizations on behalf of their facilities, may choose to demonstrate compliance with either CCFP child care

standards, applicable State child care standards, or applicable local child care standards. State agencies shall provide information about applicable State child care standards and CCFP child care standards to institutions, but may require institutions electing to demonstrate compliance with applicable local child care standards to identify and submit these standards. The State agency may permit independent centers, and sponsoring organizations on behalf of their facilities, to submit self-certification forms, and may grant approval without first conducting a compliance review at the center or facility. But the State agency shall require submission of health/sanitation and fire/safety permits or certificates for all independent centers and facilities seeking alternate child care standards approval. Compliance with applicable child care standards are subject to review in accordance with § 226.6(m).

(4) *Backlogs.* Independent centers and sponsoring organizations on behalf of their facilities may submit to the State agency a Program application for a child care center, outside-school-hours care center, or day care home which has applied for licensing and has not yet secured a determination from the licensing authority. Within 15 calendar days of receipt, the State agency shall notify the institution that the Program application is incomplete and provide the institution with information on demonstrating compliance of the center or home with CCFP child care standards and applicable State child care standards. However, the State agency shall not make any determination of eligibility under this section until 90 calendar days have elapsed from the date the State agency received both a Program application and documentation indicating that an application for licensure was submitted to the licensing authority. When a child care center, outside-school-hours care center, or day care home is approved under this section, the institution which submitted its Program application shall be informed of the responsibility to notify the State agency if the licensing application of the center or home is approved or denied by the licensing authority. The State agency shall terminate the Program participation of any independent center or facility so denied licensure or approval, effective the date of the denial. The State agency shall terminate the Program participation of an independent center, or facility, if, one year from the date of Program approval, the State or local licensing authority indicates that the independent center or the facility has failed to take action on completing the requirements for licensing. FNS shall exempt State agencies from implementation of the provisions of this paragraph and of § 226.6(d)(3)(iii) with respect to any type of child care entity (child care center, outside-school-hours care center, day care home) when State law mandates the entities of that type secure State licensure as a prerequisite to operation. State agencies seeking this exemption relative to a given type or types of child care entities shall submit for FNS review and approval documentation from the chief State legal officer that the condition for exemption exists within the State regarding the specified type or types.

(e) *Annual requirements.* State agencies shall require institutions to comply with applicable provisions of this part. Each State agency shall annually:

(1) Enter into and execute a written Program agreement with each institution, or renew such agreement with the written concurrence of the institution. The Program agreement shall provide that the institution shall accept final financial and administrative responsibility for management of an effective food service, comply with all requirements under this part, and comply with all requirements under the Civil Rights Act of 1964 and the nondiscrimination regulations of the Department, as now or later amended (7 CFR Part 15), to the end that no person shall, on the ground of race, color, national origin, sex, or handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under the Program.

(2) Require each sponsoring organization to submit a management plan with its application for review and approval. Such a plan shall include detailed information on the organizational administrative structure, the staff assigned to Program management and monitoring, administrative budget, and procedures which will be used by the sponsoring organization to administer the Program in and disburse payments to the child care facilities under its jurisdiction.

(3) Require each institution to submit an administrative budget. Each sponsoring organization shall be required to incorporate this budget into its management plan.

(4) Determine that all meal procurements with food service management companies are in conformance with the bid and contractual requirements of § 226.22.

(5) Inquire as to the preference of institutions for commodities or cash-in-lieu of commodities.

(6) Provide institutions with information on foods available in plentiful supply, based on information provided by the Department.

(7) Inform institutions with separate meal charges of their responsibility to ensure that free and reduced-price meals are served to children unable to pay the full price and provide to all institutions a copy of the Secretary's income standards to be used by institutions for determining the eligibility of enrolled children for free and reduced-price meals under the Program.

(f) *Program expansion.* Each State agency shall take action to expand the availability of benefits under this Program. As a minimum, the State shall annually notify each nonparticipating child care center, outside-school-hours care center, and day care home within the State that is licensed, approved, registered, or receiving funds under Title XX of the availability of the Program, the requirements for Program participation, and the application procedures to be followed in the Program. The State agency shall make the list of child care centers, outside-school-hours care centers, and day care homes notified each year available to the public upon request.

(g) *Commodity distribution.* The State shall annually inquire as to the preference of each institution for commodities or cash-in-lieu of commodities. Each institution electing cash-in-lieu of commodities shall receive such payments. Each institution which elects to receive commodities shall have commodities provided to it unless the State agency, after consultation with the State commodity distribution agency, demonstrates to FNS that distribution of commodities to the number of such institutions would be impracticable. The State agency may then, with the concurrence of FNS, provide cash-in-lieu of commodities for all institutions. A State agency request for cash-in-lieu of all commodities shall be submitted to FNS not later than May 1 of the school year preceding the school year for which the request is made. The State agency shall, by June 1 of each year, submit a list of institutions which have elected to receive commodities to the State commodity distribution agency, unless FNS has approved a request for cash-in-lieu of commodities for all institutions. The list shall be accompanied by information on the average daily number of lunches and suppers to be served to children by each such

institution. The State agency may, with the concurrence of the State distribution agency, permit institutions to change their choice between commodities and cash-in-lieu of commodities during the same fiscal year.

(h) *Standard contract.* Each State agency shall develop a standard contract in accordance with § 226.21 and provide for its use between institutions and food service management companies. The contract shall expressly and without exception stipulate:

(1) The institution shall provide the food service management company with a list of the State agency approved child care centers, day care homes, and outside school-hours care centers to be furnished meals by the food service management company, and the number of meals, by type, to be delivered to each location;

(2) The food service management company shall maintain such records (supported by invoices, receipts or other evidence) as the institution will need to meet its responsibilities under this part, and shall promptly submit invoices and delivery reports to the institution no less frequently than monthly;

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

(4) The meals served under the contract shall conform to the cycle menus upon which the bid was based, and to menu changes agreed upon by the institution and food service management company;

(5) The books and records of the food service management company pertaining to the institution's food service operation shall be available for inspection and audit by representatives of the State agency, of the Department, and of the U.S. General Accounting Office at any reasonable time and place, for a period of 3 years from the date of receipt of final payment under the contract, or in cases where an audit requested by the State agency or the Department remains unresolved, until such time as the audit is resolved;

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

(7) The food service management company shall not be paid for meals which are delivered outside of the agreed upon delivery time, are spoiled or unwholesome at the time of delivery, or do not otherwise meet the meal requirements contained in the contract;

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

(9) Increases and decreases in the number of meal orders may be made by the institution, as needed, within a prior notice period mutually agreed upon in the contract;

(10) All meals served under the Program shall meet the requirements of § 226.20;

(11) All breakfasts, lunches, and suppers delivered for service in outside-school-hours care centers shall be unitized, with or without milk, unless the State agency determines that unitization would impair the effectiveness of food service operations. For meals delivered to child care centers and day care homes, the State agency may require unitization, with or without milk, of all breakfasts, lunches, and suppers only if the State agency has evidence which indicates that this requirement is necessary to ensure compliance with § 226.20.

(i) *Procurement provisions.* State agencies shall require institutions to adhere to the procurement provisions set forth in § 226.22.

(j) *Institution appeal procedures.* Each State agency shall establish an appeal procedure to be followed by an institution requesting a review of a denial of an institution's application for participation, a denial of an application submitted by a sponsoring organization on behalf of a facility, a termination of the participation of an institution or facility, a suspension of an institution's agreement, a denial of an institution's application for start-up payments, a denial of an advance payment, a denial of all or a part of the claim for reimbursement, demand for the remittance of an overpayment, and any other action of the State agency affecting the participation of an institution in the Program or the institution's claim for reimbursement. At a minimum, the procedure shall provide that:

(1) The institution shall be advised in writing of the grounds on which the State agency based its action. The notice of action, which shall be sent by certified mail, return receipt requested, shall also include a full description of the institution's rights and responsibilities under this section;

(2) The written request for review shall be filed by the appellant not later than 15 calendar days from the date the appellant received the notice of action, and the State shall acknowledge the receipt of the request for appeal within 10 calendar days;

(3) The appellant may refute the charges contained in the notice of action in person and by written documentation to the review official. In order to be considered, written documentation must be filed with the review official not later than 30 calendar days after the appellant received the notice of action. The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant institution's representative to appear at a scheduled hearing shall constitute the appellant institution's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing;

(4) If the appellant has requested a hearing, the appellant shall be provided with at least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing;

(5) Any information on which the State agency's action was based shall be available to the appellant for inspection from the date of receipt of the request for review;

(6) The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section;

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

(8) Within 60 calendar days of the State agency's receipt of the request for review, the review official shall inform the State agency and the appellant of the determination of the review;

(9) The State agency's action shall remain in effect during the appeal process. However, participating institutions and facilities may continue to operate under the Program during an appeal of termination, unless the action is based on imminent dangers to the health or welfare of children. If the

institution or facility has been terminated for this reason, the State agency shall so specify in its notice of action; and

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

(k) *Program assistance.* Each State agency shall provide technical and supervisory assistance to institutions and facilities to facilitate effective Program operations, monitor progress toward achieving Program goals, and ensure compliance with the Department's nondiscrimination regulations (Part 15 of this title) issued under Title VI of the Civil Rights Act of 1964. Documentation of supervisory assistance activities, including reviews conducted, corrective actions prescribed, and follow-up efforts, shall be maintained on file by the State agency. Program reviews shall assess institutional compliance with meal requirements, family-sized and income documentation where applicable, financial management standards, and non-discrimination regulations. The State agency shall annually review 33.3 percent of all institutions, including reviews of 15 percent of the child care centers and outside-school-hours care centers under each sponsoring organization reviewed, and 10 percent of the first 1,000 day care homes and 5 percent of the homes in excess of 1,000 under each sponsoring organization reviewed. Such reviews shall be made for newly participating sponsoring organizations with five or more child care facilities within the first 90 days of Program operations. The State agency review system shall ensure that all institutions are reviewed at least once every four years.

(l) *Program irregularities.* Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. State agencies shall maintain on file evidence of such investigations and actions. FNS and OIG may make investigations at the request of the State agency, or whenever FNS or OIG determines that investigations are appropriate.

(m) *Child care standards compliance.* The State agency shall, when conducting administrative reviews of child care centers, outside-school-hours care centers, and day care homes approved by the State agency under paragraphs (d) (3) and (4) of this section, determine compliance with the child care standards used to establish eligibility and ensure that all violations are corrected. If violations are not corrected within 60 calendar days of written notification to the institution, the State agency shall terminate the Program participation of the violating institution or facility. However, if the health or safety of the children is imminently threatened, the State agency may immediately terminate participation of the institution or facility. If, during an administrative review of a child care center, outside-school-hours care center, or day care home not approved by the State agency under paragraphs (d) (3) and (4) of this section, the State agency observes violations of applicable health, safety, or staff-child ratio standards, or attendance in excess of licensed capacity, the State agency shall promptly refer such violations to the appropriate authority. The State agency may deny reimbursement for meals served to attending children in excess of authorized capacity.

(n) *Sponsoring organization agreement.* Each State agency shall develop and provide for the use of a standard form of agreement between each day care home sponsoring organization and all day care homes participating in the Program under such organization. State agencies may develop a similar form for use between sponsoring organizations and other types of facilities.

§ 226.7 State agency responsibilities for financial management.

(a) This section prescribes standards of financial management systems in administering Program funds by the State agency and institutions.

(b) Each State agency shall maintain an acceptable financial management system, adhere to financial management standards and otherwise carry out financial management policies as delineated in the Uniform Federal Assistance Regulations, at 7 CFR Part 3015.

(c) *Management evaluations and audits.* State agencies shall provide FNS with full opportunity to conduct management evaluations (including visits to institutions and facilities) of all operations of the State agency under the Program and shall provide OIG with full opportunity to conduct audits (including visits to institutions and facilities) of all operations of the State agency under the Program. Within 60 calendar days of receipt of each management evaluation report, the State agency shall submit to FNSRO a written plan for correcting serious deficiencies, including specific timeframes for accomplishing corrective actions and initiating follow-up efforts. Each State agency shall make available its records, including records of the receipt and expenditure of funds, upon request by FNS or OIG. OIG shall also have the right to make audits of the records and operation of any institution.

(d) *Reports.* Each State agency shall submit information to FNS on Program operations on a monthly and quarterly basis, and on the use of Program funds on a quarterly basis. FNS may require that each State agency submit an annual report on the scope of Program operations.

(e) *Annual plan.* Each State shall submit to the Secretary for approval by August 15 of each year an annual plan for the use of State administrative expense funds, including a staff formula for State personnel.

(f) *Rate assignment.* Each State agency shall require institutions (other than sponsoring organizations for day care homes) to submit, not less frequently than annually, information necessary to assign rates of reimbursement as outlined in § 226.9.

(g) *Administrative budget approval.* The State agency shall approve institution administrative budgets, and shall limit allowable administrative costs claimed by each sponsoring organization for day care homes to administrative costs approved in its annual budget. The State agency may establish such administrative costs limits for other institutions. Administrative budget levels may be adjusted to reflect changes in Program activities.

(h) *Start-up payments.* Each State agency shall establish procedures for evaluating requests for start-up payments, issuing these payments to eligible sponsoring organizations, and monitoring the use of these payments.

(i) *Advance payments.* Each State agency shall establish procedures for issuing advance payments by the first day of each month and comparing these payments with earned reimbursement on a periodic basis.

(j) *Recovery of overpayments.* Each State agency shall establish procedures to recover outstanding start-up and advance payments from institutions which, in the opinion of the State agency, will not be able to earn these payments.

(k) *Claims processing.* Each State agency shall establish procedures for institutions to properly submit claims for reimbursement. All valid claims shall be paid within 45 calendar days of receipt. Within 15 calendar days of receipt of any incomplete or incorrect claim which must be revised for payment, the State agency shall notify the institution as to why and how such claim must be revised. If the State agency disallows

partial or full payment for a claim for reimbursement, it shall notify the institution which submitted the claim of its right to appeal under § 226.6(j). State agencies may permit disallowances to be appealed separately from claims for reimbursement.

(l) *Participation controls.* The State agency may establish control procedures to ensure that payment is not made for meals served to children attending in excess of the authorized capacity of each independent center or child care facility.

(m) *Financial management system.* Each State agency shall establish a financial management system in accordance with the Uniform Federal Assistance Regulations, 7 CFR Part 3015, and FNS guidance to identify allowable Program costs and establish standards for institutional recordkeeping and reporting. These standards shall (1) prohibit claiming reimbursement for meals provided by a child's parents, except as authorized by § 226.18(e) and (2) allow the cost of meals served to adults who perform necessary food service labor under the Program, except in day care homes. The State agency shall provide guidance on financial management requirements to each institution.

§ 226.8 Audits.

(a) The State agency shall provide for audits at the State and institution levels of Program funds, payments and operations. Such audits shall be conducted at least once every 2 years for each institution. Organization-wide audits of institutions receiving other Federal funds may be counted toward meeting this requirement. The audits shall determine the fiscal integrity of financial transactions and reports, and compliance with applicable laws and regulations. Audits may be made by:

(1) State agency internal auditors;

(2) State Auditors General;

(3) State Comptrollers Office;

(4) other comparable State or local groups;

(5) certified public accountants;

(6) public accountants licensed on or before December 31, 1970, currently certified or licensed by the regulatory authority of the State or other political subdivision of the United States.

(b) Except with the written approval of FNSRO, State agencies shall not permit institutions either to select an auditing firm or to disburse funds provided to the State agency for the conduct of audit under § 228.4(h).

(c) In conducting audits during any fiscal year, the State agency shall establish priorities for using the funds provided for in § 226.4(h) first to meet the fiscal audit requirements outlined in this section. Costs pertaining to such audits shall not be borne in whole or in part by the institution. Such audits shall be fiscal audits conducted in accordance with the Department's guidelines. After fulfilling the audit requirements any remaining funds may be used by the State agency, during the fiscal year for which the funds are allocated, to conduct administrative reviews of program operations in institutions. If the funds provided under § 226.4(h) are not sufficient to meet the requirements of this section, the State agency may use available State administrative expense funds to conduct audits.

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

(e) In making management evaluations or audits for any fiscal year, the State agency or OIG may disregard any overpayment which does not exceed $35 or, in the case of State agency administered programs, does not exceed the amount established under State law, regulations or procedures as a minimum amount for which claims will be made for State losses generally. No overpayment shall be disregarded, however, where there are unpaid claims of the same fiscal year from which the overpayment can be deducted, or where there is evidence of violation of criminal law or civil fraud statutes.

(f) While OIG shall rely to the fullest extent feasible upon State sponsored audits, OIG may, whenever it considers necessary:

(1) Make audits on a statewide basis;

(2) Perform on-site test audits;

(3) Review audit reports and related working papers of audits performed by or for State agencies.

Subpart D—Payment Provisions

§ 226.9 Assignment of rates of reimbursement for centers.

(a) The State agency shall assign rates of reimbursement, not less frequently than annually, on the basis of family-size and income information reported by each institution. Assigned rates of reimbursement may be changed more frequently than annually if warranted by changes in family-size and income information. Assigned rates of reimbursement shall be adjusted annually to reflect changes in the national average payment rates.

(b) The State agency shall either:

(1) Require that institutions submit each month figures for meals served daily to children from families meeting the family-size and income standards for free meals, to children from families meeting the family-size and income standards for reduced-price meals, and to children from families not meeting such guidelines; or

(2) Establish claiming percentages, not less frequently that annually, for each institution on the basis of the number of enrolled children eligible for free, reduced-price, and paid meals; or

(3) Determine a blended per-meal rate of reimbursement, not less frequently than annually, by adding the products obtained by multiplying the applicable national average payment rate of reimbursement for each category (free, reduced-price, paid) by the claiming percentage for that category.

(c) The State agency may elect to pay an institution's final claim for reimbursement for the fiscal year at higher reassigned rates of reimbursement for lunches and suppers; however, the reassigned rates may not exceed the applicable maximum rates of reimbursement established under § 210.11(b) of the National School Lunch Program regulations. The total payments made to an institution shall not exceed the total net costs incurred for the fiscal year.

§ 226.10 Program payment procedures.

(a) Each State agency shall provide an advance payment to each institution by the first day of each month of operation. However, any institution may decline to receive all or part of an advance payment. The first advance payment of the fiscal year to each institution shall approximate the full amount of the average monthly reimbursement paid to the institution during the prior 6 months of operation except that the State agency may adjust the amount of advance payment to the full amount of reimbursement which the State agency has estimated the institution will earn in the month for which the advance payment is made. Advance payments to newly participating institutions shall equal the amount of reimbursement which the State agency has estimated the institution will earn in the month for which the advance payment is made.

(b) If the State agency has reason to believe that an institution will not able to submit a valid claim for reimbursement, such as failure to submit a claim for reimbursement as required by this section or audit or monitoring evidence of extensive Program deficiencies, advance payments shall be withheld until the claim is received or the deficiencies are corrected. The State agency shall notify the institution of the reason for withholding the advance and

allow the institution full opportunity to submit evidence on appeal as provided for in § 226.6(j). After three advance payments have been made to an institution the State agency shall establish procedures to ensure that no subsequent advance payment is made to such institution until the State agency has validated the institution's claim for reimbursement for the third month prior to the month for which the advance is to be paid. Claims for reimbursement and other information should be utilized to adjust the amount of advance payments to reflect the current amount needed by the institution for one month's operation. During the fiscal year, if the State agency determines that the amount of advance payments paid to an institution, less reimbursement earned by the institution, will not be earned by claims for reimbursement anticipated for the remainder of the fiscal year, the State agency may demand full or partial repayment of the outstanding balance. At the end of the fiscal year, unearned payments advanced to institutions shall be repaid to the State agency upon demand, or deducted from payments during the following fiscal year.

(c) Claims for reimbursement shall be filed with the State agency by the 10th day of the month following the month covered by the claim. Not more than 10 days of the beginning or ending month of program operations in a fiscal year may be combined on a claim with the operations of the month immediately following the beginning month, or preceding the ending month. Claims for reimbursement may not combine the last month of a fiscal year with the first month of the next fiscal year. Claims for reimbursement shall report information in accordance with the financial management system established by the State agency, and in sufficient detail to justify the reimbursement claimed. In submitting a claim for reimbursement, each institution shall certify that the claim is correct and that records are available to support the claim. Independent proprietary Title XX centers for months in which not less than 25 percent of enrolled children were Title XX beneficiaries shall submit the percentages of enrolled children receiving Title XX benefits for the month covered by the claim. Sponsoring organization of such centers, shall submit the percentage of enrolled children, for each center, for the claim month, receiving Title XX benefits. Sponsoring organizations of such centers shall not include in any claim those centers in which less than 25 percent of enrolled children for the month claimed were Title XX beneficiaries. Such records shall be retained for a period of three years after the date of submission of the final claim for the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the end of the three-year period as long as required for the resolution of the issues raised by the audit. All accounts and records pertaining to the Program shall be made available, upon request to representatives of the State agency, of the Department, and of the U.S. General Accounting Office for audit or review, at a reasonable time and place.

(d) The State agency may initiate procedures for suspension of an institution's agreement if any claim for reimbursement has not been submitted within 90 calendar days after the end of the month covered by the claim. Upon expiration such 90 days, the State agency shall notify the institution and afford 15 calendar days for submission of the missing claim. If the claim is not postmarked or received within 15 days, the State agency may suspend the institution's agreement, or disallow the claim, or elect not to take action. A suspended agreement shall remain suspended until such time as the claim is received and determined to be valid and correct by the State agency. Reimbursement shall not be paid for meals served during the period of suspension, nor shall the State agency make any advance payments to the institution during this period.

The State agency shall notify any institution suspended from participation under this paragraph of its rights to appeal under § 226.6(j).

(e) Claims for reimbursement for meals served during each fiscal year must be filed with the State agency prior to January 1 of the following fiscal year in order to be eligible for reimbursement. The State agency shall, as determined necessary through its administrative review process or otherwise, promptly take corrective action with respect to any such claim. Such corrective action must be completed in sufficient time to be reflected in the final Program Operations and Financial Status Report for each fiscal year if reimbursement for such claims is to be made available from that fiscal year through the letter of credit process described under the Uniform Federal Assistance Regulations. The final Program Operations and Financial Status Reports for each fiscal year must be submitted by March 1 of the following year. Any requested increase in reimbursement level for a fiscal year resulting from corrective action taken after submission of the final fiscal year Program Operations and Financial Status Reports, must be submitted to FNS for approval. The request will be accompanied by a written explanation of the basis for the adjustment and the actions taken to minimize the need for such adjustments in the future. If FNS approved of such increase, it will make payments subject to the availability of funds. Any reduction in reimbursement for that fiscal year resulting from corrective action taken after submission of the final fiscal year Program Operations and Financial Status Reports shall be handled in accordance with the provisions of the Uniform Federal Assistance Regulations except that amounts recovered may not be used to make Program payments.

(f) If a State agency has reason to believe that an institution or food service management company has engaged in unlawful acts with respect to Program Operations, evidence found in audits, investigations or other reviews shall be a basis for non-payment of claims for reimbursement.

§ 226.11 Program payments for child care centers and outside-school-hours care centers.

(a) Payments shall be made only to institutions operating under an agreement with the State agency for the meal types specified in the agreement served at approved child care centers and outside-school-hours care centers. A State agency may make payment for meals served in accordance with provisions of the Program in the calendar month preceding the calendar month in which the agreement is executed.

(b) Each institution shall report each month to the State agency the total number of meals, by type (breakfasts, lunches, suppers, and supplements), served to children, except that such reports shall be made for a proprietary Title XX center only for calendar months during which not less than 25 percent of enrolled children were Title XX beneficiaries.

(c) Each State agency shall base reimbursement to each institution on the number of meals, by type, served to children multiplied by the assigned rates of reimbursement, except that reimbursement shall be payable to proprietary Title XX centers only for calendar months during which not less than 25 percent of enrolled children were Title XX beneficiaries. In computing reimbursement, the State agency shall either: (1) Base reimbursement to institutions on actual

daily counts of meals served, and multiply the number of meals, by type, served to children from families meeting the family-size and income standards for free meals, served to children from families meeting the family-size and income standards for reduced-price meals, and served to children from families not meeting such standards by the applicable national average payment rate, or (2) apply the applicable claiming percentage or percentages to the total number of meals, by type, served to children and multiply the product or products by the assigned rate of reimbursement for each meal type, or (3) multiply the assigned blended per-meal rate of reimbursement by the total number of meals, by type, served to children.

(d) During any fiscal year, total payments to an institution, including any cash payments in lieu of commodities, shall not exceed allowable Program operating and administrative costs, less income to the Program. The State agency may limit payments for administrative costs to the amount approved in the annual administrative budget of the institution. The State agency may prohibit an institution from using payments for operating costs to pay for administrative expenses.

(e) Each institution shall maintain records as prescribed by the State agency's financial management system.

§ 226.12 Administrative payments to sponsoring organizations for day care homes.

(a) Sponsoring organizations for day care homes shall receive payments for administrative costs. During any fiscal year, administrative costs payments to a sponsoring organization may not exceed the lesser of (1) actual expenditures for the costs of administering the Program less income to the Program, or (2) the amount of administrative costs approved by the State agency in the sponsoring organization's budget, or (3) the sum of the products obtained by multiplying each month the sponsoring organization's:

(i) Initial 50 day care homes by 42 dollars;

(ii) Next 50 day care homes by 32 dollars;

(iii) Next 800 day care homes by 25 dollars; and

(iv) Additional day care homes by 22 dollars.

During any fiscal year, administrative payments to a sponsoring organization may not exceed 30 percent of the total amount of administrative payments and food service payments for day care home operations.

(b) Prospective sponsoring organizations of day care homes, participating sponsoring organizations of child care centers or outside-school-hours care centers, independent centers, and participating sponsoring organizations of fewer than 50 homes which meet the criteria of this paragraph shall be entitled to receive start-up payments to develop or expand successful Program operations in day care homes. The State agency shall approve start-up payments only once for any eligible sponsoring organization. Sponsoring organizations which apply for start-up payments shall evidence: (1) Public or nonprofit status in accordance with § 226.15(a), except that sponsoring organizations which are moving toward compliance with the requirements for IRS tax-exempt status must demonstrate current tax-exempt status under the State law and regulations; (2) an organizational history of managing funds and ongoing activities (i.e. administering public or private programs); (3) an acceptable and realistic plan for recruiting day care homes to participate in the Program, which may be based on estimates of the number of day care homes to be recruited and information supporting their existence (e.g., the method of contacting providers); and (4) acceptable preliminary sponsoring organization management plan (e.g., plans for preoperational visits, training).

The State agency shall deny start-up payments to applicant sponsoring organizations which fail to meet any of these criteria or which have demonstrated financial irresponsibility in the operation of other programs funded by Federal, State, or local governments. The State agency shall notify the sponsoring organization of the reasons for denial and allow the sponsoring organization full opportunity to submit evidence on appeal as provided for in § 226.6(j). Any sponsoring organization applying for start-up funds shall be notified of approval or disapproval by the State agency in writing within 30 calendar days of filing a complete and correct application. If a sponsoring organization submits an incomplete application, the State agency shall notify the sponsoring organization within 15 calendar days of receipt of the application and shall provide technical assistance, if necessary, to the sponsoring organization for the purpose of completing its application.

(c) Applicant sponsoring organizations which apply for and meet the criteria for start-up payments shall enter into an agreement with the State agency. The agreement shall specify:

(1) Activities which the sponsoring organization will undertake to initiate or expand Program operations in day care homes;

(2) The amount of start-up payments to be issued to the sponsoring organization, together with a budget detailing the costs which the sponsoring organization shall incur, document, and claim;

(3) The time allotted to the sponsoring organization for the initiation or expansion of Program operations in family day care homes;

(4) The responsibility of the applicant sponsoring organization to repay, upon demand by the State agency, start-up payments not expended in accordance with the agreement.

(d) Upon execution of the agreement, the State agency shall issue a start-up payment to the sponsoring organization in an amount equal to not less than one, but not more than two, month's anticipated administrative reimbursement to the sponsoring organization as determined by the State agency. However, no sponsoring organization may receive start-up payments for more than 50 day care homes, and eligible sponsoring organizations with fewer than 50 homes under their jurisdiction at the time of application for start-up funds shall receive such payments for up to 50 homes, less the number of homes under their jurisdiction. In determining the amount of start-up payments to be made to a sponsoring organization, the State agency shall consider the anticipated level of start-up costs to be incurred by the sponsoring organization and alternate sources of funds available to the sponsoring organization.

(e) Upon expiration of the time allotted to the sponsoring organization for initiating or expanding Program operations in day care homes, the State agency shall obtain and review documentation of activities performed and costs incurred by the sponsoring organization under the terms of the start-up agreement. If the sponsoring organization has not made every reasonable effort to carry out the activities specified in the agreement, the State agency shall demand repayment of all or part of the payment; however, the sponsoring organization may retain start-up payment for all day care homes which initiate Program operations. No sponsoring organization may retain any start-up payments in excess of its actual costs for the expenditures specified in the agreement.

§ 226.13 Food service payments to sponsoring organizations for day care homes.

(a) Payments shall be made only to sponsoring organizations operating under an agreement with the State agency for the meal types specified in the agreement served to enrolled nonresident children and eligible enrolled children of day care home providers, at approved day care homes.

(b) Each sponsoring organization shall report each month to the State agency the total number of meals, by type (breakfasts, lunches, suppers, and supplements), served to children enrolled in approved day care homes.

(c) Each sponsoring organization shall receive payment for meals served to children enrolled in approved day care homes at the rate of 47.75 cents for each breakfast, 93.5 cents for each lunch and supper, and 28 cents for each supplement. However, the rate for the lunches and suppers shall be reduced by the value of commodities established under § 226.5(b) for all sponsoring organizations for day care homes which have elected to receive commodities. The full amount of food service payments shall be disbursed to each day care home on the basis of the number of meals, by type, served to children. However, the sponsoring organization may withhold from Program payments to each home an amount equal to costs incurred for the provision of Program foodstuffs or meals by the sponsoring organization in behalf of the home and with the home provider's written consent.

§ 226.14 Claims against institutions

(a) State agencies shall disallow any portion of a claim for reimbursement and recover any payment to an institution not properly payable under this part. However, the State agency shall notify the institution of the reasons for any disallowance or demand for repayment, and allow the institution full opportunity to submit evidence on appeal as provided for in § 226.6(j). Miminum State agency collection procedures for unearned payments shall include: (1) Written demand to the institution for the return of improper payments; (2) if, after 30 calendar days, the institution fails to remit full payment or agree to a satisfactory repayment schedule, a second written demand for the return of improper payments sent by certified mail return receipt requested; and (3) if, after 60 days, the institution fails to remit full payment or agree to a satisfactory repayment schedule, the State agency shall refer the claim against the institution to appropriate State or Federal authorities for pursuit of legal remedies.

(b) In the event that the State agency finds that an institution which prepares its own meals is failing to meet the meal requirements of § 226.20, the State agency need not disallow payment or collect an overpayment arising out of such failure if the institution takes such other action as, in the opinion of the State agency, will have a corrective effect.

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

Subpart E—Operational Provisions

§ 226.15 Institution provisions.

(a) *Tax-exempt status.* Except for proprietary Title XX centers, and sponsoring organizations of such centers, institutions shall be public, or have tax-exempt status under the Internal Revenue Code of 1954, or be moving toward compliance with the requirements for tax-exempt status, or be currently operating another Federal program requiring nonprofit status. An institution which has applied to IRS for tax-exempt status may participate in the program while its application is pending review by IRS. If IRS denies the application for tax-exempt status, the institution shall immediately notify the State agency of such denial. The State agency shall then terminate the participation of the institution. If IRS certification of tax-exempt status has not been received within 12 months of filing the application with IRS, and IRS indicates that the institution has failed to provide all required information, the State agency shall terminate the participation of the institution until such time as IRS tax-exempt status is obtained.

(b) *Applications.* Each institution shall submit to the State agency all information required for its approval. As a minimum, such information shall include:

(1) Except for proprietary Title XX centers and sponsoring organizations of proprietary Title XX centers, evidence of nonprofit status, in accordance with § 226.15(a);

(2) An application for participation, or application renewal materials, accompanied by all necessary supporting documentation;

(3) An administrative budget;

(4) If an independent child care center or independent outside-school-hours care center, documentation that it meets the licensing/approval requirements of § 226.6(d)(1);

(5) A nondiscrimination and free and reduced-price policy statement, and information regarding a public release, in accordance with § 226.23; and

(6) For each proprietary Title XX center, documentation that it provides nonresidential day care services for which it receives compensation under Title XX of the Social Security Act and certification that not less then 25 percent of the children enrolled during the most recent calendar month were Title XX beneficiaries. Sponsoring organizations shall provide documentation and certification for each proprietary Title XX center under their jurisdiction.

(c) *Responsibility.* Each institution shall accept final administrative and financial responsibility for Program operations. No institution may contract out for management of the Program.

(d) *Staffing.* Each institution shall provide adequate supervisory and operational personnel for management and monitoring of the Program.

(e) *Recordkeeping.* Each institution shall establish procedures to collect and maintain all necessary Program records. Such records shall include:

(1) Copies of all applications and supporting documents submitted to the State agency;

(2) Documentation of the enrollment of each child, including family-size and income information used to determine eligibility for free or reduced-price meals for each child reported as being in either need category, at child care centers and outside-school-hours care centers. Such information shall include the social security number of each adult member of the household.

(3) Documentation of the enrollment of each child at day care homes and the family size and income information used to determine the eligibility of enrolled providers' children for free or reduced-price meals. Such information shall include the social security number of each adult member of the household of which the provider's child is a member.

(4) Daily records indicating the number of children in attendance and the number of meals, by type (breakfast, lunch, supper, and supplements), served to enrolled children;

(5) Except at day care homes, daily records indicating the number of meals,

by type, served to adults performing labor necessary to the food service;

(6) Copies of invoices, receipts, or other records required by the State agency financial management instruction to document:

(i) Administrative costs claimed by the institution;

(ii) Operating costs claimed by the institution except sponsoring organizations of day care homes; and

(iii) Income to the Program.

(7) Copies of all claims for reimbursement submitted to the State agency;

(8) Receipts for all Program payments received from the State agency;

(9) Copies of menus, and any other food service records required by the State agency; and

(10) Information on training session date(s) and location(s), as well as topics presented and names of participants.

(f) *Claims submission.* Each institution shall submit claims for reimbursement to the State agency in accordance with § 226.10.

(g) *Program agreement.* Each institution shall enter into a Program agreement with the State agency in accordance with § 226.6(e)(1).

(h) *Commodities.* Each institution receiving commodities shall ensure proper commodity utilization.

(i) *Special Milk Program.* No institution may participate in both the Child Care Food Program and the Special Milk Program at the same time.

§ 226.16 Sponsoring organization provisions.

(a) Each sponsoring organization shall comply with all provisions of § 226.15.

(b) Each sponsoring organization shall submit to the State agency all information required for its approval and the approval of all child care facilities under its jurisdiction, including:

(1) A sponsoring organization management plan, in accordance with § 226.6(e)(2);

(2) An application for participation, or renewal materials, for each child care facility accompanied by all necessary supporting documentation; and

(3) Timely information concerning the eligibility status of child care facilities (such as licensing/approval actions).

(c) Each sponsoring organization shall accept final administrative and financial responsibility for food service operations in all child care facilities under its jurisdiction.

(d) Each sponsoring organization shall provide adequate supervisory and operational personnel for the effective management and monitoring of the program at all child care facilities under its jurisdiction. At a minimum, such Program assistance shall include:

(1) Pre-approval visits to each child care facility for which application is made to discuss Program benefits and verify that the proposed food service does not exceed the capability of the child care facility;

(2) Staff training for all child care facilities in Program duties and responsibilities prior to beginning Program operations;

(3) Additional training sessions, to be provided not less frequently than annually; and

(4) Reviews of food service operations to assess compliance with meal pattern, recordkeeping, and other Program requirements. Such reviews shall be made not less frequently than:

(i) Three times each year at each child care center, provided at least one review is made during each child care center's first six weeks of Program operations and not more than six months elapses between reviews;

(ii) Three times each year at each day care home, provided at least one review is made during each day care home's first four weeks of Program operations and not more than six months elapse between reviews; and

(iii) Six times each year for each outside-school-hours care center, provided at least one review is made during each outside-school-hours care center's first four weeks of Program operations and not more than three months elapse between reviews.

(e) In addition to records required under § 226.15(e), each sponsoring organization shall maintain the following:

(1) Information concerning the dates and amounts of disbursements to each child care facility;

(2) Information concerning the location and dates of each child care facility review, any problems noted, and the corrective action prescribed and effected.

(f) The State agency may require a sponsoring organization to enter into separate agreements for the administration of separate types of child care facilities (child care centers, day care homes, and outside-school-hours care centers).

(g) Each sponsoring organization electing to receive advance payments for day care homes may disburse such payments to each of the operating homes under its jurisdiction immediately upon receipt from the State agency, but shall disburse such payments to each home not later than the fifth working day following receipt of the home's records for the month for which the advance is payable. If advance payments are disbursed by the sponsoring organization prior to receipt of each home's records, such payments shall be based on the number of meals projected to be served to enrolled children at each day care home during the period covered by the advance, multiplied by the applicable payment rate as specified in § 226.13(c). Each sponsoring organization shall disburse any reimbursement payments for food service due to each operating home within 15 working days of receipt from the State agency. Such payment shall be based on the number of meals served to enrolled children at each day care home, less any payments advanced to such home. However, the sponsoring organization may withhold from Program payments to each home an amount equal to food service operating costs incurred by the sponsoring organization in behalf of the home and with the home provider's written consent. If payments from the State agency are not sufficient to provide all day care homes under the sponsoring organization's jurisdiction with advance payments and reimbursement payments, available monies shall be used to provide all due reimbursement payments before advances are disbursed.

(h) Disbursements from sponsoring organizations for child care centers or outside-school-hours care centers shall be made within fifteen working days of receipt of payment, on the basis of the management plan approved by the State agency, and may not exceed the Program costs documented at each facility during any fiscal year.

(i) Disbursements of advance payments may be withheld from child care facilities which fail to submit reports required by § 226.15(e).

(j) Each sponsoring organization shall maintain all Program payments in a non-interest bearing account between the date of receipt from the State agency and the date of disbursement.

(k) A for-profit organization shall be eligible to serve as a sponsoring organization for proprietary Title XX centers which have the same legal identity as the organization, but shall not be eligible to sponsor proprietary Title XX centers which are legally distinct from the organization, day care homes, or public or private nonprofit centers.

§ 226.17 Child care center provisions.

(a) Child care centers may participate in the Program either as independent centers or under the auspices of a sponsoring organization; provided, however, that public and private

nonprofit centers shall not be eligible to participate in the Program under the auspices of a for-profit sponsoring organization. Child care centers participating as independent centers shall comply with the provisions of § 226.15.

(b) All child care centers, independent or sponsored, shall meet the following requirements:

(1) Child care centers shall have Federal, State, or local licensing or approval to provide day care services to children. Child care centers which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates that renewal will be denied. If licensing or approval is not available, a center may participate if:

(i) It receives Title XX funds for child care; or

(ii) It demonstrates compliance with the CCFP Child Care Standards or any applicable State or local child care standards to the State Agency.

(2) Except for proprietary Title XX centers, child care centers shall be public, or have tax exempt status under the Internal Revenue Code of 1954, or be moving toward compliance with the requirements for tax-exempt status, or be currently operating another Federal program requiring nonprofit status. A child care center which has applied to the Internal Revenue Service (IRS) for tax-exempt status may participate in the Program while its application is pending review by IRS. If IRS denies the application for tax-exempt status, the child care center shall immediately notify the State agency of such denial and the State agency shall terminate the participation of the child care center. If IRS certification of nonprofit status has not been received within 12 months of filing the application with IRS, and IRS indicates that the child care center has failed to provide all required information, the State agency shall terminate the participation of the child care center until such time as IRS tax-exempt status is obtained.

(3) Each child care center participating in the Program shall serve one or more of the following meal types: (i) breakfast, (ii) lunch, (iii) supper, and (iv) supplemental food. Reimbursement shall not be claimed for more than two meals and one supplement provided daily to each child.

(4) Each child care center participating in the Program shall claim only the meal types specified in its approved application in accordance with the meal pattern requirements specified in § 226.20. Reimbursement may not be claimed for meals served to children who are not enrolled, or for meals served to children at any one time in excess of the child care center's authorized capacity, or for any meal served at a proprietary Title XX center during a calendar month when less than 25 percent of enrolled children were Title XX beneficiaries. Menus and any other nutritional records required by the State agency shall be maintained to document compliance with such requirements.

(5) A child care center with pre-school children may also be approved to serve a breakfast, supplement, and supper to school-age children enrolled in an outside-school-hours care program meeting the criteria of § 226.19(b) which is distinct from its day care program for preschool-age children. The State agency may authorize the service of lunch to such enrolled children who attend a school which does not offer a lunch Program provided the limit of not more than two meals and one supplement per child per day is not exceeded. If the majority of children served by the center are participating in an outside-school-hours care program, the center shall comply with reporting requirements of § 226.19 and, if it is a facility, shall be monitored by the sponsoring organization at the frequency specified in § 226.16(d)(4)(iii).

(6) A child care center may utilize existing school food service facilities or obtain meals from a school food service facility, and the pertinent requirements of this part shall be embodied in a written agreement between the child care center and school. The center shall maintain responsibility for all Program requirements set forth in this part.

(7) Child care centers shall collect and maintain current family-size and income information and the social security number of adult household members for children classified as eligible for free and reduced-price meals, and documentation of the enrollment of children not eligible for free or reduced-price meals.

(8) Each child care center shall maintain daily records of the number of meals by type (breakfast, lunch, supper, and supplements) served to enrolled children, and to adults performing labor necessary to the food service.

§ 226.18 Day care home provisions.

(a) Day care homes shall have current Federal, State or local licensing or approval to provide day care services to children. Day care homes which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates that renewal will be denied. If licensing or approval is not available, a day care home may participate in the Program if:

(1) It receives Title XX funds for providing child care; or

(2) It demonstrates compliance with CCFP child care standards or applicable State or local child care standards to the State agency.

(b) Day care homes participating in the program shall operate under the auspices of a public or private nonprofit sponsoring organization. Sponsoring organizations shall enter into a written agreement, developed by the State agency, with each sponsored day care home to specify the rights and responsibilities of both parties. At a minimum, the agreement shall embody:

(1) The right of the sponsoring organization, the State agency, and the Department to visit the day care home and review its meal service and records during its hours of child care operations;

(2) The responsibility of the sponsoring organization to train the day care home's staff in program requirements;

(3) The responsibility of the day care home to prepare and serve meals which meet the meal patterns specified in § 226.20;

(4) The responsibility of the day care home to maintain records of menus, and of the number of meals, by type, served to enrolled children;

(5) The responsibility of the day care home to promptly inform the sponsoring organization about any change in the number of children enrolled for care or in its licensing or approval status;

(6) The meal types approved for reimbursement to the day care home by the State agency;

(7) The right of the day care home to receive in a timely manner the full food service rate for each meal served to enrolled children for which the sponsoring organization has received payment from the State agency. However, if, with the home provider's consent, the sponsoring organization will incur costs for the provision of program foodstuffs or meals in behalf of the home, and subtract such costs from Program payments to the home, the particulars of this arrangement shall be specified in the agreement;

(8) The right of the sponsoring organization or the day care home to terminate the agreement for cause or convenience; and

(9) A prohibition of any sponsoring organization fee to the day care home for its Program administrative services.

(c) Each day care home shall serve one or more of the following meal types:

(1) Breakfast, (2) Lunch, (3) Supper and (4) Supplemental food. Reimbursement shall not be claimed for more than two meals and one supplement provided daily to each child.

(d) Each day care home participating in the program shall serve the meal types specified in its approved application in accordance with the meal pattern requirements specified in § 226.20. Menu records shall be maintained to document compliance with these requirements. Meals shall be served at no separate charge to enrolled children;

(e) Each day care home shall maintain daily records of the number of children in attendance and the number of meals, by type, served to enrolled children. Payment may be made for meals served to the provider's own children only when (1) such children are enrolled and participating in the child care program during the time of the meal service, (2) enrolled nonresident children are present and participating in the child care program and (3) providers' children meet the family-size income standards for free or reduced-price meals. Reimbursement may not be claimed for meals served to children who are not enrolled, or for meals served at any one time to children in excess of the home's authorized capacity or for meals served to providers' children who are not eligible for free or reduced-price meals.

(f) The State agency may not require a day care home or sponsoring organization to maintain documentation of home operating costs. The State agency may not require a sponsoring organization to provide family size and income data on children enrolled in homes under its jurisdiction except in the case of providers' own children for the purpose of determining the eligibility of such children for program participation.

§ 226.19 Outside-school-hours care center provisions.

(a) Outside-school-hours care centers may participate in the Program either as independent centers or under the auspices of a sponsoring organization; Provided, however, that public and private nonprofit centers shall not be eligible to participate in the Program under the auspices of a for-profit sponsoring organization. Outside-school-hours care centers participating as independent centers shall comply with the provisions of § 226.15.

(b) All outside-school-hours care centers, independent or sponsored, shall meet the following requirements:

(1) Outside-school-hours care centers shall have current Federal, State or local licensing or approval to provide organized child care services to enrolled school-age children outside of school hours. The main purpose of the Program shall be the care and supervision of children. Outside-school-hours care centers which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates the renewal will be denied. If licensing or approval is not available, an outside-school-hours care center may participate in the Program if:

(i) It receives Title XX funds for providing child care; or

(ii) It demonstrates compliance with CCFP child care standards or any applicable State or local child care standards to the State agency.

(2) Except for proprietary Title XX centers, outside-school-hours care centers shall be public, or have tax-exempt status under the Internal Revenue Code of 1954, or be moving toward compliance with the requirements for tax-exempt status, or be currently participating in another Federal program requiring nonprofit status. Centers which have applied to IRS for tax-exempt status may participate in the Program while their application is pending review by IRS. If IRS denies the application, the center shall immediately notify the State agency of such denial and the State agency shall terminate the participation of the center. If IRS certification of nonprofit status has not been received within 12 months of filing the application with IRS and IRS indicates that the center has failed to provide all required information, the State agency shall terminate the participation of the center in the Program until such time as IRS certification is obtained.

(3) Nonresidential public or private nonprofit schools which provide organized child care programs for school children may participate in the Program as outside-school-hours care centers if:

(i) Children are enrolled in a regularly scheduled child care program which meets the criteria of paragraph (b)(1) of this section. The program is organized for the purpose of providing child care services and is distinct from any extracurricular programs organized primarily for scholastic, cultural, and athletic purposes; and

(ii) Separate Program records are maintained.

(4) Outside-school-hours care centers shall be eligible to serve a breakfast, supplement, and supper to enrolled children outside of school hours.

(5) The State agency may authorize the service of lunch on weekdays to enrolled children attending schools which do not offer a lunch program provided the limit of not more than two meals and one supplement per child per day is not exceeded. Lunch may be served to all enrolled children during periods of school vacation, including weekends and holidays, provided that no more than two meals and one supplement is served per child per day. However, outside-school-hours care centers may not operate under the Program on weekends only.

(6) Each outside-school-hours care center participating in the Program shall claim only the meal types specified in its approved application and served in compliance with the meal pattern requirements of § 226.20. Reimbursement shall not be claimed for more than two meals and one supplement provided daily to each child. In addition, reimbursement shall not be claimed for meals served to children who are not enrolled, for meals served to children at any one time in excess of authorized capacity, or for any meal served at a proprietary Title XX center during a calendar month when less than 25 percent of enrolled children were Title XX beneficiaries.

(7) Three hours shall elapse between the beginning of one meal service and the beginning of another, except that 4 hours shall elapse between the service of a lunch and supper when no supplement is served between lunch and supper. The service of a supper shall begin no later than 7 p.m. and end no later than 8 p.m. The duration of the meal service shall be limited to 2 hours for lunches and supper and 1 hour for other meals.

(8) Each outside-school-hours care center shall ensure that each meal service is supervised by an adequate number of operational personnel trained in Program requirements. Operational personnel shall ensure that: (i) meals are served only to children enrolled for care and adults who perform necessary food service labor; (ii) meals served to children meet the meal pattern requirements specified in § 226.20; (iii) each meal service is consistent with the meal time requirements of paragraph (b)(7) of this section; (iv) meals served are consumed on the premises of the centers; (v) accurate records are maintained; and (vi) the number of meals prepared or ordered is promptly adjusted on the basis of participation trends.

(9) Each outside-school-hours care center shall accurately maintain the following records:

(i) Documentation of enrollment for all children, including current family-size and income information for children

classified as eligible for free and reduced-price meals;

(ii) Number of meals prepared or delivered for each meal service;

(iii) Daily menu records for each meal service;

(iv) Number of meals served to enrolled children at each meal service;

(v) Number of enrolled children in attendance during each meal service;

(vi) Number of meals served to adults performing necessary food service labor for each meal service; and

(vii) All other records required by the State agency financial management system.

(10) An outside-school-hours care center may utilize existing school food service facilities or obtain meals from a school food service facility, and the pertinent requirements of this part shall be embodied in a written agreement between the outside-school-hours care center and the school. The center shall maintain responsibility for all Program requirements set forth in this part.

§ 226.20 Requirements for meals.

(a) Except as otherwise provided in this section, each meal served in the Program shall contain, as a minimum, the indicated food components:

(1) A breakfast shall contain:

(i) A serving of fluid milk as a beverage or on cereal, or used in part for each purpose;

(ii) A serving of vegetable(s) or fruit(s) or full-strength vegetable or fruit juice, or an equivalent quantity of any combination of these foods;

(iii) A serving of whole-grain or enriched bread; or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or a serving of whole-grain or enriched or fortified cereal; or a serving of cooked whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as rice, bulgur, or corn grits; or an equivalent quantity of any combination of these foods.

(2) Both lunch and supper shall contain:

(i) A serving of fluid milk as a beverage;

(ii) A serving of lean meat, poultry or fish; or cheese; or an egg; or cooked dry beans or peas; or peanut butter; or an equivalent quantity of any combination of these foods. These foods must be served in a main dish, or in a main dish and one other menu item, to meet this requirement. Cooked dry beans or dry peas may be used as the meat alternate or as part of the vegetable/fruit component but not as both food components in the same meal;

(iii) A serving of two or more vegetables or fruits, or a combination of both. Full-strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement;

(iv) A serving of whole-grain or enriched bread; or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or a serving of whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as rice, bulgur, or corn grits; or an equivalent quantity of any combination of these foods.

(3) Supplemental food shall be served between other meal types and contain two of the following four components:

(i) A serving of fluid milk as a beverage, or on cereal, or used in part for each purpose;

(ii) A serving of meat or meat alternate;

(iii) A serving of vegetable(s) or fruit(s) or full-strength vegetable or fruit juice, or an equivalent quantity of any combination of these foods. Juice may not be served when milk is served as the only other component;

(iv) A serving of whole-grain or enriched bread; or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or a serving of cooked whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as rice, bulgar, or corn grits; or an equivalent quantity of any combination of these foods.

(b) *Infant meal pattern.* When infants aged up to 1 year participate in the Program, an infant meal shall be offered. Foods within the infant meal pattern shall be of texture and consistency appropriate for the particular age group being served. The total amount of food authorized in the meal patterns set forth below must be provided to the infant in order to qualify for reimbursement but may be served during a span of time consistant with the infant's eating habits. Solid food should be introduced to children age 4 months and older on a gradual basis with the intent of ensuring their nutritional well-being. The infant meal shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age group:

(1) *Age 0 up to 4 months:*

(i) Breakfast—4–6 fluid ounces of infant formula;

(ii) Lunch or supper—4–6 fluid ounces of infant formula;

(iii) Supplemental food—4–6 fluid ounces of infant formula.

(2) *4 to 8 months:*

(i) Breakfast—6–8 fluid ounces of infant formula; 1–3 tablespoons of infant cereal;

(ii) Lunch or supper—6–8 fluid ounces of infant formula; 1–2 tablespoons of infant cereal; 1–2 tablespoons of fruit or vegetable of appropriate consistency or a combination of both; 0–1 tablespoon of meat, fish, poultry, or egg yolk or 0–½ ounce (weight) of cheese or 0–1 ounce (weight or volume) of cottage cheese or cheese food or cheese spread of appropriate consistency;

(iii) Supplemental food—2–4 fluid ounces of infant formula or full-strength fruit juice; 0–¼ slice of crusty bread or 0–2 cracker type products made from whole-grain or enriched meal or flour that are suitable for an infant for use as a finger food when appropriate.

(3) *8 months up to 1 year:*

(i) Breakfast—6–8 fluid ounces of infant formula, or 6–8 fluid ounces of whole fluid milk and 0–3 fluid ounces of full-strength fruit juice; 2–4 tablespoons infant cereal;

(ii) Lunch or supper—6–8 fluid ounces of infant formula, or 6–8 fluid ounces whole fluid milk or 0–3 fluid ounces of full-strength fruit juice; 3–4 tablespoons of fruit or vegetable of appropriate consistency or infant cereal or combinations of such foods; 1–4 tablespoons of meat, fish, poultry, or egg yolk or ½–2 ounces (weight) of cheese or 1–4 ounces (weight or volume) of cottage cheese or cheese food or cheese spread of appropriate consistency; and

(iii) Supplementary food—2–4 fluid ounces of infant formula or whole fluid milk or full strength fruit juice; 0–¼ slice of crusty bread or 0–2 cracker type products made from whole-grain or enriched meal or flour that are suitable for an infant for use as a finger food when appropriate.

(c) *Meal patterns for children age one through 12.* When children over age one participate in the Program, the total amount of food authorized in the meal patterns set forth below shall be provided in order to qualify for reimbursement.

Breakfast

(c)(1) The minimum amount of food components to be served as breakfast as set forth in paragraph (a)(1) of this section are as follows:

Food components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12 [1]
Milk			
Milk, fluid	½ cup [2]	¾ cup	1 cup.
Vegetables and Fruits			
Vegetable(s) and/or fruit(s)	¼ cup	½ cup	½ cup.
or			
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s) and juice.	¼ cup	½ cup	½ cup.
Bread and Bread Alternates [3]			
Bread	½ slice	½ slice	1 slice.
or			
Cornbread, biscuits, rolls, muffins, etc. [4]	½ serving.	½ serving	1 serving
or			
Cold dry cereal [5]	¼ cup or ⅓ oz	⅓ cup or ½ oz	¾ cup or 1 oz.
or			
Cooked cereal	¼ cup	¼ cup	½ cup.
or			
Cooked pasta or noodle products	¼ cup	¼ cup	½ cup.
or			
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	¼ cup	¼ cup	½ cup.

[1] Children age 12 and up may be served adult-size portions based on the greater food needs of older boys and girls., but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.
[2] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.
[3] Bread, pasta or noodle products, and cereal grains, shall be wholegrain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain or enriched or fortified.
[4] Serving sizes and equivalents to be published in guidance materials by FNS.
[5] Either volume (cup) or weight (oz), whichever is less.

Lunch or Supper

(2) The minimum amounts of food components to be served as lunch or supper as set forth in paragraph (a)(2) of this section are as follows:

Food components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12[1]
Milk			
Milk, fluid	½ cup	¾ cup	1 cup.
Vegetables and Fruits[3]			
Vegetable(s) and/or fruit(s)	¼ cup total	½ cup total	¾ cup total.
Bread and Bread Alternates[4]			
Bread	½ slice	½ slice	1 slice.
or			
Cornbread, biscuits, rolls, muffins, etc.[5]	½ serving	½ serving	1 serving.
or			
Cooked pasta or noodle products	¼ cup	¼ cup	½ cup.
or			
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	¼ cup	¼ cup	½ cup.
Meat and Meat Alternates			
Lean meat or poultry or fish [6]	1 oz	1½ oz	2 oz.
or			
Cheese	1 oz	1½ oz	2 oz.
or			
Eggs	1 egg	1 egg	1 egg.
or			
Cooked dry beans or peas	¼ cup	⅜ cup	½ cup.
or			
Peanut butter or an equivalent quantity of any combination of meat/meat alternate.	2 tbsp	3 tbsp	4 tbsp.

[1] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.
[3] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.
[3] Serve 2 or more kinds of vegetable(s) and/or fruit(s). Full-strength vegetable or fruit or fruit juice may be counted to meet not more than one-half of this requirement.
[4] Bread, pasta or noodle products, and cereal grains shall be wholegrain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour.
[5] Serving sizes and equivalents to be published in guidance materials by FNS.
[6] Edible portion as served.

Supplemental Food

(3) The minimum amounts of food components to be served as supplemental food as set forth in paragraph (a)(3) of this section are as follows. Select two of the following four components. (Juice may not be served when milk is served as the only other component.)

Food Components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12
Milk			
Milk, fluid	½ cup [2]	½ cup	1 cup.
Vegetables and Fruits			
Vegetable(s) and/or fruit(s)	½ cup	½ cup	¾ cup.
or			
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s) and juice.	½ cup	½ cup	¾ cup.
Bread and Bread Alternate [3]			
Bread	½ slice	½ slice	1 slice.
or			
Cornbread, biscuits, rolls, muffins, etc. [4]	½ serving	½ serving	1 serving.
or			
Cold dry cereal [5]	¼ cup or ½ oz	¼ cup or ½ oz	¾ cup or 1 oz.
or			
Cooked cereal	¼ cup	¼ cup	½ cup.
or			
Cooked pasta or noodle products	¼ cup	¼ cup	½ cup.
or			
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	¼ cup	¼ cup	½ cup.
Meat and Meat Alternates			
Lean meat or poultry or fish [6]	½ oz	½ oz	1 oz.
or			
Cheese	½ oz	½ oz	1 oz.
or			
Eggs	½ egg	½ egg	1 egg.
or			
Cooked dry beans or peas	⅛ cup	⅛ cup	¼ cup.
or			
Peanut butter or an equivalent quantity of any combination of meat/meat alternate.	1 tbsp	1 tbsp	2 tbsp.

[1] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the mimimum quantities specified in this section for children age 6 up to 12.
[2] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.
[3] Bread, pasta or noodle products, and cereal grains shall be wholegrain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with wholegrain or enriched meal or flour; cereal shall be wholegrain or enriched or fortified.
[4] Serving size and equivalents to be published in guidance materials by FNS.
[5] Either volume (cup) or weight (oz), whichever is less.
[6] Edible portion as served.

(d) *Additional Food:* To improve the nutrition of participating children over 1 year of age additional foods may be served with each meal as follows:

(1) *Breakfast.* Include as often as practical an egg; or a 1-ounce serving (edible portion as served) of meat, poultry or fish; or 1-ounce of cheese; or 2 tablespoons of peanut butter or an equivalent quantity of any combination of these foods. Additional foods may be served as desired.

(2) *Lunch or supper.* Additional foods may be served as desired.

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

(f) *Continuing unavailability of milk.* The inability of an institution to obtain a supply of milk on a continuing basis shall not bar it from participation in the Program. In such cases, the State agency may approve service of meals without milk, provided that an equivalent amount of canned, whole dry or nonfat dry milk is used in the preparation of the components of the meal set forth in subparagraphs (a)(1), (2) and (3) of this section.

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

(h) *Individual substitutions.* Substitutions may be made in food listed in paragraphs (b) and (c) of this section if individual participating children are unable, because of medical or other special dietary needs, to consume such foods. Substitutions because of medical needs shall be made only when supported by a statement from a recognized medical authority which includes recommended alternate foods.

(i) *Special variations.* FNS may approve variations in the food components of the meals on an experimental or a continuing basis in any institution where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic, or physical needs.

(j) *Meal planning.* Institutions shall plan for and order meals on the basis of current participation trends, with the objective of providing only one meal per child at each meal service. Records of participation and of ordering or preparing meals shall be maintained to demonstrate positive action toward this objective. In recognition of the fluctuation in participation levels which makes it difficult to estimate precisely the number of meals needed and to reduce the resultant waste, any excess meals that are ordered may be served to children and may be claimed for reimbursement, unless the State agency determines that the institution has failed to plan and prepare or order meals with the objective of providing only one meal per child at each meal service.

(k) *Sanitation.* Institutions shall ensure that in storing, preparing, and serving food, proper sanitation and health standards are met which conform with all applicable State and local laws and regulations. Institutions shall ensure that adequate facilities are available to store food or hold meals.

(l) *Donated commodities.* Institutions shall efficiently use in the Program any

foods donated by the Department and accepted by the institution.

(m) *Plentiful foods.* Institutions shall, insofar as practical, purchase and efficiently use in the Program foods designated as plentiful by the Department.

(n) *Additional provision.* The State agency may allow institutions which serve meals prepared in schools participating in the National School Lunch and School Breakfast Programs to substitute the meal pattern requirements of the regulations governing those Programs (7 CFR Part 210 and 7 CFR Part 220, respectively) for the meal pattern requirements contained in this section.

§ 226.21 Food service management companies.

(a) Any institution may contract with a food service management company. An institution which contracts with a food service management company shall remain responsible for ensuring that the food service operation conforms to its agreement with the State agency. All procurements of meals from food service management companies shall adhere to the procurement standards set forth in § 226.22. Public institutions shall follow applicable State or local laws governing bid procedures. In the absence of any applicable State or local laws, and in addition to the procurement provisions set forth in § 226.22, the State agency may mandate that each institution with Program meal contracts of an aggregate value in excess of $10,000 formally advertise such contracts and comply with the following procedures intended to prevent fraud, waste, and Program abuse:

(1) All proposed contracts shall be publicly announced at least once 14 calendar days prior to the opening of bids. The announcement shall include the time and place of the bid opening;

(2) The institution shall notify the State agency at least 14 calendar days prior to the opening of the bids of the time and place of the bid opening;

(3) The invitation to bid shall not provide for loans or any other monetary benefit or terms or conditions to be made to institutions by food service management companies;

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

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

(6) The bid shall be publicly opened;

(7) All bids totaling $50,000 or more shall be submitted to the State agency for approval before acceptance. All bids shall be submitted to the State agency for approval before accepting a bid which exceeds the lowest bid. State agencies shall respond to any request for approval within 10 working days of receipt;

(8) The institutions shall inform the State agency of the reason for selecting the food service management company chosen. State agencies may require institutions to submit copies of all bids submitted under this section.

(b) The institution and the food service management company shall enter into a standard contract as required by § 226.6(h). However, public institutions may, with the approval of the State agency, use their customary form of contract if it incorporates the provisions of § 226.6(h).

(c) A copy of the contract between each institution and food service management company shall be submitted to the State agency prior to the beginning of Program operations under the subject contract.

(d) Each proposed additional provision to the standard form of contract shall be submitted to the State agency for approval.

(e) A food service management company may not subcontract for the total meal, with or without milk, or for the assembly of the meal.

§ 226.22 Procurement standards.

(a) This section establishes standards and guidelines for the procurement of foods, supplies, equipment, and other goods and services. These standards are furnished to ensure that such materials and services are obtained efficiently and economically and in compliance with the provisions of applicable Federal law and Executive orders.

(b) These standards shall not relieve the institution of any contractual responsibilities under its contracts. The institution is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered into in support of the Program. These include, but are not limited to: source evaluation, protests of award, disputes, and claims. Violations of the law shall be referred to the local, State, or Federal authority having proper jurisdiction.

(c) Institutions may use their own procurement procedures which reflect applicable State or local laws and regulations, provided that procurements made with Program payments conform to the standards set forth in this section and in Attachment O of Office of Management and Budget Circulars A-102 and A-110, as well as to procurement requirements which may be established by the State agency, with the approval of FNS to prevent fraud, waste, and Program abuse.

(d) Institutions shall maintain a written code of standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Program payments. No employee, officer or agent of the grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(1) The employee, officer or agent;

(2) Any member of his immediate family;

(3) His or her partner; or

(4) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The institution's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

Institutions may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the institution's officers, employees, or agents, or by contractors or their agents.

(e) The institution shall establish procurement procedures which provide that proposed procurement actions shall be reviewed by institution officials to avoid the purchase of unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical.

(f) Affirmative steps shall be taken to assure that small and minority businesses are utilized when possible. Affirmative steps shall include the following:

(1) Including qualified small and minority businesses on solicitation lists;

(2) Assuring that small and minority businesses are solicited whenever they are potential sources;

(3) When economically feasible, dividing total requirements into smaller

tasks or quantities so as to permit maximum small and minority business participation;

(4) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority businesses;

(5) Using the services and assistance of the Small Business Administration and the Minority Business Enterprise of the Department of Commerce as required;

(6) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in (b) (1) through (5) of this section; and

(7) Taking similar appropriate affirmative action in support of women's business enterprises.

(g) All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition consistent with this section. Procurement procedures shall not restrict or eliminate competition. Examples of what is considered to be restrictive of competition include, but are not limited to (1) placing unreasonable requirements on firms in order for them to qualify to do business, (2) noncompetitive practices between firms, (3) organizational conflicts of interest, and (4) unnecessary experience and bonding requirements.

(h) The institution shall have written selection procedures which shall provide, as a minimum, the following procedural requirements:

(1) Solicitations of offers, whether by competitive sealed bids or competitive negotiation, shall:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(2) Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(i) Program procurements shall be made by one of the following methods:

(1) Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for the procurement of services, supplies or other property, costing in the aggregate not more than $10,000. Institutions shall comply with State or local small purchase dollar limits under $10,000. If small purchase procedures are used for a procurement under the Program, price or rate quotation shall be obtained from an adequate number of qualified sources; or

(2) In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

(i) In order for formal advertising to be feasible, appropriate conditions must be present, including as a minimum, the following:

(A) A complete, adequate and realistic specification or purchase description is available.

(B) Two or more responsible suppliers are willing and able to compete effectively for the institution's business.

(C) The procurement lends itself to a firm-fixed price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(ii) If formal advertising is used for a procurement under the Program, the following requirements shall apply:

(A) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

(B) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.

(C) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(D) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the grantee indicates that such discounts are generally taken.

(E) Any or all bids may be rejected when there are sound documented business reasons in the best interest of the Program.

(3) In competitive negotiation, proposals are requested from a number of sources and the Request for Proposal is publicized. Negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. If competitive negotiation is used for a procurement under a grant, the following requirements shall apply:

(i) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposals shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable:

(ii) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance;

(iii) The institution shall provide mechanisms for technical evaluation of the proposal received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award; and

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly.

(4) Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is infeasible under small purchase,

competitive bidding (formal advertising), or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

(i) The item is available only from a single source;

(ii) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation;

(iii) FNS authorizes noncompetitive negotiation; or

(iv) After solicitation of a number of sources, competition is determined inadequate.

(j) The cost plus a percentage of cost method of contracting shall not be used. Institutions shall perform some form of cost or price analysis in connection with every procurement action including contract modifications. Costs or prices based on estimated costs for contracts under the Program shall be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

(k) Institutions shall maintain records sufficient to detail the significant history of a procurement. These records shall include, but are not necessarily limited to information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the cost or price.

(l) In addition to provisions defining a sound and complete procurement contract, institutions shall include the following contract provisions or conditions in all procurement contracts and subcontracts as required by the provision, Federal Law or FNS:

(1) Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate;

(2) All contracts in excess of $10,000 shall contain suitable provisions for termination by the institution including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor;

(3) All contracts awarded in excess of $10,000 by institutions and their contractors shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60);

(4) Where applicable, all contracts awarded by institutions in excess of $2,500 which involve the employment of mechanics or laborers shall include a provision for compliance with section 103 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard work day or week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence;

(5) The contract shall include notice of USDA requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and of USDA requirements and regulations pertaining to copyrights and rights in data. These requirements are in § 3015.175 of the USDA Uniform Federal Assistance Regulations 7 CFR Part 3015. All negotiated contracts (except those awarded by small purchases procedures) awarded by institutions shall include a provision to the effect that the institution, FNS, the Comptroller General of the United States or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions. Institutions shall require contractors to maintain all required records for three years after institutions make final payment and all other pending matters are closed;

(6) Contracts and subcontracts of amounts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1837(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under nonexempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to FNS and to the U.S. EPA Assistant Administrator for Enforcement (EN–329); and

(7) Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy efficiency conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163).

(m) Institutions shall maintain a contract administration system insuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

§ 226.23 Free and reduced-price meals.

(a) The State agency shall require each institution to submit, at the time the institution applies for Program participation, a written policy statement concerning free and reduced-price meals to be used uniformly in all child care facilities under its jurisdiction as required in this section. Institutions shall not be approved for participation nor agreements renewed unless the free and reduced-price policy statement has been approved. Pending approval of a revision of a policy statement, the existing policy shall remain in effect.

(b) Sponsoring organizations of day care homes (which may not serve meals at a separate charge to children) and other institutions which elect to serve meals at no separate charge, shall develop a policy statement consisting of an assurance to the State agency that all children are served the same meals at no separate charge, regardless of race, color, national origin, sex, or handicap and that there is no discrimination in the course of the food service.

(c) Independent centers and sponsoring organizations of centers which charge separately for meals shall develop a policy statement for determining eligibility for free and reduced-price meals which shall include the following:

(1) The specific criteria to be used in determining eligibility for free and reduced-price meals. The institution's standards of eligibility shall conform to the Secretary's income standards;

(2) A description of the method or methods to be used in accepting applications from families for free and reduced-price meals;

(3) A description of the method or methods to be used to collect payments

from those children paying the full or reduced price of the meal which will protect the anonymity of the children receiving a free or reduced-price meal;

(4) An assurance which provides that the institution will establish a hearing procedure for use when benefits are denied or terminated as a result of verification: (i) A simple, publicly announced method for a family to make an oral or written request for a hearing; (ii) an opportunity for the family to be assisted or represented by an attorney or other person in presenting its appeal; (iii) an opportunity to examine, prior to and during the hearing, the documents and records presented to support the decision under appeal; (iv) that the hearing shall be held with reasonable promptness and convenience to the family and that adequate notice shall be given to the family as to the time and place of the hearing; (v) an opportunity for the family to present oral or documentary evidence and arguments supporting its position; (vi) an opportunity for the family to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses; (vii) that the hearing shall be conducted and the determination made by a hearing official who did not participate in making the initial decision; (viii) the determination of the hearing official shall be based on the oral and documentary evidence presented at the hearing and made a part of that hearing record; (ix) that the family and any designated representatives shall be notified in writing of the decision of the hearing official; (x) that a written record shall be prepared with respect to each hearing, which shall include the decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing, the decision of the hearing official, including the reasons therefor, and a copy of the notification to the family of the decision of the hearing official; and (xi) that such written record of each hearing shall be preserved for a period of three years and shall be available for examination by the family or its representatives at any reasonable time and place during such period;

(5) An assurance that there will be no overt identification of free and reduced-price meal recipients and no discrimination against any child on the basis of race, color, national origin, sex, or handicap;

(6) An assurance that the charges for a reduced-price lunch or supper will not exceed 40 cents, that the charge for a reduced-price breakfast will not exceed 30 cents, and that the charge for a reduced-price supplement will not exceed 15 cents.

(d) Each institution shall annually provide the information media serving the area from which the institution draws its attendance with a public release. All media releases issued by institutions other than sponsoring organizations of day care homes, shall include the Secretary's Income Eligibility Guidelines for Free and Reduced-Price Meals. The release issued by all sponsoring organizations of day care homes, and by other institutions which elect not to charge separately for meals, shall announce the availability of meals at no separate charge. The release issued by institutions which charge separately for meals shall announce the availability of free and reduced-price meals to children meeting the approved eligibility criteria. All releases shall state that meals are available to all enrolled children without regard to race, color, national origin, sex, or handicap.

(e) For the purpose of determining eligibility for free and reduced-price meals, institutions, other than sponsoring organizations of day care homes, shall distribute applications for free and reduced-price meals to parents or guardians of children enrolled in the institution. The application, and any other descriptive material distributed to such persons, shall contain only the family-size and income levels for reduced-price meal eligibility with an explanation that households with incomes less than or equal to these levels are eligible for free or reduced-price meals. Such forms and descriptive materials shall not contain the income standards for free meals. The application shall collect the following information: Family size and income, as well as the social security numbers of all adult members of the household. If an adult household member does not have a social security number, then "NONE" must be indicated on the application. The application shall also contain substantially the following statement:

Sections 9 and 17 of the National School Lunch Act require that in order for your child to be eligible for free or reduced-price meals, you must provide the social security numbers of all adult members of your household. Provisions for these social security numbers is not mandatory; but failure to provide the numbers will result in denial of the application for free or reduced-price benefits. This notice must be brought to the attention of all household members whose social security numbers are disclosed. The social security number may be used to identify household members in carrying out efforts to verify the correctness of the information stated in the application. These verification efforts may be carried out through Program reviews, audits, and investigations to make sure that your child is eligible to receive benefits. These efforts may result in loss or reduction of benefits, administrative claims, or legal action if incorrect information is reported.

State and local agencies shall ensure that the notice complies with section 7 of Pub. L. 93–579 (Privacy Act of 1974). If a State or local agency plans to use the social security numbers in a manner not described by this notice, the notice should be altered to describe those uses.

(f) Free and reduced-price meal eligibility reports by institutions to State agencies shall be based on family-size and income information established not more than 12 months prior to reporting.

(g) Sponsoring organizations for family day care homes shall ensure that no separate charge for food service is imposed on families of children enrolled in participating family day care homes.

Subpart F—Food Service Equipment Provisions

§ 226.24 Property management requirements.

(a) This section prescribes policies and procedures governing title, use, and disposition of personal property obtained by an institution by purchase, whose cost was borne in whole or in part with food service equipment assistance funds. Institutions shall follow the property management policies and procedures prescribed by the State agency.

(b) The following requirements shall be observed in acquiring, using and disposing of nonexpendable personal property:

(1) When nonexpendable personal property has been acquired by an institution in whole or in part with food service equipment assistance funds, formerly made available to institutions, title shall be vested in the institution;

(2) The institution shall retain such property in the Program as long as the State agency decides that there is a need for such property to accomplish the purposes of the Program whether or not the institution's food service continues to be supported by Federal funds;

(3) When there is no longer a need for such property to accomplish the purpose of the Program, the institution shall use the property in connection with other Federal programs it administers. Priority shall be given to Federal programs administered by the Department over the programs administered by other Federal agencies. Approval from the Department or State agency, as applicable, must be obtained by the institution prior to using equipment

acquired with food service equipment assistance funds for programs of other Federal agencies. When the institution no longer has need for such property in any of its federally assisted programs, the property may be used for the institution's own official activities. In such situations, the institution may use the property without reimbursement to the State agency, or sell the property and retain the proceeds if the property had an acquisition cost of less than $1,000 per unit. In the case of other property, the institution may retain the property for its own use, provided that a fair compensation is made to FNS for the Federal share of the property. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the property to the current fair market value of the property. If the institution has no need for the property, disposition shall be made as follows:

(i) If the property had an acquisition cost of $1,000 or more per unit, the institution shall request disposition instructions from the State agency. If the State agency has no need for the property, the availability of the property shall be reported to the General Service Administration (GSA) by the Department to determine whether a requirement for the property exists in other Federal programs. FNS shall issue instructions to the State agency within 120 days following the receipt of the request. If the institution is instructed to ship the property elsewhere, the institution shall be reimbursed by the State agency where applicable, with an amount which is computed by applying the percentage of the institution's participation in the cost of the property to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred. If the institution is instructed to otherwise dispose of the property, the institution shall be reimbursed by the State agency for the costs incurred in the disposition. If disposition instructions are not issued within 120 days after reporting, the institution shall sell the property and reimburse the Department in an amount which is computed by applying the percentage of Federal participation in the cost of the property to the sales proceeds. Further, the institution may be permitted to deduct and retain from the Federal share $100 or 10 percent of the proceeds, whichever is greater, for the institution's selling and handling expenses; and

(ii) When the State agency determines that nonexpendable personal property with an acquisition cost of $1,000 or more financed with food service equipment assistance funds is unique or difficult or costly to replace, the State agency may reserve the right to require the institution to transfer title to property to the State agency or to a third party subject to the following provisions:

(A) The right to require the transfer of title may be reserved only by means of an express special condition in the agreement or, if approval for the acquisition of the property is given after the agreement is executed, by the means of a written stipulation at the time the approval is given.

(B) The property shall be appropriately identified in the award document or otherwise made known to the institution.

(C) FNS or the State agency shall not exercise this right until the institution no longer needs the property in the Program. That need will be deemed to end on the date of termination of the agreement, unless the institution continues to conduct a food service after the date and demonstrates to the State agency a continued need for the property in its food service.

(D) The State agency shall issue disposition instructions within 120 days after the completion of the need for the property under the Program. If instructions are not issued within this 120 day period, the State agency's right shall lapse, and the institution shall apply the applicable standards contained in paragraphs (b) (2) and (3) of this section.

(4) The institution's property management standards for non-expendable personal property shall also include the following procedural requirements:

(i) Property records shall be maintained accurately and provide for:

(A) a description of the property; (B) manufacturer's serial number or other identification number; (C) acquisition date and costs; (D) source of the property; (E) percentage of food service equipment assistance funds used in the purchase of the property; (F) location, use, and condition of the property; and (G) ultimate disposition data including sales price or the method used to determine current fair market value if the institution reimburses the Department for its share.

(ii) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property;

(iii) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage or the theft of the property. Any loss, damage, or the theft of non-expendable property shall be investigated and fully documented. The institution shall be responsible for replacing or repairing (with funds of the institution) property which is lost, damaged, or destroyed due to negligence by the institution;

(iv) Adequate maintenance procedures, including those recommended by the manufacturer shall be implemented to keep the property in good condition; and

(v) Adequate sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

(c) The institution may, at its option, either retain or sell items of expendable personal property when no longer needed for any federally sponsored activity (including activities sponsored by other Federal agencies). Compensation to the Department is required if the aggregate fair market value of all of those items of expendable personal property acquired with equipment assistance funds exceeds $1,000 when no longer needed for any federally sponsored activity. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original property to the current fair market value of items retained and to the sales proceeds of items sold.

(d) Compensation for the Federal share of property made by institutions to the State agency shall be returned to FNS.

Subpart G—Other Provisions

§ 226.25 Other provisions.

(a) *Grant closeout procedures.* Grant closeout procedures for the Program shall be in accordance with the Uniform Federal Assistance Regulations.

(b) *State requirements.* Nothing contained in this part shall prevent a State agency from imposing additional requirements for participation in the Program which are not inconsistent with the provisions of this part; however, any additional requirements shall be approved by FNSRO and may not deny the Program to an eligible institution.

(c) *Value of assistance.* The value of assistance to children under the Program shall not be considered to be income or resources for any purposes under any Federal or State laws, including, but not limited to laws relating to taxation, welfare, and public assistance programs.

(d) *Maintenance of effort.* Expenditure of funds from State and local sources for

the maintenance of food programs for children shall not be diminished as a result of funds received under the Act.

(e) *Fraud penalty.* Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this part, whether received directly or indirectly from the Department or whoever receives, conceals, or retains such funds, assets, or property to his use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(f) *Claims adjustment authority.* The Secretary shall have the authority to determine the amount of, to settle, and to adjust any claim arising under the Program, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of the program. This provision shall not diminish the authority of the Attorney General of the United States under section 516 of Title 28, U.S. Code, to conduct litigation on behalf of the United States.

§ 226.26 Program information.

Persons desiring information concerning the Program may write to the appropriate State agency or Regional Office of FNS as indicated below:

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: New England Regional Office, FNS, U.S. Department of Agriculture, 33 North Avenue, Burlington, MA 01803.

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, One Vahlsing Center, Robbinsville, NJ 08691.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street NW, Atlanta, GA 30309.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 536 South Clark Street, Chicago, IL 60605.

(e) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 2420 West 26th Avenue, Room 430, Denver, CO 30211.

(f) In the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5–C–30, Dallas, TX 75242.

(g) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, CA 94108.

Dated: August 13, 1982.

Mary C. Jarratt,

Assistant Secretary for Food and Consumer Service.

[FR Doc. 82–22562 Filed 8–16–82; 9:29 am]

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federal register

Friday
August 20, 1982

Part V

Department of Agriculture

Office of the Secretary

Forest Service

Rules of Procedure of Board of Contract Appeals and Policy on Appeal of Decisions Concerning the National Forest System; Proposed Rules

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 24

Organization and Functions; Rules of Procedure of Board of Contract Appeals, Department of Agriculture

AGENCY: Agriculture Department.

ACTION: Proposed rule.

SUMMARY: The Board of Contract Appeals, Department of Agriculture, has been established by the Secretary of Agriculture in accordance with the Contract Disputes Act of 1978 (Pub. L. 95–563, 41 U.S.C. 601–613). This proposed rule would revise the jurisdiction of the Board by deleting that provision related to referrals to the Board from the Commodity Credit Corporation and by excluding from the jurisdiction of the Board appeals from decisions of Forest Service officers with respect to disputes arising under grazing and special use permits issued by the Forest Service. The proposed rule would also add the Rules of Procedure to be followed in proceedings governed by the Contract Disputes Act in addition to the presently published rules governing proceedings under the Board's nonstatutory jurisdiction.

The changes proposed herein result from the enactment of the Contract Disputes Act, review of existing procedures, and consideration of USDA and public experience since 1974 with current procedures.

DATE: Comments must be received on or before October 19, 1982.

ADDRESSES: Send comments to: Administrative Judge Jewel F. Lewis, Chair, Board of Contract Appeals, Room 2912, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Administrative Judge Jewel F. Lewis, (202) 447–2066, (202) 447–7023.

SUPPLEMENTARY INFORMATION: The current Board of Contract Appeals, Department of Agriculture has been established by the Secretary of Agriculture in accordance with the Contract Disputes Act of 1978 (Pub. L. 95–563, 41 U.S.C. 601–613). This proposed rule would set forth the organization and functions of the Board and the jurisdiction delegated to it by the Secretary of Agriculture. The Board continues to function as the agency board pursuant to the Contract Disputes Act of 1978, and also as the agency board pursuant to the nonstatutory jurisdiction as set forth in proposed § 24.4(b)

The proposed rule would delete current § 24.4(b). There have been no referrals to the Board from the Commodity Credit Corporation under this section for the almost eight years since the Board was reorganized to serve on a full time basis with enlarged jurisdiction under 7 CFR 24.1 *et seq.* (39 FR 30912, August 26, 1974). Any appeals from decisions of the Commodity Credit Corporation contracting officers involving questions of fact or law would continue to be considered by the Board under proposed §§ 24.4(a) and 24.4(b)(1).

The proposed rule would also add the Rules of Procedure to be followed in proceedings governed by the Contract Disputes Act, in addition to the presently published rules governing proceedings under the Board's nonstatutory jurisdiction. Appeals within the scope of the Disputes Article of contracts entered into prior to March 1, 1979, shall continue under the Rules of Procedure in § 24.21(c), Subpart B of Part 24, except where an election is made by the contractor (appellant) to come under the Contract Disputes Act of 1978 (41 U.S.C. 601–613). In appeals (1) under such Act by reason of election of the contractor, or (2) under such Act mandatorily because the contract was entered into on or after March 1, 1979, the Rules of Procedure in § 24.21(b), Subpart B of Part 24, shall apply.

Further, the proposed rule would exclude from the jurisdiction of the Board appeals from decisions of Forest Service officers which currently would be brought under § 24.4(e) with respect to disputes arising under grazing and special use permits issued by the Forest Service.

In the Department's management of approximately 190 million acres of National Forest, National Grassland, and other lands known collectively as the National Forest System, the Chief of the Forest Service, through a line organization of Regional Foresters, Forest Supervisors, and District Rangers, issues grazing and special use permits to private parties. These permits are authorized by various statutory authorities, including but not limited to 16 U.S.C. 580, 43 U.S.C. 1752, 16 U.S.C. 551, 16 U.S.C. 495, 16 U.S.C. 431 *et seq.*, 16 U.S.C. 497, 30 U.S.C. 185, 7 U.S.C. 1011(d), 16 U.S.C. 580d, 43 U.S.C. 931c, 931d, 16 U.S.C. 1131–1136, 16 U.S.C. 532–538, 16 U.S.C. 460e–6a(c), 43 U.S.C. 1761–1771, 16 U.S.C. 470aa.

Presently, disputes over policy and management decisions involving grazing and special use permits may be appealed through an administrative appeal process established by the Forest Service at 36 CFR 211.19. Consideration of grazing and special use permit disputes by the Agriculture Board of Contract Appeals has been limited to narrow and distinct factual and legal determinations considered to be of a "contract" nature. We have found these definitions to be unclear and impractical to apply.

Surveys indicate only three grazing decisions and four special use decisions have been held to qualify for consideration by the Board since 1974. Of the seven appeals filed with the Board, one relating to grazing and two relating to special use permits were dismissed for lack of jurisdiction. During this same period, there have been over 100 grazing and 700 special use permit appeals under the administrative review procedure of 36 CFR 211.19. These procedures are being proposed for revision as 36 CFR 211.18 and are also published in the Federal Register of this date.

Utilization of the administrative appeals procedure indicates that most decisions on grazing and special use permits are inseparable from policy and management decisions in managing the National Forest System lands for multiple use purposes. The lack of traditional contract characteristics, rights, and remedies strongly argues that the proper forum for review of decisions on grazing and special use permits falls within the policy and management area subject to review under 36 CFR 211.19 (proposed to be revised as 36 CFR 211.18). Consolidating all aspects of review of grazing and special use permits, including those currently reviewed under § 24.4(e), under the administrative appeals procedures of the Forest Service would eliminate the present difficulty and confusion in attempting to distinguish between decisions under such permits involving management and policy issues and those involving issues of a contractual nature.

Objective

The proposed rule would clarify the Agriculture Board of Contract Appeals' jurisdiction and procedures as well as remove confusion about the jurisdictional responsibility within the U.S. Department of Agriculture for review of disputes on grazing and special use permits by placing under proposed rule 36 CFR 211.18 all aspects of appeals relating to grazing and special use permits which currently would be brought under § 24.4(e).

Regulatory Impact

This proposed action is a delegation of administrative authority and is,

therefore, exempt from the requirements of Executive Order 12291.

Small Entity Impact

The proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, an analysis of impacts on small entities is not required.

Environmental Impact

The proposed rule relates to delegation of authority and the internal administration of the U.S. Department of Agriculture. Therefore, it does not constitute a major federal action affecting the quality of the human environment.

Paperwork Burden

The proposed rule would impose no additional paperwork requirements on individuals or groups who appeal decisions of the Department of Agriculture to the Board of Contract Appeals, Department of Agricultural.

List of Subjects in 7 CFR Part 24

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

For the reasons set forth in the preamble, Subpart A—Organization and Functions, and Subpart B—Rules of Procedure, of Part 24, Board of Contract Appeals, Department of Agriculture, are proposed to be revised to read as follows:

PART 24—BOARD OF CONTRACT APPEALS, DEPARTMENT OF AGRICULTURE

Subpart A—Organization and Functions

Sec.

24.1 General.
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Subpart B—Rules of Procedure

24.21 Rules of Procedure of Agriculture Board of Contract Appeals—AGBCA.

Authority: (5 U.S.C. 301); (40 U.S.C. 486(c)); sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714b); 30 Stat. 35, as amended (16 U.S.C. 551); 50 Stat. 525, as amended (7 U.S.C. 1011(f)); secs. 9, 10, 62 Stat. 1072, 1073 (15 U.S.C. 714g, 714h); sec. 8, 92 Stat. 2383 (41 U.S.C. 601–613).

Subpart A—Organization and Functions

§ 24.1 General.

The Board of Contract Appeals, United States Department of Agriculture (referred to as the "Board") is an agency of the Department established by the Secretary of Agriculture in accordance with the requirements of the Contract Disputes Act of 1978 (Pub. L. 95–563, 41 U.S.C. 601–613). The provisions of 5 U.S.C. 551–559 (Administrative Procedure Act, 80 Stat. 378, as amended) are not applicable to proceedings before the Board except for the requirements under 5 U.S.C. 552 (81 Stat. 54) respecting public information, agency rules, opinions, orders, and records.

§ 24.2 Composition of the Board.

The Board consists of a Chair, Vice Chair, and other members, all of whom are attorneys at law duly licensed by a state, commonwealth, territory, or the District of Columbia. The Chair shall manage the business and operations of the Board, assign cases to members and establish panels for cases. Except as provided in Rule 12.2, the Small Claims (Expedited) Procedure, and Rule 12.3, the Accelerated Procedure, § 24.21(b), and in Rule 9, Accelerated Procedure, § 24.21(c), decisions of the Board will be rendered by a panel of three Administrative Judges and the decision of the majority of the panel will constitute the decision of the Board. The Vice Chair shall perform the functions of the Chair upon request of the Chair or in the event of absence or inability of the Chair to act. Members are designated Administrative Judges.

§ 24.3 Presiding Administrative Judge.

The Chair acts as Presiding Administrative Judge, or designates a member of the Board to so act, in each proceeding. The Presiding Administrative Judge has power to:

(a) Rule upon motions and requests;

(b) Adjourn the hearing from time to time and change the time and place of hearing;

(c) Administer oaths and affirmations and take affidavits;

(d) Receive evidence;

(e) Order the taking of depositions;

(f) Admit or exclude evidence;

(g) Hear oral argument on facts or law;

(h) Consolidate appeals filed by two or more appellants; and

(i) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

In cases considered by the Board under § 24.4(b) the Chair is hereby delegated authority to request subpoenas pursuant to 5 U.S.C. 304.

§ 24.4 Jurisdiction.

(a) *Statutory.* Pursuant to the Contract Disputes Act of 1978 (Pub. L. 95–563, 41 U.S.C. 601–613), the Board shall consider and determine appeals from decisions of contracting officers relating to contracts entered into on or after March 1, 1979, and, at the contractor's election, contracts entered into prior to March 1, 1979, with respect to claims pending before the contracting officer on March 1, 1979, or initiated thereafter. For purposed of this paragraph (a) the term "contracts" shall mean express or implied contracts made by the Department of Agriculture, agencies of the Department and the Commodity Credit Corporation, or by any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal, for:

(1) The procurement of property, other than real property in being;

(2) The procurement of services;

(3) The procurement of construction, alteration, repair or maintenance of real property; or

(4) The disposal of personal property.

(b) *Non-statutory.* (1) Pursuant to Disputes Article of contracts, other than timber sale contracts, entered into prior to March 1, 1979, made by the Department of Agriculture, agencies of the Department and the Commodity Credit Corporation, the Board shall consider and determine appeals from decisions of contracting officers arising under such contracts, unless election by the contractor brings the appeal under the statutory jurisdiction described in paragraph (a) of this section.

(2) The Board shall have jurisdiction of appeals from decisions of contracting officers of the Forest Service (as defined in § 24.9(c)), in which the issue under appeal arises under the terms of provisions of timber sale contracts, except that:

(i) Appeals subject to Board jurisdiction involving Forest Service decisions under § 24.4 (a), (c) or (d) shall be excluded from jurisdiction under this paragraph.

(ii) No appeal under this paragraph shall lie where the relief sought is reformation of contract, monetary damages or amendment of contract at the discretion of the Forest Service to extend the term of the contract.

(c) *Contract Work Hours Standards Act.* The Board shall have jurisdiction of appeals taken from decisions of contracting officers of the Department of Agriculture under the Contract Work

Hours Standards Act (Pub. L. 87–581, August 13, 1962, 76 Stat. 357; 40 U.S.C. 327–332).

(d) *Debarment.* The Board shall have jurisdiction to hear and determine the issue of debarment and the period thereof, if any, on an appeal by a person debarred (1) by an authorized official of the Commodity Credit Corporation under 7 CFR 1407.6(d), or (2) by an authorized official of the Department of Agriculture, under 41 CFR 4–1.604–1(b), or (3) by an authorized official of the Farmers Home Administration, under Subpart C of Part 1918, Chapter XVIII of this title.

§ 24.5 Time for filing notice of appeal.

A notice of appeal under § 24.4(a) shall be filed within 90 days from the date of receipt of a contracting officer's decision. (41 U.S.C. 606.) A notice of appeal under § 24.4(b)(1) shall be filed within 30 days from the date of receipt of the decision of the contracting officer or within such different time as may be prescribed in the contract or other applicable regulation of the Department. A notice of appeal under § 34.4(b)(2) shall be filed within 30 days from the date of receipt of the decision of the contracting officer of the Forest Service. The time for filing a notice of appeal shall not be extended by the Board.

§ 24.6 Board location and address.

The Board of Contract Appeals is located in Washington, D.C. All correspondence and all documents to be filed with the Board should be addressed to the Board of Contract Appeals, United States Department of Agriculture, Washington, D. C. 20250. The Board's telephone number is 202–447–7023.

§ 24.7 Public information.

(a) The records of the Board are open to the public for inspection and copying at the office of the Board. Decisions and rulings of the Board shall be published from time to time and copies made available to the public upon request at cost of duplication except that the Board shall, in its discretion, have authority to make copies of decisions and rulings available at no charge in accordance with the Record Copying Policy and Procedures of the Department (39 FR 26050). Hearings before the Board shall be open to the public.

(b) Information which is to be made available for public inspection and copying under provisions of 5 U.S.C. 552(a)(2) and 7 CFR 1.2 may be obtained at the office of the Board. The address of the Board is set forth in § 24.6. Except for such information as is generally available to the public, requests should be in writing and submitted in accordance with 7 CFR 1.3 and paragraphs (c) and (d) of this § 24.7.

(c) Facilities for copying are available at the office of the Board.

(d) Facilities for inspection and copying are available during established office hours for the Board, usually 8:30 a.m. to 5:00 p.m., Monday through Friday. The Department of Agriculture has established a schedule of fees for copies of information. The Board charges for copies of records in accordance with the Department fee schedule.

(e) The Vice Chair is authorized to receive requests for records submitted in accordance with 7 CFR 1.3(a), and to make determinations regarding whether to grant or deny requests for records exempt from mandatory disclosure under the provisions of 5 U.S.C. 552(b). This official is authorized to (1) extend the ten-day administrative deadline for reply pursuant to 7 CFR 1.8, (2) make discretionary releases pursuant to 7 CFR 1.11(b) of records exempt from mandatory disclosure, and (3) make determinations regarding the charging of fees.

(f) Appeals from denials of requests submitted under paragraph (c) of this section shall be submitted in accordance with 7 CFR 1.3(e) to the Chair, Board of Contract Appeals, Department of Agriculture, 12th Street and Independence Avenue, SW., Washington, D.C. 20250. The Chair shall determine whether to grant or deny the appeal and shall also make all necessary determinations relating to an extension of the twenty-day administrative deadline for reply pursuant to 7 CFR 1.8, discretionary release pursuant to 7 CFR 1.11(b) of records exempt from mandatory disclosure under 5 U.S.C. 552(b), and the charging of appropriate fees.

§ 24.8 Rules of procedure.

The Chair of the Board shall prescribe its Rules of Procedure and publish such Rules in Subpart B of this Part 24 and may prescribe and so publish amendments from time to time. The Rules of Procedure and any amendments thereto shall be consistent with this subpart.

§ 24.9 Definitions.

"Board" means the Board of Contract Appeals established under this Subpart.

"Contract" means any agreement entered into by the Department or its agencies or authorized officials with any person having the legal effect of a contract between the Department and such person.

"Contracting officer" means any person who, by appointment in accordance with applicable regulations, has the authority to enter into and administer contracts and make determinations and findings with respect thereto and includes the authorized representative of the contracting officer, acting within the limits of his/her authority. For purposes of appeals under § 24.4(b)(2), "contracting officer of the Forest Service" means a Forest Supervisor, Forest and Range Experiment Station Director, Forest Products Laboratory Director, Area Director, Regional Forester, or the Chief, Forest Service, as the case may be, who is the person designated as the contracting officer under the contract, or any officer or employee of the Forest Service who is authorized to act in his/her stead.

"Department" means the United States Department of Agriculture.

"Government attorney" means the attorney of the Department designated to handle a particular appeal on behalf of the contracting officer.

"Person" means any individual, partnership, public or private corporation, association, agency or other legal entity.

§§ 24.10–24.20 [Reserved]

Subpart B—Rules of Procedure

§ 24.21 Rules of procedure of Agriculture Board of Contract Appeals—AGBCA.

(a) *Preface to Rules.*—(1) *Time, computation and extensions.* (i) All time limitations specified for various procedural actions are computed as maximums and are not to be fully exhausted if the action described can be accomplished in a lesser period. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time by either party shall be in writing and state good cause for the requested extension. The Board may grant such extensions on good cause shown except that the Board shall not extend the time prescribed under 7 CFR 24.5 for taking an appeal.

(ii) Except as otherwise provided by law, in computing any period of time prescribed by these rules or any order of the Board, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day. If mailing is required, the date of the postmark shall be treated as the date action was taken.

(2) *Exparte Communications.* No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communication concerning the Board's administrative functions or procedures.

(b) Rules of Procedure Applicable to Appeals under the Contract Disputes Act of 1978, 41 U.S.C. 601 *et seq.* (7 CFR 24.4(a))—

Preliminary Procedures

Rule
1. Appeals, How and When Taken
2. Notice of Appeal, Contents of.
3. Docketing of Appeals.
4. Preparation, Content, Organization, Forwarding, and Status of Appeal File.
5. Dismissal for Lack of Jurisdiction.
6. Pleadings.
7. Amendments of Pleadings or Record.
8. Hearing Election.
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12. Optional SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures.
12.1. Elections to Utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures.
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Hearings

17. Where and When Held.
18. Notice of Hearings.
19. Unexcused Absence of a Party.
20. Hearings: Nature; Examination of witnesses.
21. Subpoenas.
22. Copies of Papers.
23. Posthearing Briefs.
24. Transcript of Proceedings.
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Representation

26. The Appellant
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Miscellaneous

28. Decisions.
29. Motion for Reconsideration.
30. Dismissal without Prejudice
31. Dismissal or Default for Failure to Prosecute or Defend.
32. Remand from Court.
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Preliminary Procedures

Rule 1. Appeals, How and When Taken

(a) *Notice of Appeal—90 Days.* Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy thereof shall be furnished to the contracting officer from whose decision the appeal is taken.

(b) *Failure to Issue CO decision—60 days—$50,000 or less.* Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in paragraph (a) of this Rule 1, citing the failure of the contracting officer to issue a decision.

(c) *Failure to Issue CO decision—Reasonable Time—more than $50,000.* Where the contractor has submitted a claim in excess of $50,000 to the contracting officer and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in paragraph (a) of this Rule 1, citing the failure to issue a decision.

(d) *Stay Pending Final CO Decision.* Upon docketing of appeals filed pursuant to paragraphs (b) or (c) of this Rule 1, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

Rule 2. Notice of Appeal, Contents of

A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the department and agency or bureau involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed by the appellant (the contractor making the appeal), or by the appellant's duly authorized representative or attorney. The complaint referred to in Rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

Rule 3. Docketing of Appeals

When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing shall be given to the appellant, with a copy of these rules, and to the contracting officer.

Rule 4. Preparation, Content, Organization, Forwarding, and Status of Appeal File

(a) *Duties of Contracting Officer.* Within 30 days of receipt of a letter from the Board transmitting the complaint, the contracting officer shall assemble and transmit to the Board through agency channels an appeal file in triplicate consisting of all documents pertinent to the appeal, including:

(1) The decision from which the appeal is taken;

(2) The contract, including specifications and pertinent amendments, plans, and drawings;

(3) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered relevant to the appeal.

(b) *Duties of the Appellant.* Within 30 days after receipt from the Board of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board in triplicate any documents not contained therein which the appellant considers relevant to the appeal.

(c) *Organization of Appeal File.* Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthy Documents.* Upon request by either party, the Board may waive the requirement to furnish to the other party through the Board copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document as to which such a waiver has been granted such party shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of Documents in Appeal File.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing, or if there is no hearing, of settling the record. If such objection is made the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence either prior to hearing or prior to closing the record if there is no hearing, in accordance with Rules 13 and 20.

(f) *Dispensing with Appeal File requirements.* Notwithstanding the foregoing, the filing of the Rule 4 (a) and (b) documents may be dispensed with by the Board either upon request of the appellant in the notice of appeal or thereafter upon stipulation of the parties.

Rule 5. Dismissal for Lack of Jurisdiction

Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

Rule 6. Pleadings

(a) *Appellant—Complaint.* Except as provided in Rule 12.2(b) and Rule 12.3(b),

within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a Complaint setting forth simple, concise and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a Complaint, although no particular form is required. Upon receipt of the Complaint, the Board shall serve a copy of it upon the Government. Should the Complaint not be filed within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its Complaint and the Government shall be so notified.

(b) *Government—Answer.* Within 30 days from receipt of the Complaint, or the aforesaid notice from the Board, the Government shall prepare and file with the Board an original and two copies of an Answer thereto. The Answer shall set forth simple, concise and direct statements of Government's defenses to each claim asserted by appellant, including any affirmative defenses available. Upon receipt of the Answer, the Board shall serve a copy upon appellant. Should the Answer not be filed within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

Rule 7. Amendments of Pleadings or Record

The Board upon its own initiative or upon application by a party may order a party to make a more definite statement of the Complaint or Answer, or to reply to an Answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable it to meet such evidence.

Rule 8. Hearing Election

After filing of the Government's Answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in Rules 17 through 25, or whether it elects to submit its case on the record without a hearing, as prescribed in Rule 11.

Rule 9. Prehearing Briefs

Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to Rule 8. If the Board does not require prehearing briefs either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

Rule 10. Prehearing or Presubmission Conference

(a) *Conference.* Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may upon its own initiative, or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an Administrative Judge or examiner of the Board for a conference to consider:

(1) Simplification, clarification, or severing of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate discovery;

(4) Limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(5) The possibility of agreement disposing of any or all of the issues in dispute; and

(6) Such other matters as may aid in the disposition of the appeal.

(b) *Written results of conference.* The Administrative Judge or examiner of the Board shall make such rulings and orders as may be appropriate to achieve settlement by agreement of the parties or to aid in the disposition of the appeal. The results of pretrial conferences, including any rulings and orders, shall be reduced to writing by the Administrative Judge or examiner and this writing shall thereafter constitute a part of the record.

Rule 11. Submission Without a Hearing

Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to Rule 13. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with Rule 23.

Rule 12. Optional SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures

Nothwithstanding any other provisions of these Rules of Procedure, the SMALL CLAIMS (EXPEDITED) and ACCELERATED procedures shall be available solely at the election of the appellant.

Rule 12.1. Elections To Utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures

(a) *SMALL CLAIMS (EXPEDITED)—$10,000 or less.* In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election. The details of this procedure appear in Rule 12.2.

(b) *ACCELERATED—$50,000 or less.* In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election. The details of this procedure appear in Rule 12.3.

(c) *Time for Election.* The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made by written notice within 60 days after receipt of notice of docketing the appeal unless such period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.

(d) *Board Determines Amount in Dispute.* In deciding whether the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure is applicable to a given appeal, the Board shall determine the amount in dispute.

Rule 12.2. The SMALL CLAIMS (EXPEDITED) Procedure

(a) *Time Periods for Proceedings.* In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply: (1) Within ten days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under rule 4 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs;

(2) Within 15 days after the Board has acknowledged receipt of appellant's notice of election, the assigned administrative judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (i) Identify and simplify the issues; (ii) establish a simplified procedure appropriate to the particular appeal involved; (iii) determine whether the appellant wants a hearing, and if so, fix a time and place therefor; (iv) require the Government to furnish all the additional documents relevant to the appeal, and (v) establish an expedited schedule for resolution of the appeal.

(b) *Decisions—120 days.* Pleadings, discovery and other prehearing activity will

be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(c) *Form of Decisions.* Written decision by the Board in cases processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may, in the Judge's discretion, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the Appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

(d) *No Precedent—Not Appealable.* A decision against the Government or the contractor shall have no value as precedent, and in the absence of fraud shall be final and conclusive and may not be appealed or set aside.

Rule 12.3. The ACCELERATED Procedure

(a) *Time Periods for Proceedings.* In cases proceeding under the ACCELERATED procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed elsewhere in these Rules, including Rule 4, as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, and may reserve 30 days for preparation of the decision.

(b) *Decisions—180 days.* Pleadings, discovery and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the dates scheduled, or if no hearing is scheduled, to close the record on a date that will allow decision within the 180-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 180-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record, and the filing of briefs, if any.

(c) *Form of decisions.* Written decisions by the Board in cases processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of the Chair or a Vice Chair or other designated Administrative Judge, or by a majority among these two and an additional designated member in case of disagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the ACCELERATED procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

Rule 12.4. Motions for Reconsideration in Rule 12 cases

Motions for Reconsideration of cases decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be decided within the original 120-day or 180-day limit, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this Rule.

Rule 13. Settling the Record

(a) *Components of the Record.* The record upon which the Board's decision will be rendered consists of the documents furnished under Rules 4 and 12, to the extent admitted in evidence, and the following items, if any: pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(b) *Closing Dates for Inclusion of Material.* Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) *Weight Given to Evidence.* The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

Rule 14. Discovery—Depositions

(a) *General Policy and Protective Orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When Depositions Permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on Depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) *Use as Evidence.* No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(e) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

(f) *Subpoenas.* Where appropriate, a party may request the issuance of a subpoena under the provisions of Rule 21.

Rule 15. Interrogatories to Parties, Admission of Facts, and Production and Inspection of Documents

After an appeal has been docketed and complaint filed with the Board, a party may serve on the other party: (a) Written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 30 days; (b) a request for the admission of specified facts and the authenticity of any documents, to be answered or objected to within 30 days after service; the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and (c) a request for the production, inspection and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence. Any discovery engaged in under this Rule shall be subject to the provisions of Rule 14(a) with respect to general policy and protective orders and of Rule 33 with respect to sanctions.

Rule 16. Service of Papers other than Subpoenas

Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of Complaints, Answers and briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in Rule 21.

Hearings

Rule 17. Where and When Held

Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, Rule 12 requirements, and other pertinent factors. On request or motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

Rule 18. Notice of Hearings

The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay.

Rule 19. Unexcused Absence of a Party

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

Rule 20. Hearings: Nature; Examination of Witnesses

(a) *Nature of Hearings.* Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and the Government may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence or in the sound discretion of the presiding Administrative Judge or examiner. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(b) *Examination of Witnesses.* Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding Administrative Judge or examiner shall other wise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his statements may be subject to the provisions of Title 18, United States Code, sections 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

Rule 21. Subpoenas

(a) *General.* Upon written request of either party filed with the recorder, or on the initiative of the Administrative Judge to whom a case is assigned, or who is otherwise designated by the Chair, such Adminstrative Judge may issue a subpoena requiring:

(1) Testimony at a deposition—the deposing of a witness in the city or county where such witness resides or is employed or transacts business in person, or at another location convenient for such witness that is specifically determined by the Board;

(2) Testimony at a hearing—the attendance of a witness for the purpose of taking testimony at a hearing: and

(3) Production of books and papers—in addition to (1) or (2), the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary Cooperation.* Each party is expected (1) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (2) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(c) *Requests for Subpoenas.*

(1) A request for a subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion the Board may honor requests for subpoenas not made within these time limitations. (2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(d) *Requests to Quash or Modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; Issuance.* (1) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Administrative Judge shall sign the subpoena and may, in the Judge's discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) *Service.* (1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place.

A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(g) *Contumacy or Refusal To Obey a Subpoena.* In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

Rule 22. Copies of Papers

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

Rule 23. Posthearing Briefs

Posthearing Briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding Administrative Judge or examiner at the conclusion of the hearing.

Rule 24. Transcript of Proceedings

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Waiver of transcript may be especially suitable for hearings under Rule 12.2 Transcripts or copies of the proceedings shall be made available by the Board to the Government attorney. Appellant may order transcripts of the proceedings from the contract reporter at the hearing at actual cost of duplication (Pub. L. 92–463, October 6, 1972, 86 Stat. 770, 5 U.S.C. App. I).

Rule 25. Withdrawal of Exhibits

After a decision has become final, the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such with withdrawal.

Representation

Rule 26. The Appellant

An individual appellant may appear before the Board in person, a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state,

commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

Rule 27. The Government

Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney in the form specified by the Board from time to time. Whenever appellant and the Government counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal. However, if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

Miscellaneous

Rule 28. Decisions

Decisions of the Board will be made in writing and authenticated copies of the decision will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board in Washington, D.C. Decisions of the Board will be made solely upon the record, as described in Rule 13.

Rule 29. Motion for Reconsideration

A motion for reconsideration may be file by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

Rule 30. Dismissal Without Prejudice

In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause for suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

Rule 31. Dismissal or Default for Failure To Prosecute or Defend

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to Rule 33. If good cause is not shown, the Board may take appropriate action.

. Rule 32. Remand From Court

Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders shall conform to these rules.

Rule 33. Sanctions

If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

Rule 34. Applicability of These Rules

These Rules of Procedure shall apply to contracts made by agencies described in Section I, Preface to Rules, for (1) the procurement of property, other than real property in being; (2) the procurement of services; (3) the procurement of construction, alteration, repair or maintenance of real property; or (4) the disposal of personal property. These Rules shall apply (1) mandatorily, to all appeals relating to contracts entered into on or after March 1, 1979, and (2) at the contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on March 1, 1979, or initiated thereafter.

(c) Rules of Procedure Applicable to Appeals pursuant to the Disputes Article of Contracts and not under the Contract Disputes Act of 1978 (7 CFR 24.4(b).

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Docketing, Pleadings, Preliminary Procedures

Rule 1. Appeals, How Taken

Notice of an appeal shall be in writing and the original, together with two copies, shall be mailed or otherwise furnished to the contracting officer from whose decision the appeal is taken, addressed to the Secretary of Agriculture, within the time specified in the contract or allowed by applicable provision of regulation or law. (See 7 CFR 24.5)

Rule 2. Notice of Appeal, Contents of

A notice of appeal shall clearly identify the decision from which the appeal is taken, the date of the decision, the contract number, the agency or field office of the Department cognizant of the dispute and shall indicate that an appeal is thereby intended. The notice of appeal need not follow any prescribed form. It may be in the form of a letter. It should be signed personally by the appellant (the contractor making the appeal), or by an officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in Rule 4 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint if it otherwise fulfills the requirements of a complaint.

Rule 3. Forwarding of Appeals.

When a notice of appeal in any form has been received by the contracting officer, the date of mailing (or date of receipt, if otherwise conveyed) shall be endorsed thereon by the contracting officer. The contracting officer shall forward the original and one copy of the notice of appeal to the Board within 10 days through agency channels. The agency office receiving such notice of appeal shall forward the original and one copy to the Board of Contract Appeals, United States Department of Agriculture, Washington, D.C. 20250, not later than 15 days from the date of receipt from its contracting officer. Following receipt by the Board of such notice of appeal, the Board will notify the appellant (contractor) and the contracting officer of the docketing of the appeal and will furnish a copy of these rules to the appellant.

Rule 4. Complaint

A complaint shall be filed by appellant with the Board not later than the date prescribed by letter from the Board except where the Board treats the notice of appeal as the complaint. The complaint shall contain simple, concise and direct statements of each claim and the dollar amount claimed, alleging the basis for each claim with appropriate reference to contract provisions. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form of formality is required. If a complaint is not timely filed, the Board may treat the notice of appeal as the complaint if it deems the issues to be sufficiently defined.

The Board will notify the Government attorney of any such determination.

Rule 5. Appeal File

(a) *Duties of contracting officer.* The contracting officer shall assemble and file with the Board within the time prescribed by letter from the Board, three copies of all documents pertinent to the appeal as an appeal file including as applicable but not necessarily limited to:

(1) The decision and findings of fact from which appeal is taken;

(2) The contract including pertinent specifications, amendments, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter is dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

(b) *Organization of appeal file.* Documents in the appeal file may be originals or legible facsimile or authenticated copies thereof, and shall be arranged in chronological order, where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(c) *Board action upon receipt of appeal file.* The Board upon receipt of the appeal file from the contracting officer will send a copy thereof to appellant and to the Government attorney. The appellant and the Government attorney may supplement the appeal file by filing with the Board three copies of any additional documents not contained in the appeal file assembled by the contracting officer which appellant or the Government attorney believes are also pertinent to the appeal. Such filings shall be made with the Board within the time prescribed by the Board. The Board upon receipt of any such additional documents will send a copy thereof to the other party.

(d) *Status of documents in appeal file.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision, unless a party objects to the consideration of a particular document in advance of hearing or of closing the record in the event there is no hearing on the appeal. If objection to a document is made, the Board will rule upon its admissibility into the record as evidence.

(e) *Lengthy documents.* The Board may waive the requirement of including in the copy of the appeal file to be furnished to the other party copies of bulky, lengthy, or out-of-size documents when a party shows to the satisfaction of the Board that providing such documents would impose an undue burden, provided that such documents are available for inspection at the office of the party filing only one copy thereof. Such documents will also be available for inspection at the office of the Board.

Rule 6. Answer

The Government attorney will be requested by the Board to file an answer on behalf of the contracting officer after the complaint has been filed. The answer shall be filed with the Board within the time prescribed by letter from the Board and shall be in an original and two copies setting forth simple, concise, and direct statements of defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counterclaims as appropriate. The Board will send a copy of the answer to appellant. If a counterclaim is filed, an opportunity will be afforded to appellant to file a response. If an anwer is not timely filed, the Board may, in its discretion, enter a general denial and so notify the appellant.

Rule 7. Additional Pleadings and Motions

The presiding officer may permit or require such additional pleadings or amendments thereto and motions to be filed as may be desirable in the interests of defining the issues and affording the parties full opportunity to prepare their cases. When issues within the proper scope of the appeal, but not raised by the pleadings or the appeal file are tried by express or implied consent of the parties, or by permission of the presiding officer, such issues shall be treated in all respects as if raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or appeal file, it may be admitted within the proper scope of the appeal: *Provided, however,* That the objecting party may be granted a continuance if necessary to enable such party to meet such evidence.

Rule 8. Hearing Election

A hearing before the Board shall be a matter of right which shall be afforded to appellant. The Government attorney may request a hearing in any case. If the parties waive a hearing the case shall be submitted on the record except where the presiding officer requires a hearing. The Board will ascertain from the parties whether a hearing is requested and ordinarily this will be done after the appeal file and pleadings have been received by the Board.

Rule 9. Accelerated Procedure

(a) *Election.* Either party may notify the Board of its election to have the appeal handled under this Rule 9. If both parties agree to handling under accelerated procedure, the presiding officer shall determine whether the appeal falls within the dollar limitation prescribed in paragraph (b) of this Rule 9 and whether the case otherwise is appropriate, taking into consideration the nature of the dispute, for handling under accelerated procedure. The determination of the presiding officer to handle or not handle the appeal under accelerated procedure shall be final.

(b) *Dollar amount limitation.* In order to be eligible for handling under accelerated procedure, the appeal shall involve $25,000 or less consisting of the claim of appellant together with the amount involved in any counterclaim filed by the Government attorney. If no dollar amount of claim or counterclaim is involved, the presiding officer shall determine whether the appeal can be properly disposed of under this Rule 9.

(c) *Elimination of procedures.* In cases proceeding under this Rule 9, parties are encouraged to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery and briefs.

(d) *Presiding officer as decision maker.* The presiding officer in any appeal handled under accelerated procedure shall issue a short written decision as soon as practicable after closing of the record and such decision shall be the final decision of the Board.

Rule 10. Prehearing or Presubmission Procedures

(a) *Prehearing orders.* The presiding officer may issue an order in cases where a hearing will be held prescribing as to one or more of the following that the parties shall:

(1) Exchange a list of witnesses giving titles and a brief description of the subject matter of the testimony;

(2) Exchange proposed exhibits and prepare an additional set thereof for the presiding officer; and

(3) Exchange a list of expert witnesses with a summary of their qualifications and testimony.

(b) *Prehearing orders in complex cases.* The presiding officer may issue a more comprehensive order in cases where a hearing will be held and it appears that the issues are confused, complex, that the hearing will be unduly long, or where quantum is involved. Such order, in addition to covering one or more of the items under (a) of this rule, may prescribe as to one or more of the following that the parties shall:

(1) Submit to the presiding officer a stipulation of all facts not in dispute;

(2) Attempt preparation of an agreed statement of factual and legal issues and, failing therein, submit separate statements; and

(3) Submit to the other party, where the issue of quantum will be heard, a statement of the monetary claim in detail with accounting schedules and explanations and afford the other party the right to an audit with the audit report to be available to both parties.

(c) *Prehearing or presubmission briefs and oral argument.* The presiding officer may require or allow the filing of prehearing or presubmission briefs in such manner as prescribed and may also require or allow oral argument in such manner as prescribed prior to hearing or submission on the record.

(d) *Prehearing or presubmission conference.* The presiding officer may require a prehearing or presubmission conference to consider:

(1) The simplification or clarification of the issues;

(2) The possibility of obtainiing stipulations, admissions, agreements on documents, understandings on matters already of record or similar agreements which will avoid unnecessary proof;

(3) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence if the case is to be heard;

(4) The possibility of agreement disposing of all or any of the issues in dispute;

(5) Such other matters as may aid in the disposition of the appeal.

The results of the conference shall be reduced to writing by the presiding officer and this writing shall constitute part of the record.

Rule 11. Submission Without a Hearing

Either party may elect to waive a hearing and if the other party as well as the Board do not require a hearing, the case shall be submitted upon the record before the Board. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument and briefs.

Rule 12. Discovery Procedures

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, and such order may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the presiding officer may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the presiding officer.

(d) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition and photographs. Expenses of making copies and photographs shall be borne by the party seeking to make or cause to be made copies and photographs.

Rule 13. Sanctions

If any party fails or refuses to obey an order issued by the presiding officer, the presiding officer may make such order in regard to the failure deemed necessary to the just and expeditious conduct of the appeal.

Rule 14. Subpoena Power

The Chairman has authority by delegation from the Secretary to request the appropriate United States Attorney to apply to the appropriate United States District Court for the issuance of subpoenas pursuant to 5 U.S.C. 304.

Hearings

Rule 15. Hearings, Notice of

The presiding officer shall give notice of the time and place set for hearing which shall be scheduled as may best serve the interests of the parties and the Board. Such notice shall be sent to the parties in writing not less than 30 days in advance of the date for such hearing unless the parties waive notice.

Rule 16. Unexcused Absence of a Party

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

(e) *Interrogatories to parties.* After an appeal has been docketed, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the presiding officer will determine the extent to which the interrogatories will be permitted.

(f) *Admission of facts.* After an appeal has been docketed, a party may serve on the other party a request for the admission of specified facts. The party served shall answer each requested item or file objections thereto within 30 days after service. The presiding officer will rule on any such objections. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond or object to the request for admission.

(g) *Production, inspection and copying of documents.* After an appeal has been docketed, a party may arrange with the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot agree theron, the presiding officer shall specify just terms and conditions in making the inspection and making copies.

Rule 17. Hearings, Open to Public, Verbatim Transcript

Hearings shall be open to the public. Testimony shall be reported verbatim. Transcripts of the proceedings shall be made available by the Board to the Government attorney. Appellant may order transcripts of the proceedings from the contract reporter at the hearing at actual cost of duplication (Pub. L. 92–463, October 6, 1972, 86 Stat. 770, 5 U.S.C. App. I).

Rule 18. Hearings, Conduct of

(a) *General.* Hearings shall be as informal as may be reasonable and appropriate under the circumstances. The parties may offer such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the presiding officer in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits or other evidence not ordinarily admissible under the generally accepted rules of evidence, may be admitted in the discretion of the presiding officer. The presiding officer shall receive only evidence which is germane to the issues involved and shall exclude, insofar as practicable, evidence which is immaterial, irrelevant or unduly repetitious or which is not of the sort upon which responsible persons are accustomed to rely. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board members considering the case, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The presiding officer may in any case require evidence in addition to that offered by the parties.

(b) *Examination of witnesses.* Witnesses will be examined under oath or affirmation subject to cross-examination and questions from the presiding officer and Board members. If the testimony of a witness is not given under oath, the presiding officer may warn the witness that statements made may be subject to provisions of law imposing penalties for knowingly making false representations (18 U.S.C. 287, 1001).

(c) *Burden of proof and order of proceeding.* The burden of proof rests on the appellant asserting the claim or error in the decision except that the burden of proof in case of counter-claims rests on the party asserting them. Unless otherwise permitted by the presiding officer, the appellant shall proceed first at the hearing followed by the presentation of the Government attorney and any rebuttal case permitted by the presiding officer.

(d) *Objections.* If a party objects to the admission or rejection of any evidence or to a limitation of the scope of any examination or cross-examination, such party shall state briefly the grounds of such objection and the presiding officer shall rule thereon or reserve ruling.

(e) *Records and documents.* Upon proof of authenticity, papers, books, records or documents shall be admissible in evidence without the production of the person who made or prepared the same except that the person who prepared documents specially for use at the hearing should be available to explain such documents.

(f) *Exhibits.* All documents offered in evidence at a hearing shall be marked for identification by number or letter as prescribed by the presiding officer. Except where the presiding officer finds that the furnishing of copies is impracticable, a copy of each proposed exhibit shall be made available to the other party when offer is made or prior to the hearing, if possible.

(g) *Offer of proof.* Whenever evidence is excluded from the record the offering party

may make an offer of proof briefly stating the evidence proposed to be received into evidence.

(h) *Official notice.* Official notice will be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: *Provided,* That the parties shall be given adequate notice of matters so noticed and shall be given adequate opportunity to show that such facts are erroneously noticed.

(i) *Depositions.* No testimony taken by deposition shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at such hearing. It will not be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the presiding officer may receive depositions as evidence in supplementation of that record.

Posthearing or postsubmission procedures

Rule 19. Posthearing Briefs.

The presiding officer shall prescribe the manner of filing any posthearing briefs.

Rule 20. Closing the Record

(a) *Contents.* The record consists of the appeal file described in Rule 5 and, to the extent the following have been filed, the pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs and documents which the presiding officer has specifically designated be made part of the record. The record will at all reasonable times be available for inspection by the parties at the office of the Board.

(b) *Closing or settling of record.* Except as the presiding officer may otherwise order, no proof shall be received in evidence after completion of a hearing or in cases submitted on the record, after the parties have been notified that the case is ready for decision. The weight to be attached to any evidence of record will rest within the sound discretion of the Board members considering the case. The presiding officer may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

Rule 21. Copies of Papers.

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefore, during or after the hearing.

Rule 22. Withdrawal of Exhibits.

After a decision has become final the Board may, upon request and after notice to the other party, in its discretion, permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

Rule 23. Decisions

The Board shall issue written decisions containing findings of fact and conclusions and shall send copies simultaneously to the parties by certified mail or, if delivered directly, with a notation of the date of delivery. Decisions of the Board will be made solely upon the record as described in Rule 20.

Rule 24. Reconsideration, Motion for

A motion for reconsideration of a Board decision, if filed by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion and shall be filed within 30 days from the date of receipt of a copy of the Board decision by the party filing the motion. The Board, in its discretion, may deny the motion or permit such additional proceedings as deemed necessary.

Dismissals

Rule 25. Dismissals

(a) *Lack of jurisdiction.* A motion to dismiss for lack of jurisdiction may be filed by a party at any time. The Board may also raise the question of jurisdiction at any time on its own motion. The presiding officer shall prescribe any necessary proceedings including but not limited to written arguments, briefs or hearing on the issue of jurisdiction. The presiding officer shall issue a Ruling on the issue of jurisdiction unless the Chairman requires a full three member panel to consider the issue of jurisdiction in which event the designated panel shall issue the Ruling on the issue of jurisdiction.

(b) *Failure to prosecute.* Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the presiding officer, comply with orders of the presiding officer, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the presiding officer may issue an order requiring the offending party to show cause why the appeal should not be either dismissed or granted, as appropriate. If the offending party shall fail to show such cause, the presiding officer may issue an Order of Dismissal for failure to prosecute or take such other action deemed reasonable and proper under the circumstances.

(c) *Without prejudice.* In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the suspension has continued, or it appears that it will continue, for an inordinate length of time, the presiding officer, exercising sound discretion, may dismiss such appeals without prejudice to restoration to the docket when the cause of suspension has been removed. Unless either party or the Board acts within 3 years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

(d) *Settlement or withdrawal.* The parties may settle the issues at any state of the proceedings before issuance of a decision of the Board. The appellant may withdraw the appeal at any time. The presiding officer in the event of settlement or withdrawal shall issue an Order of Dismissal.

Miscellaneous

Rule 26. Representation of Parties.

Appellant may appear before the Board in person or be represented by an authorized representative or attorney subject to the limitations prescribed in 7 CFR 1.26 regarding representation before the Department. The Government shall be represented by the Government attorney.

For Subpart A: August 11, 1982.

John R. Block,

Secretary.

For Subpart B: Signed at Washington, D.C. on August 3, 1982.

Administrative Judge Jewel F. Lewis,

Chair, Board of Contract Appeals.

[FR Doc. 82-22502 Filed 8-19-82; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

36 CFR Part 211

Appeal of Decisions Concerning the National Forest System

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise Departmental policies and procedures by which individuals or groups may request an administrative appeal of decisions that are made by Forest Service officials concerning the management of the National Forest System. The proposed rule corrects ambiguities in the present administrative appeal procedures, streamlines procedures, improves the readability of the regulation, and reorganizes the regulation to improve clarity. The proposed changes result from a comprehensive review of the existing regulation and from consideration of suggestions received over the last 5 years from Appellants and Forest Service officials.

DATES: Comments must be received on or before October 19, 1982.

ADDRESSES: Send comments to: Forest Service, USDA, Attn: Larry Hill (Rm. 1004, RPE), P.O. Box 2417, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Larry Hill, (202) 382-8013 or (703) 235-1797.

SUPPLEMENTARY INFORMATION:

Background

The Forest Service, USDA, has responsibility for management of 190

million acres of National Forest, National Grassland, and other land known collectively as the National Forest System. The Chief of the Forest Service, through a line organization of Regional Foresters, Forest Supervisors, and District Rangers, manages the surface resources and, in some instances, the subsurface resources of these lands.

The Forest Service provides a process by which individuals or groups may appeal National Forest System management decisions. These procedures are set forth in 36 CFR 211.19. About 500 appeal requests are received by the Forest Service each year. Of these, approximately 150 reach the office of the Chief of the Forest Service for either an appeal of a Regional Forester's initial decision or for a second level appeal of a Forest Supervisor's decision. Forest Service officials are guided in the appeal process by 36 CFR 211.19, by Forest Service policy as set forth in the Forest Service Manual (FSM 1570), and by accepted practices.

Since publication of the present regulation in 1977, numerous suggestions for change has been submitted by Appellants and Forest Service personnel. Suggested changes stemmed from concerns about undue delay in obtaining decisions, inconsistent interpretation of certain procedural elements of the appeal process, ambiguous language, and an increasing complexity in appeals cases. From these suggestions, a discussion paper outlining 62 proposals for change was developed. A notice of availability of the discussion paper and a request for public comment were published on page 46969 of the **Federal Register** of September 23, 1981. Some 72 responses were received from individuals and organizations. Having considered those responses, the agency is now proposing a revision to 36 CFR 211.19.

Objectives

The proposed rule would remove ambiguities of certain existing procedures, incorporate existing administrative practice not presently in the regulation, reorganize the text to more closely follow the steps an Appellant must follow, and simplify the language of the regulation. Specifically, the proposed rule would result in the following changes:

1. *Terminology.* Text has been revised throughout to reflect use of the term "Appeal" in preference to "Review".

Rationale: The interchangeable use of the terms Appeal and Review is a source of confusion. From a legal viewpoint there is no distinction between the two. The use of consistent terminology should help readers, especially those for whom the procedure is new.

2. *Matters Excluded From Appeal.* Proposed § 211.18(b) updates matters excluded from appeal by adding Contract Disputes Act and OMB Circular A–76 provisions. Other CFR references have been updated.

Rationale: The list of exclusions in the current rule is out of date.

3. *Period for Filing.* Proposed § 211.18(c) changes the time period for filing an appeal to begin with the date of decision rather than the dual criteria in the present rule. Under the proposed rule, an appeal must be filed within 45 days of the date of written decision. An exception is proposed so that the period for filing an appeal on decisions on final environmental impact statements would not be shorter than the 30 days allowed under 40 CFR 1506.10. The proposed rule retains a 30-day period for second level appeals and appeals on procedural matters.

Rationale: The two different appeal periods, 30 days and 45 days, in the current rule apply to different groups of individuals. It is not always clear who has been "notified." Also, the present 30-day period is from the date of receipt. The result is an inordinate administrative burden on the government and a high degree of uncertainty on the part of the public about when a decision is subject to appeal.

A written decision is specified since the Forest Service should be able to identify a single, understandable "date of decision." The appeal period for oral decisions would begin when they are documented.

Also, the present regulation is ambiguous on the time limit for filing an appeal on procedural matters. One section, (c), specifies within 30 days after they are made, while another, (e), specifies decisions are appealable within 30 days of the receipt of a decision.

Decisions on Timeliness. Proposed § 211.18(c) authorizes Deciding Officers to make an initial decision on whether or not an appeal is timely.

Rationale: The current rule does not specify who rules on timeliness of appeals. Practice varies, although FSM 1571.3 implies this is the Deciding Officer's responsibility.

For the Deciding Officer to rule on this question is efficient. The Deciding Officer has the information readily available to make such a ruling and to avoid delay. Further, such decisions are appealable as a procedural matter.

5. *All Initial Submissions Within Time for Filing.* Proposed § 211.18(c) requires that Appellants submit a statement of reasons supporting an appeal, any request for stay, and any request for an oral presentation within the time limit for filing a notice of appeal.

Rationale: The current rule allows requests for stays to be submitted at any time and for the Appellant's statement of reasons to be submitted up to 15 days after a notice of appeal.

The proposed rule removes the 15-day limitation for preparing a statement of reasons but requires all materials to be filed by a common date for a given decision. The change will avoid delay and uncertainty by Forest Officers about when to expect submissions by potential Appellants.

6. *Time Extensions.* Proposed § 211.18(d) authorizes Deciding and Reviewing Officers to grant extensions of time for meeting specific deadlines.

Rationale: The current rule makes no explicit provision for time extensions. They are presently granted or denied as a matter of Forest Service policy and practice. The proposal will give notice to the public about time extensions which may be granted.

7. *No Time Extensions for Appeals on Procedural Matters.* Proposed § 211.18(d) expedites appeals by not allowing time extensions for appeals on procedural matters.

Rationale: The current rule leads to undue delay as requests for time extensions and appeals on the denial of those requests are reviewed rather than the matter under dispute.

8. *Review by the Secretary.* Proposed § 211.18(f) provides an expedited process for reviewing Chief's decisions. Appeals of initial decisions by the Chief are to be transmitted to the Secretary within 5 days. The proposed rule also directs that the Chief's appeal decisions be forwarded to the Secretary within 1 business day. Review by the Secretary remains at the Secretary's discretion.

Rationale: The Secretary is now bound by the procedual requirements of the rule for all phases of an appeal. For example, the present rule requires that a responsive statement be prepared to the Appellant's reasons and that the Appellant have the option to comment on it before an appeal of a Chief's decision is sent to the Secretary. It is desirable for the Secretary to initiate such measures as may be desirable to expedite an appeal.

9. *Obsolete Provisions.* The proposed rule deletes obsolete provisions of 36 CFR 211.19(j) for subordinates to contracting officers.

10. *Information by Reference.* Proposed § 211.18(g) allows the Deciding Officer the option to incorporate material in the responsive statement by reference.

Rationale: The present rule is not clear on whether or not material may be incorporated in a responsive statement by reference. The proposal would bring the rule in accord with current practice and avoid lengthy, repetitious duplication of information already a matter of record.

11. *Requests for Stay.* Proposed § 211.18(h) authorizes Deciding Officers to grant or deny requests to stay the implementation of a decision under appeal. Decisions on stays would continue to be appealable.

Rationale: The present rule requires a request for stay to be transmitted immediately to the Reviewing Officer. The result is added delay on a matter which a Deciding Officer could decide and implement. The Deciding Officer can act immediately and possesses the most information from which to make an initial decision.

12. *Dismissal.* Proposed § 211.18(i) provides that an Appellant may withdraw an appeal and provides authority for Forest Officers to dismiss an appeal when an issue is moot, when there is no timely statement of reasons for requesting the appeal, or when the relief requested cannot be granted.

Rationale: There are presently no provisions for an Appellant to withdraw an appeal or for dismissal of an administrative appeal by the Forest Service. Dismissal of appeals on which the issues have become moot or when an Appellant does not give reasons for an appeal will result in savings to the involved parties.

13. *Provision for Comments From Members of the Public.* Proposed § 211.18(k) provides that members of the public may provide comments for the appeal record without becoming a party to the appeal.

Rationale: The present rule describes both "interested parties" and "intervenors" as "Multiple Parties." However, "interested parties" are not parties to the appeal. The proposed rule continues to allow comments from interested persons or groups to be added to the record, but does not recognize them as parties.

14. *Intervenors.* Proposed § 211.18(l) clarifies that intervenors are limited to the same levels of appeal as original Appellants.

Rationale: The present rule is unclear on whether or not intervenors are tied to the same established time frame and appeal levels as the original Appellant. The proposed rule is more specific.

15. *Requests for Oral Presentation.* Proposed § 211.18(m) provides that Appellants may request an opportunity for an oral presentation when submitting a responsive statement and that Reviewing Officers need not decide whether or not to allow one until they receive the record.

Rationale: The change allows Reviewing Officers to wait until they have the record before them before determining whether an informal presentation would be helpful.

16. *Summary Notes of Oral Presentation.* Proposed § 211.18(m) provides that Appellants and Intervenors may add summary notes of oral presentations to the appeal record.

Rationale: Present practice is for a Reviewing Officer to summarize an Appellant's oral presentation and for the Appellant to comment on that summary. This places a burden on the Reviewing Officer and leads to delay. The proposed change will ensure Appellants the opportunity to submit their concerns for the record. The change will reduce the time for obtaining a decision.

17. *Consolidation of Appeals.* Proposed § 211.18(n) allows appeals of the same or similar decisions to be consolidated by Reviewing Officers.

Rationale: The present rule is not explicit about consolidating appeals when separate decisions involve the same issue. Forest Service policy (FSM 1571.36) allows consolidation of appeals on same or similar decisions. The proposed rule brings the regulation into consistency with current practice.

18. *Procedural Matters.* Proposed § 211.18(o) begins the period for appealing procedural decisions with the date of the procedural decision; provides that procedural decisions by Reviewing Officers, except those on dismissals and stay requests, are not subject to appeal; provides for an expedited appeal of procedural decisions similar to that now provided for stay request; and clarifies language that procedural matters cannot be appealed to a higher level than the original administrative decision.

Rationale: Under the present rule, many procedural matters are subject to appeal, even those within the discretion of a Reviewing Officer and related to the conduct of an appeal.

The proposed rule establishes a uniform procedure for appealing procedural decisions and constitutes considerable change in the regulation. The changes are the result of evaluating public comments to proposals to shorten the time for second level appeals, to specify that certain procedural decisions are not appealable, to limit procedural appeals to one level, and to provide for shortened time frames in procedural appeals. The proposed rule should expedite the appeal of administrative decisions.

19. *Administrative Appeal Record.* Proposed § 211.18(p) provides that Appellants may comment on additions to the appeal record having to do with the appeal issue.

Rationale: Although the present rule provides that the Appellant will be notified when additions are made to the record, there is no provision for an Appellant's right to comment on the additions. The proposed rule sets specific time requirements for those comments.

20. *Request for Additional Information or Remand for Further Action.* The title for proposed § 211.18(q) distinguishes between a Reviewing Officer requesting additional information from which to decide an appeal or the Reviewing Officer remanding the matter to a subordinate. The proposal clarifies language that cases are remanded when there is insufficient basis to affirm or reverse a decision.

Rationale: The proposal brings the title of the paragraph into comformity with the contents and with current practice.

Regulatory Impact

This proposed action does not constitute a major rule as defined in Executive Order 12291. It will not result in a substantial impact on the Nation's economy or on large numbers of individuals and businesses or directly affect competition in domestic or foreign markets. To the contrary, the proposed rule seeks to improve and streamline the administrative process by which individuals or groups may obtain appeal of National Forest System management decisions and improves the readability and usefulness of the regulation. These improvements could, therefore, result in savings of time and cost for Appellants and agency officials.

Small Entity Impact

The Assistant Secretary for Natural Resources and Environment has determined the proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, an analysis of impacts on small entities is not required.

Environmental Impact

This proposed action sets forth procedures for appealing National Forest System management decisions. While the issues in a given appeal entered under this proposed rule may

involve major environmental quality issues, the proposed rule itself does not constitute a major Federal action affecting the quality of the human environment.

Paperwork Burden

The proposed rule would impose no additional paperwork requirements on individuals or groups who appeal Forest Service decisions concerning the management of the National Forest System. Use of the administrative appeal procedure is initiated at the discretion of the public, not mandated by the agency. The extent of written materials submitted to support the appeal is solely at the discretion of the Appellant. The improvements proposed are intended to simplify and clarify the process for both Appellants and Forest Service officials and could lead to less paperwork.

List of Subjects in 36 CFR Part 211

Administrative practice and procedure, and National forests.

For the reasons set forth in the preamble, Part 211, Subpart B, of Chapter II of Title 36 of the Code of Federal Regulations is proposed to be amended as follows:

1. Amend the Table of Contents for Subpart B to read as follows:

Subpart B—Appeal of Decisions Concerning the National Forest System

Sec.

211.18 Appeal of decisions of forest officers.

2. The authority citation for Part 211, Subpart B is revised to read as follows:

Authority: 30 Stat. 35, as amended, 50 Stat. 526 (16 U.S.C. 551, 7 U.S.C. 1011(f), 5 U.S.C. 301)

3. Remove § 211.19 and, in lieu thereof, add § 211.18 to read as follows:

§ 211.18 Appeal of decisions of forest officers.

(a) *Matters subject to appeal.* Written decisions of Forest Officers concerning the National Forest System and not excluded in paragraph (b) of this section are subject to appeal.

(b) *Matters excluded from appeal under this section.* (1) Decisions appealable to the Agriculture Board of Contract Appeals, USDA, under 7 CFR 24.

(2) Decisions involving Freedom of Information Act denials under 7 CFR 1(A) or Privacy Act determinations under 7 CFR 1.118.

(3) Decisions in which jurisdiction of another Government agency, the Comptroller General, or a court supersedes that of the Department of Agriculture.

(4) Decisions appealable under separate proceedings, including, but not limited to, those under 36 CFR 228.14, 36 CFR 292.15(1), 36 CFR 223.11, and 7 CFR 21.104.

(5) Decisions pursuant to OMB Circular A–76.

(6) Decisions concerning contracts under the Federal Property and Administrative Services Act of 1949, as amended.

(7) Decisions covered by the Contract Disputes Act.

(8) Decisions involving personnel matters.

(9) Decisions where relief sought is reformation of a contract or award of monetary damages.

(c) *Timely appeals.* (1) A notice of appeal of any initial decision, statement of reasons supporting the appeal, any request for stay, and any request for an oral presentation, must be filed within 45 days of date of written decision. Decisions may be implemented unless a stay is granted.

(2) A notice of appeal at the second level, or of any procedural matter, must be filed within 30 days of written decision. A statement of reasons supporting the appeal, any request for stay, and any request for an oral presentation must accompany an appeal at the second level.

(3) Nothing herein shall shorten the 30-day period provided in 40 CFR 1506.10 for filing a notice of appeal of any initial decision on a final environmental impact statement.

(4) Postmarks, other evidence of mailing, or, if not mailed, time of receipt, will determine time of filing. Weekends or Federal holidays are included in time allowed for filing, but when filing time would expire on a weekend or holiday, time is extended to the next business day.

(5) The Forest Officer who made the initial decision being appealed, known as the Deciding Officer, decides on questions of timeliness.

(6) Decisions on timeliness are appealable.

(d) *Extensions.* (1) Time for filing notice of appeal may not be extended. Likewise, time may not be extended for appeals on procedural matters.

(2) Written requests for extensions to prepare a statement of reasons, to provide comments on the responsive statement, and to submit comments following an oral presentation may be granted in extraordinary circumstances. A decision will be made within 10 days of receipt and written notification will be provided.

(3) If additional time is needed by a Forest Officer, Appellants will be notified.

(4) Decisions on requests for extensions are not appealable.

(e) *Format for appeal notice.* A written notice of appeal must be filed with the Forest Officer who made the decision being appealed. The notice must specifically identify the decision being appealed, the decision date, the Forest Officer who made the decision, and the relief desired. A statement of reasons supporting the appeal must be included, or submitted within the time for filing a notice of appeal.

(f) *Levels of appeal.* (1) Levels and sequence of appeal are limited to the following:

(i) Initial decisions of a District Ranger may be appealed to the Forest Supervisor, with second level appeal to the Regional Forester.

(ii) Initial decisions of a Forest Supervisor may be appealed to the Regional Forester, with second level appeal to the Chief.

(iii) Initial decisions of a Regional Forester may be appealed to the Chief.

(iv) Initial decisions of the Chief may be appealed to the Secretary of Agriculture.

(2) A notice of appeal of any initial decision of the Chief must be filed with the Chief, who shall, within 5 days of its receipt, transmit the notice and the Chief's decision to the Secretary for review at the Secretary's discretion.

(3) Appeal decisions of the Chief will be transmitted to the Secretary within 1 business day. The Secretary may exercise discretion to review such decisions but will not accept any notice of appeal or other petition regarding appeal decisions by the Chief.

(4) Any Chief's decision which is transmitted to the secretary may be implemented if the Secretary, within 10 days of receipt, does not exercise discretionary review.

(5) If the Secretary elects to review a Chief's decision, the review may be conducted on the record before the Chief or under such other procedures as the Secretary may deem appropriate.

(6) Decisions at the last level of appeal constitute the final adminsistrative determination of the Department of Agriculture.

(g) *Responsive statement.* At each level of appeal, the Deciding Officer will, within 30 days of receiving a statement of reasons, prepare a responsive statement and send it to the Appellant. The responsive statement may incorporate by specific reference other documentation in the record. Appellants may, within 20 days from date of the responsive statement, provide a concise reply. Upon receipt of such reply, or at the end of the 20-day

period, whichever comes first, the appeal record will be sent to the Reviewing Officer.

(h) *Stay of decision pending appeal.* (1) A stay of implementation of a decision under appeal will be considered only if the Appellant submits a statement to the Deciding Officer, explaining specifically what the appellant wants stopped and the reasons. Within 10 days of receipt of the request, the Deciding Officer shall grant or deny the stay and notify the Appellant in writing. In cases where a stay is granted, that stay will remain in effect until 10 days after the date of the Reviewing Officer's decision on the original administrative appeal.

(2) Decisions on stay requests are appealable.

(i) *Dismissal.* (1) An Appellant may withdraw an appeal at any time during the appeal process by notifying the Deciding Officer of the withdrawal.

(2) A Deciding Officer or Reviewing Officer may dismiss an appeal when the matter under appeal has become moot, when the Appellant has failed to submit a statement of reasons in a timely manner, or where relief is expressly precluded by law or regulation.

(3) Dismissals are appealable.

(j) *Scope of appeal.* Throughout all levels of appeal, an Appellant and any Intervenor shall be confined to the issues originally raised in the appeal. New information on the original issues may be introduced at the second level.

(k) *Provision for comments.* Any person or organization may submit written comments for the record. Such comments will be considered as provided for in paragraph (p).

(l) *Intervenors.* (1) At the discretion of the Reviewing Officer, any person or organizaiton having an immediate interest in the subject of an appeal may intervene by submitting written information at any level of the appeal process. Such intervention may not act to elevate the appeal to levels higher than available to the original Appellant.

(2) In appeals involving Intervenors, the Reviewing Officer may prescribe special procedures to expedite the process.

(3) Appellants and Intervenors must concurrently furnish copies of all submissions to each other; otherwise, such submissions may be removed from the appeal record. At the discretion of the Reviewing Officer, Appellants will be given time to review and comment on initial submissions by intervenors and vice versa.

(4) Appellants or Intervenors appealing a decision to a higher level must furnish copies of a notice of appeal to the Deciding Officer and to all other named parties to the appeal.

(m) *Oral presentation.* Within the appeal time limits established herein, an Appellant may ask for an opportunity for an informal oral presentation. The Reviewing Officer will respond to the request no later than 10 days after receiving the appeal record. If the request is granted, the Reviewing Officer will advise the Appellant of who will hear the presentation and of the place, time, and date. Participants may provide documentary material at the presentation and a brief summary for the record within 10 days after the presentation.

(n) *Consolidation of appeals.* Multiple appeals of the same or similar decisions may be consolidated by the Reviewing Officer with one responsive statement prepared and one appeal decision issued. Copies will be sent to all involved parties.

(o) *Procedural matters.* (1) Appeals on procedural matters must be filed with the Deciding Officer within 30 days of the procedural decision. A statement of the Appellant's concerns must be included.

(2) Decisions by the Deciding Officer on matters excluded from appeal, stay requests, dismissals, and timeliness of filing are appealable.

(3) The Deciding Officer shall promptly transmit appeals, with a response to the Appellant's concerns, to the Reviewing Officer for decision. Procedural decisions by the Reviewing Officer except those involving dismissal and stay requests are not appealable.

(4) Decisions on procedural matters will be made within 10 days of receipt and all parties will be notified in writing.

(5) Time extensions may not be granted to Appellants for appeals on procedural matters.

(6) Levels of appeal for decisions on procedural matters cannot exceed the levels available for the original administrative decision.

(p) *Appeal record.* The record consists of documents directly concerning the appeal issue and process, including, but not limited to, notices of appeal, comments, statements of reasons, responsive statements, procedural determinations, correspondence, oral summaries and accompanying documents, appeal decisions, and other information the Reviewing Officer may consider necessary to reach a decision. The record is open for public inspection. Notification will be provided to all parties whenever new information is added to the record. Within 20 days of additions on the appeal issue, Appellants may provide a concise reply. Upon receipt of such reply, or at the end of the 20-day period, whichever comes first, the appeal record will be considered complete.

(q) *Request for additional information or remand for further action.* If the appeal record is considered inadequate to affirm or reverse the decision, the Reviewing Officer may suspend the appeal process and request additional information, or remand the case with instructions for further action.

(r) *Appeal decision.* An appeal decision will be based only on the record, and should be made within 30 days of the Reviewing Officer's receipt of the complete record. The Reviewing Officer will notify the Appellant if more time is needed.

(s) *Continuance of appeals.* Provisions of 36 CFR 211.19 will remain in effect for cases filed between June 28, 1977, and the effective date of 36 CFR 211.18.

John B. Crowell, Jr.,

Assistant Secretary for Natural Resources and Environment.

July 28, 1982.

[FR Doc. 82-22503 Filed 8-19-82; 8:45 am]

BILLING CODE 3410-11-M

federal register

Friday
August 20, 1982

Part VI

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs; Self Bonding

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 800 and 806

Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs; Self-Bonding

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: In this rulemaking the Office of Surface Mining Reclamation and Enforcement (OSM) reproposes the rule on self-bonding. This proposed rule would establish the following two standards of financial eligibility to self bond: At least 5 years of continuous operation; and financial solvency demonstrated by an "A" or higher bond rating, a tangible net worth of at least $10 million, or ownership of at least $20 million of tangible fixed assets. The amount of all self-bonds that regulatory authorities may accept would be limited to 25 percent of the applicant's tangible net worth. Several other criteria for self-bonding also are proposed. A section would be added allowing the regulatory authority to accept the guarantee of a qualifying parent corporation for its subsidiaries. The rulemaking is necessary in order to replace the current rule which was suspended.

DATES: *Written comments:* Accepted until 5 p.m. (eastern time) on September 20, 1982.

Public hearings: Held on request only, on September 8, 1982, at 9:00 a.m. (local).

Public meetings: Scheduled on request only.

ADDRESSES: *Written comments: Hand-deliver* to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (TSR–21), Room 5315, 1100 L Street, NW., Washington, D.C.; or *mail* to the Office of Surface Mining U.S. Department of the Interior, Administrative Record (TSR–21), Room 5315L, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearings: Washington, D.C.—Department of the Interior Auditorium, 18th and C Streets, NW.; Pittsburgh, Pa.—William S. Moorehead Federal Building, Room 2212, 1000 Liberty Avenue; and Denver, Colo.—Brooks Tower, 2d Floor Conference Room, 1020 15th Street.

Public meetings: OSM offices in Washington, D.C.; Charleston, W. Va.; Knoxville, Tenn.; Indianapolis, Ind.; and Denver, Colo.

FOR FURTHER INFORMATION CONTACT: Public hearings and information: Adele Merchant, Branch of Economic Analysis, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C. 20240; 202–343–2156.

Public meetings; Jose del Rio, 202–343–4022.

SUPPLEMENTARY INFORMATION:

I. Public Commenting Procedures.
II. Background.
III. Discussion of Proposed Rules.
IV. Procedural Matters.

I. Public Commenting Procedures

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Commenters are requested to submit five copies of their comments (see "Addresses"). Comments received after the time indicated under "Dates" or at locations other than Washington, D.C., will not necessarily be considered or be included in the Administrative Record for the final rulemaking.

Public Hearings

Persons wishing to comment at the public hearings should contact the person listed under "For Further Information Contact" by the close of business *three working days* before the date of the hearing. If no one requests to comment at a public hearing at a particular location by that date, the hearing will not be held. If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

Public hearings will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment, and persons present in the audience who wish to comment, have been heard.

Public Meetings

Persons wishing to meet with OSM representatives to discuss these proposed rules may request a meeting at any of the OSM offices listed in "Addresses" by contacting the person listed under "For Further Information Contact."

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record room (1100 L St.). A written summary of each public meeting will be made a part of the Administrative Record.

II. Background

The Surface Mining Control and Reclamation Act of 1977 (the Act), Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, in Section 509(c) authorizes self-bonding for the completion of reclamation work which an operator may fail to perform. The Act requires that an applicant for self-bonding demonstrate to the regulatory authority that it has a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient to self-insure. Pursuant to Section 501(c) the Secretary of the Interior must promulgate rules to implement Title V of the Act, of which the self-bonding provision is a part, and upon which State regulatory program approval is based.

A self-bonding rule, 30 CFR 806.11(b), was first proposed on September 18, 1978 (43 FR 41661 and 41869). The proposed rule would have established general criteria in order for a regulatory authority to accept an applicant's self-bond. Besides the provision required by the Act for an agent to receive service of process, the proposed rules required a demonstration of a history of compliance with the Act, the rules and the State or Federal program over a 10-year period. The criterion for financial solvency proposed was simply that the applicant have a net worth of no less than twice the total amount of bond obligations on all its surface coal mining and reclamation permits.

This meant that the total amount of self-bond could not exceed one-half the applicant's net worth. In addition, all parties either owning or having a beneficial interest in the applicant were to execute an indemnity agreement under which each would be jointly and severally liable.

In the final rule of March 13, 1979, (44 FR 14901, 15114 and 15387) the ratio was decreased from one-half of the net worth to one-sixth so as to be more in line with the ratio used by the surety industry. A significant new requirement was added in the final rule. A mortgage or security interest in real or personal property valued at an amount at least equal to the bond was to be granted to the regulatory authority. Another

requirement of detailed financial information from an applicant was also added.

A petition to amend the bonding rules was received shortly after the final rules became effective (44 FR 28005, May 14, 1979). One of the sections which the petitioners were concerned with was § 806.11 on self-bonding. The petition was granted (44 FR 51098, September 6, 1979), and on January 24, 1980, a proposed rulemaking notice appeared (45 FR 6028) which dealt with the many comments received on self-bonding and which indicated the somewhat controversial nature of the subject (45 FR 6033). The rulemaking notice (45 FR 6040) proposed to make self-bonding a separate section, § 806.12. Most importantly, only one eligibility standard would have been retained—the applicant would have to have been in continuous operation for 10 years. The net worth to self-bond ratio would have been eliminated. Also, the requirement of a mortgage or security interest was proposed to be dropped.

The final rule, however, published on August 6, 1980, (45 FR 52306) retained the self-bonding rules as they were made final in March 1979. The failure to revise the self-bonding rules precipitated litigation by several groups contending that the rules unduly favored large operators. *National Coal Association and American Mining Congress v. Andrus,* Civ. No. 80–2530, and *Pennsylvania Coal Mining Association v. Department of the Interior,* Civ. No. 80–2544, both in the U.S. District Court, District of Columbia. A settlement agreement in these matters was entered into in December 1981.

While this litigation was pending, a proposed revision of all the bonding rules was published on September 9, 1981 (46 FR 45082). The proposed revision to self-bonding would have greatly simplified the rules, leaving the adoption of detailed requirements to the States in their programs. Public comments on the proposed revision called for more detailed requirements for self-bonding eligibility, which would have required a substantial change from the proposed rule. In repsonse to the proposed September 9, 1981, self-bonding rule, some commenters requested more detailed Federal guidance for development of self-bonding in State programs. Some commenters believed OSM was doing a disservice to all parties by placing responsibilities on the States to establish self-bond criteria. Some felt that the previous rules should be adopted as the standard of compliance. Other commenters favored publishing minimum standards by which to evaluate State program submittals. Surety companies believed that loosely administered self-bonding programs may preclude surety industry involvement in surface coal mining reclamation bonding.

In light of comments received on the proposed rules and as a result of the agreement reached with the parties in the litigation, OSM suspended, in part, the existing self-bonding rules on December 7, 1981 (46 FR 59934). The self-bonding rules in § 806.14 were suspended except for certain general provisions in § 806.14(a), (a)(1), part of (a)(5) and (a)(7), which all tracked provisions in Section 509(c) of the Act.

OSM has decided to repropose the self-bonding revisions separately from the other bonding rules. Thus, if adopted, the final revision of the bonding rules would consolidate Parts 800, 801, 805, 806, 807, 808 and 809 into one part—Part 800, but would not include provisions related to self-bonding, other than the definition of a self-bond. As proposed on September 9, 1981, the definition of a "self-bond" would be an "indemnity agreement in a sum certain executed by the permittee and made payable to the regulatory authority, with or without separate surety."

This separate rulemaking, which would add the self-bonding rules to 30 CFR Part 800 as § 800.23, proposes more detailed requirements for self-bonding than under the September 1981 rulemaking, but not as many as under the March 1979 rules. OSM is asking that comments on the proposed rule include documentation and detailed explanations. The comments referred to in this proposed rulemaking were received in response to the September 9, 1981, proposal.

III. Discussion of Proposed Rules

General

In this proposal all self-bonding rules would be moved to new 30 CFR 800.23. The existing suspended and nonsuspended self-bonding rules in § 806.14 are proposed for deletion and would be replaced by proposed § 800.23.

Proposed § 800.23 would allow a State to develop a comprehensive self-bonding program to balance the risk of forfeiture versus the security required in a self-bonding program. The proposed self-bonding rule would establish minimum criteria required to allow an applicant for a surface coal mining and reclamation operation permit to self-bond. States would be encouraged to adopt more detailed rules that reflect the financial structure of the local industry, and which provide the regulatory authority with sufficient protection from exposure to the risk of forfeiture.

The rules proposed here would establish the following four basic requirements for self-bonding under Section 509(c) of the Act: (1) Continuous operation over a period of 5 years; (2) financial solvency which may be demonstrated by either an "A" or higher bond rating, a tangible net worth of $10 million or ownership of $20 million in tangible fixed assets; (3) submittal of a report containing certified financial information and an opinion of an independent certified public accountant based on the applicant's financial statement; and (4) execution of an indemnity agreement. These proposed rules would also allow a parent corporation, having a controlling interest in a subsidiary which applies for a surface mining permit, to guarantee the self-bond of the subsidiary if the parent corporation meets certain requirements.

It is proposed that the self-bonding rules in this rulemaking would form the benchmark by which the States could build their own programs. The States, if they choose to allow self-bonding, could add their own relevant criteria. Overly detailed provisions in OSM's rules, such as the August 6, 1980, self-bonding rules, would prevent a State from adopting additional provisions to address the particular self-bonding conditions in the State's mining industry. Therefore, the objective in the rulemaking is to make the standards general enough to take into account state-specific conditions. A detailed discussion of each of the provisions of the proposed rule follows.

Regulatory Authority Discretion

Proposed § 800.23(a) would set the conditions under which a self-bond from an applicant for a surface coal mining and reclamation operation permit may be accepted by the regulatory authority. The acceptance of a self-bond would be discretionary with the regulatory authority. Even though an applicant meets the eligibility criteria, the regulatory authority could decide not to accept an applicant's self-bond whenever there was a reasonable basis for denial. Section 509(c) of the Act makes plain that acceptance of self-bonding is discretionary. This provision tracks the language of the Act.

Agent for Service of Process

The first condition for acceptance of a self-bond, proposed in § 800.23(a)(1), would require the permit applicant to designate an agent in the State who will receive service of process. This

requirement is directly from Section 509(c) of the Act.

Continuous Operation

The second condition, in proposed § 800.23(a)(2), would require that the permit applicant must have been in continuous operation for a period of 5 years. Section 509(c) of the Act provides that an operator be in "continuous operation sufficient for authorization to self-insure * * *." In existing suspended § 806.14(a)(5) the requirement was a period of 10 years. However, OSM believes that a 5-year history of continuous operation when considered with the other financial tests proposed in this rulemaking is sufficent to establish the financial soundness of the business entity.

Under proposed § 800.23(a)(2) (i) and (ii) a joint venture or syndicate in operation less than 5 years could possibly qualify for a self-bond if each of its members has been in operation for at least 5 years. Also, regulatory authorities, in calculating the five-year period of continuous operation, could exclude periods of business interruptions caused by events beyond the control of the applicant, such as natural disasters. In such situations the regulatory authority's determination of whether the requirement for 5 years of continuous operation has been met would have to be related to the applicant's likelihood of remaining in business during the mining and reclamation operations.

Financial Solvency

Proposed § 800.23(a)(3) sets the third condition that would have to be met before a self-bond may be accepted by the regulatory authority. This provision would require the applicant to submit financial information in sufficient detail to show that the applicant meets one of the three financial solvency criteria listed in proposed § 800.23(a)(3) (i), (ii) and (iii). Additional financial solvency tests could be established by the regulatory authority, *e.g.*, financial ratios, such as current assets to current liability, and total liability to net worth. Ratios such as these relate the financial stability of the company to other entities in the industry.

The first criterion in proposed § 800.23(a)(3)(i) would be based on the applicant's credit history. The applicant would have to have at least an "A" rating for its outstanding debt. A rating by either Moody's Investor Service or Standard and Poor's Corporation would be required. The credit history criterion would be added to enable operators who are financially sound but who do not have $10 million in tangible net worth or $20 million in tangible fixed assets to qualify. Bond ratings provide an appraisal of the firm's ability to repay specific long-term debts.

A 1981 study of financial tests for owners or operators of hazardous waste facilities, prepared by the Environmental Protection Agency (EPA), found that firms receiving any of the four highest ratings from Moody's or Standard and Poor's bond rating services show financial strength equal to firms qualifying under certain financial ratio tests. (Complete references are provided at the end of the discussion of these proposed rules.) Partly as a result of this study, EPA adopted rules (47 FR 15032, April 7, 1982) which require that an applicant for financial assurance tests have $10 million of tangible net worth and certain other financial criteria, in addition to the appropriate bond rating.

Since OSM would not be requiring the double proof of solvency—the $10 million tangible net worth in conjunction with the bond rating criterion—the applicant's bond rating would have to be in the top three ratings from Moody's (Aaa, Aa, A) or Standard and Poor's (AAA, AA, A). This would better assure that the company applying for self-bonding under the bond rating criterion would be able to survive in depressed economic conditions (Standard and Poor's Guide to Bond Ratings, 1979).

The second criterion for financial solvency proposed in § 800.23(a)(3)(ii) would set a requirement of a tangible net worth of at least $10 million. Accumulation of a net worth of this amount is a sufficient indication of financial solvency to assure that the applicant will fulfill the reclamation responsibility. The amount of $10 million was chosen because it is high enough to indicate that a business is well-established and it provides a sufficient financial cushion should the regulatory authority have to act under the indemnity agreement to complete the reclamation.

EPA, in its study of financial tests for owners or operators of hazardous waste facilities, mentions a National Association of Accountants' report that found that the failure of firms with a tangible net worth of greater than $10 million was "sharply lower" than the failure rate of those firms with tangible net worth less than $10 million (Backer and Gosman, 1978). EPA's review of all available data indicated that the rate of failure for firms with the $10 million tangible net worth (22 per 10,000 firms) was almost half that of firms with less than $10 million net worth (Environmental Protection Agency, 1981).

OSM's proposal to allow net worth requirements to be measured using only tangible net worth would exclude intangible items from net worth. Intangible items include goodwill, patents, royalties, and trademarks, which OSM considers too difficult to liquidate. EPA, in the preamble of its April 7, 1982, **Federal Register** notice adopting the hazardous waste rules (47 FR 15032), noted that intangibles may be difficult to convert to cash, and thus restricted its net worth requirements to trangible net worth. OSM realizes, however, the financial ratios that the regulatory authority may use in assessing a company's financial health customarily use intangibles in assessing total net worth. OSM does not intend by the use of "tangible net worth" in proposed § 800.23(a)(3)(ii) to require such a restriction in the financial ratios as may be used by the regulatory authority as an additional test to measure financial solvency of an applicant.

The third test for indicating financial solvency in proposed § 800.23(a)(3)(iii) would be for the applicant to own at least $20 million of tangible fixed assets in the United States. Even though the operator may have little equity in the assets, ownership of $20 million of tangible fixed assets is a sufficient indication that lenders are confident in the operator's business ability and that they expect it to meet its financial obligations.

When considered with the restriction of the proposed minimum allowable net worth to bond amount ratio of 4:1 (discussed under proposed § 800.23(b)), the criterion of substantial fixed assets should be sufficient to ensure the applicant's ability to complete his reclamation responsibilities. Tangible fixed assets would include business plants and equipment. It would not include land, or coal in place.

OSM has considered allowing applicants having a net worth or fixed assets lower than the proposed amounts to qualify for self-bonding. OSM believes that the amounts proposed, $10 million of tangible net worth or $20 million of tangible fixed assets, would provide the regulatory authority with the minimum protection from risk of forfeiture. Information provided to OSM by Dun & Bradstreet in April, 1982, indicated that 130 coal companies could qualify under restrictions of 5-years continuous operation and a net worth of at least $10 million or tangible fixed assets of at least $20 million.

OSM will consider lowering the net worth and fixed asset minimums if commenters can show through

documentation and explanation that lower minimums coupled with other financial criteria will afford sufficient protection from risk to the regulatory authority. By lowering the minimums more coal companies could qualify. For instance, the Dun & Bradstreet data showed that 70 additional companies could qualify if the minimums were lowered to $5 million net worth or $10 million in tangible fixed assets. If convincing comments are received in support of lowering minimums, OSM will consider the alternatives when issuing final self-bonding rules. Comments are also requested as to whether a different debt rating criterion should be used other than Moody's and standard and Poor's top three bond ratings.

Submission of Financial Information

Proposed § 800.23(a)(4) would require the applicant to submit a financial report prepared by an independent certified public accountant from which the regulatory authority would be able to determine continuous operation and financial solvency. The requirements of existing suspended § 806.14(a)(5)(i)–(vii) are considered too detailed or too stringent and would not allow the States the flexibility to set their own financial information requirements for self-bonding. For this reason the proposal would allow the regulatory authority to specify the precise financial information that must be submitted. The statement would have to be certified by an independent certified public accountant and be accompanied by the accountant's opinion as to the applicant's ability to meet all obligations under its reclamation plan.

Parent Corporation Guarantor

Proposed § 800.23(a)(5) would allow subsidiaries of qualified parent corporations to self-bond, if the parent corporation would become the guarantor through the use of a "corporate guarantee." In addition to requiring the parent corporation to meet the same conditions as any other applicant for a self-bond, the rule would require a controlling interest in the subsidiary by the parent corporation. The willingness of the parent corporation to assume the bond obligations would indicate that the parent corporation has an interest in a successful mining and reclamation operation. Under proposed § 800.23(a)(5)(i) the regulatory authority would be assured funds from the guarantor to complete the reclamation plan if the subsidiary is unable to and the parent corporation chooses not to complete the reclamation.

Proposed § 800.23(a)(5) (ii) and (iii) would allow the parent corporation as guarantor to cancel the corporate guarantee only if the arrangement is satisfactory to the regulatory authority and only if replacement bond is obtained before the cancellation date. The parent corporation guarantor would have the burden of protecting the regulatory authority from risk and would therefore be obligated under the corporate guarantee in the event that a replacement bond is unobtainable.

Limitation on Amount of Self-Bond

Proposed § 800.23(b) would set a basic limitation on all self-bonds regardless of under which criterion under paragraph (a)(3) the applicant may be eligible. Under this proposal the total value of all self-bonds that a regulatory authority may accept from an applicant or a parent corporation guarantor would not exceed 25 percent of the tangible net worth of the applicant or guarantor. OSM believes that this restriction would provide a sufficient financial cushion when coupled with other qualifying criteria so that the risk involved is acceptable, that is, the regulatory authority would be assured that reclamation would be completed.

There is no requirement in this proposal to grant a security interest in real and personal property for a self-bond as was required in the 1979 rule. An operator's bond, if secured with collateral, becomes a collateral bond. This point was made in the May 1979 rulemaking petition to amend the bonding rules (44 FR 28007). In this proposal, when an operator does not qualify for self-bonding, then collateral could be posted for the bond amount, a surety bond obtained, or a letter of credit provided.

Some commenters to the September 1981 proposal asserted that self-bonds should be supported by collateral. Under this proposal regulatory authorities would have the discretion to require collateral as part of a self-bond, but the proposed Federal self-bonding rules would not require collateral.

Indemnity Agreement

Proposed § 800.23(c)(1) through (c)(4) would set terms for the indemnity agreement, such as who is required to sign it and what rights the regulatory authority acquires by its acceptance. The indemnity agreement specifies the amount of the bond and formally enumerates the applicant's and other parties' liability in the event of forfeiture.

Proposed § 800.23(c)(1) would set a general requirement that the indemnity agreement be executed by all parties who must be bound by it. It also would provide that such an agreement shall be a joint and several obligation of the parties. This latter provision is taken from existing suspended § 806.14(a)(6)(iii).

Proposed § 800.23(c)(2) would pertain to corporations and parent corporation guarantors entering into an indemnity agreement. It would require that the indemnity agreement be signed by two authorized corporate officers and supported by the corporation's board of directors. The provision is taken from existing suspended § 806.14(a)(6)(i)(A).

Proposed § 800.23(c)(3) specifies requirements for applicants who are partnerships, joint ventures and syndicates. Each partner and each member of a joint venture or syndicate who has a beneficial interest would be required to execute the agreement. This provision is similar to existing suspended § 806.14(a)(6) (i)(C) and (iv).

Forfeiture

Proposed § 800.23(c)(4) would require the applicant or parent corporation guarantor, pursuant to § 808.13, to pay the regulatory authority upon forfeiture the sum necessary to complete the reclamation. Section 808.13 of the existing bonding rules sets the procedures for forfeiture and was proposed for revision and redesignation as § 800.50(a) on September 9, 1981 (46 FR 45090). If the proposed revisions to § 808.13 are finalized, the change of § 808.13 to § 800.50(a) would also be noted in the final rule adopting proposed § 800.23.

Proposed § 800.23(c)(4) would also provide that under forfeiture an indemnity agreement would operate as a judgment against the liable parties if permitted under State law. This would enable the regulatory authority to take legal action to collect the bond should the parties refuse to pay the sum demanded. This provision has been included in this proposal to provide for a directly enforceable instrument.

Conditions for Release from Self-Bonds

Proposed § 800.23(d) would require that at any time a permittee, who is self-bonded under these provisions, or a parent corporation guarantor does not meet the eligibility criteria of proposed § 800.23(a)(3) the permittee shall have 90 days to post surety or collateral bonds. Proposed § 800.23(d) would encompass the standards as proposed in September, 1981, for § 800.16(e) on surety insolvency—a permittee would have 90 days to post substitute bonds before having the cease coal production and

begin reclamation operations (46 FR 45093).

Proposed Deletions

Provisions of existing § 806.14 (a), (a)(1), part of (a)(5) and (a)(7) which were not suspended in the December 7, 1981, notice are proposed for deletion. In this rulemaking, proposed § 800.23 (a), (a)(1), (a)(5) and (d) would retain the intent of the paragraphs proposed for deletion.

Reference Materials

Reference materials used to develop these proposed rules are as follows:

Backer, M. and M. L. Gosman. 1978. *Financial Reporting and Business Liquidity.* New York: National Association of Accountants. pp. 143–179.

Dun and Bradstreet. 1982. *Prospect Reports, April, 1982.*

Environmental Protection Agency. 1981. *Background Document for the Financial Test & Municipal Revenue Test for Financial Assurance for Closure and Post-Closure Care.* EPA. 149 pp.

Standard and Poor's Corporation. 1979. *Standard and Poor's Rating Guide.* New York: McGraw Hill, Inc. p. 6.

IV. Procedural Matters

Paperwork Reduction Act

The information collection requirements in existing 30 CFR Part 800 were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507. These approvals were identified in "notes" at the introduction to 30 CFR Part 800. OSM would delete those "notes" and codify the OMB approvals under new § 800.10 that contains information collection requirements. OSM is requesting reapproval from OPMB for existing information collection requirements. This information collection was originally approved under Part 806.

The information required by § 800.23(a) and (c) would be collected and used by regulatory authorities in implementing the bonding responsibilities for surface and underground mining activities to ensure that companies have adequate financial ability to qualify for a self-bond. This information required by § 800.23(a) and (c) is mandatory of an operator who elects to self-bond its reclamation obligation. OSM would be responsible for collecting the information only when a Federal program is implemented for a State. Twenty-four states have had regulatory programs approved through which they may collect self-bonding information.

Executive Order 12291

The Department of the Interior (DOI) has examined these proposed rules according to the criteria of Executive Order 12291 (February 17, 1981). OSM has determined that these are not major rules and do not require a regulatory impact analysis because they would impose only minor costs on the coal industry and coal consumers.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that these rules would not have a significant economic impact on a substantial number of small entities. The proposed rules may allow small coal operators increased flexibility in meeting the reclamation bonding requirement and may ease the bonding burden of small coal operators.

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA) on this proposed rule and has made an interim finding that it would not significantly affect the quality of the human environment. The draft EA is on file in the OSM Administrative Record at the address listed in the "Addresses" section of this preamble. A final EA will be completed and a final conclusion reached on the significance of any resulting impacts before issuance of the final rule.

List of Subjects

30 CFR Part 800

Coal mining, Insurance, Reporting and requirements, Surety bonds, Surface mining, Underground mining, Administrative practices and procedures.

30 CFR Part 806

Insurance, Reporting and recordkeeping requirements, Surety bonds, Surface mining, Underground mining.

Accordingly, 30 CFR Parts 800 and 806 are proposed to be amended as set forth herein.

Dated: July 30, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary, Energy and Minerals.

PART 800—BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER REGULATORY PROGRAMS

1. Section 800.23 is added to 30 CFR Part 800 to read as follows:

§ 800.23 Self-bonding.

(a) The regulatory authority may accept a self-bond from an applicant for a permit if all of the following conditions are met:

(1) The applicant designates a suitable agent to receive service of process in the State where the proposed surface mining operation is to be conducted.

(2) The applicant has been in continuous operation as a business entity for a period of not less than 5 years. Continuous operation shall mean that business was conducted over a period of 5 years immediately preceding the time of application.

(i) The regulatory authority may allow a joint venture or syndicate with less than 5 years of continuous operation to qualify under this requirement, if each member of the joint venture or syndicate has been in continuous operation for at least 5 years.

(ii) The regulatory authority may exclude periods of interruption to the operation that were beyond the applicant's control when calculating the period of continuous operation. Such an exclusion shall relate to the applicant's likelihood of remaining in business during the mining and reclamation operations.

(3) The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:

(i) The applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either Moody's Investor Service or Standard and Poor's Corporation;

(ii) The applicant has a tangible net worth of at least $10 million. (Tangible net worth means total assets minus total liabilities and does not include intangibles such as goodwill, patents, royalties and trademarks); or

(iii) The applicant's tangible fixed assets in the United States total at least $20 million. Tangible fixed assets include plants and equipment, but do not include land and coal in place.

(4) The applicant submits a report from an independent certified public accountant on examination of the applicant's financial statements for the latest completed fiscal year. The report shall include any specific financial information requested by the regulatory authority, and the accountant's opinion of the applicant's ability to meet all obligations under the reclamation plan submitted under Subchapter G of this chapter.

(5) When a written guarantee for an applicant is submitted by a parent corporation guarantor, the guarantor meets the conditions of paragraphs

(a)(1) through (a)(4) of this section. Such a written guarantee shall be referred to as a "corporate guarantee." The parent corporation shall have a controlling interest in the applicant. The terms of the corporate guarantee must provide for the following:

(i) If the applicant fails to complete the reclamation plan, the guarantor will do so or the guarantor will be liable under the indemnity agreement to provide funds to the regulatory authority sufficient to complete the reclamation plan.

(ii) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the regulatory authority at least 90 days in advance of the cancellation date, and the regulatory authority accepts the cancellation.

(iii) The cancellation shall be accepted by the regulatory authority only if the applicant obtains suitable replacement bond before the cancellation date.

(b) For the regulatory authority to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant shall not exceed 25 percent of the applicant's tangible net worth. For the regulatory authority to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed subsidiary self-bonds shall not exceed 25 percent of the guarantor's tangible net worth.

(c) If the regulatory authority accepts an applicant to self-bond, an indemnity agreement shall be submitted subject to the following requirements:

(1) The indemnity agreement shall be executed by all persons and parties who are to be bound by it and shall bind each jointly and severally.

(2) Corporations applying for a self-bond or parent corporations guaranteeing a subsidiary's self-bond shall submit indemnity agreements signed by two corporate officers who are authorized to bind the corporation and supported by a letter of consent by the corporation's board of directors authorizing entry into the agreement.

(3) If the applicant is a partnership, joint venture or syndicate, the agreement shall bind each partner or party who has a beneficial interest, directly or indirectly, in the applicant.

(4) Pursuant to § 808.13 of this chapter, the applicant or parent corporation guarantor shall be required to pay to the regulatory authority an amount necessary to complete the prescribed reclamation plan. If permitted under State law, the indemnity agreement when under forfeiture shall operate as a judgment against those parties liable under the indemnity agreement.

(d) If at any time during the period when a self-bond is posted, the financial conditions of the applicant or the parent corporation guarantor change so that they do not meet the criteria of paragraph (a)(3) of this section, the permittee shall within 90 days post an alternate form of bond in the same amount as the self-bond. Should the permittee fail to post an adequate substitute bond, the provisions of § 800.16(e) shall apply.

PART 806—FORM, CONDITIONS, AND TERMS OF PERFORMANCE BONDS AND LIABILITY INSURANCE

§ 806.14 [Removed]

2. 30 CFR Part 806 and remaining § 806.14 are removed.

(Authority: Pub. L. 95–87; 30 U.S.C 1201 *et seq.*)

[FR Doc. 82–22784 Filed 8–19–82; 8:45 am]
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federal register

Friday
August 20, 1982

Part VII

Department of the Interior

Fish and Wildlife Service

Migratory Bird Hunting; Proposed Frameworks for Late Season Migratory Bird Hunting Regulations

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Late Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental proposed rule.

SUMMARY: This document supplements proposed rulemakings published in the **Federal Register** on April 19 and June 15, 1982, and sets forth proposed frameworks, (i.e., the outer limits for dates and times when shooting may occur, hunting areas, and the number of birds which may be taken and possessed) for late season migratory bird hunting regulations for the 1982–83 season. These seasons generally commence on or about October 1, 1982, and include most of those for waterfowl.

Except as noted, frameworks will be similar to those in effect last hunting season. The Service plans to continue its program of stabilized duck hunting regulations into the 1982–83 hunting season as the third year of a 5-year cooperative study with Canada.

The Service annually prescribes migratory bid hunting regulations frameworks to the States. The effects of this proposed rule are to facilitate the selection of hunting seasons by the States and to further the establishment of the late season migratory bird hunting regulations for the 1982–83 season.

DATES: The comment period for these proposed late season frameworks will end on August 30, 1982.

ADDRESS: Comments to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments received on these proposed late season frameworks will be available for public inspection during normal business hours in Room 525–B, Matomic Building, 1717 H Street, NW., Washington, D.C. Copies of the environmental assessment on stabilizaton of hunting regulations are available from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. The Service's biological opinions resulting from its consultation under section 7, Endangered Species Act, are available for public inspection in or available from the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: John P. Rogers, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202–254–3207).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

On April 19, 1982, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the **Federal Register** (47 FR 16718) a proposal to amend 50 CFR Part 20, with comment periods ending June 23, July 16, and August 23, 1982, respectively, for the 1982–83 Alaska, Puerto Rico, and Virgin Islands; other early hunting seasons; and the late hunting seasons frameworks. That document dealt with the establishment of hunting seasons, hours, areas, and limits for migratory game birds under §§ 20.101 through 20.107 and 20.109 of Subpart K. On June 15, 1982, the Service published in the **Federal Register** (47 FR 25922) a second document consisting of a supplemental proposed rulemaking dealing with both the early and late season frameworks. On July 12, 1982, the Service published for public comment in the **Federal Register** (47 FR 30162) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early season migratory bird hunting regulations. On July 19, 1982, the Service published in the **Federal Register** (47 FR 31282) a fourth document containing final frameworks for Alaska, Puerto Rico, and the Virgin Islands, and on August 9, 1982 (47 FR 34498), a fifth document containing final frameworks for other early seasons for migratory bird hunting regulations from which State wildlife conservation agency officials selected early season hunting dates, hours, areas, and limits for the 1982–83 season. Before September 1, 1982, the Service will publish in the **Federal Register** a sixth document consisting of a final rule amending Subpart K of 50 CFR Part 20 to set hunting seasons, hours, areas, and limits for mourning doves, white-winged doves, band-tailed pigeons, rails, woodcock, snipe, and gallinules; September teal seasons; sea ducks in certain defined areas of the Atlantic Flyway; ducks in September in four States; sandhill cranes in the Central and Pacific Flyways; and migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands during 1982–83. This document is the seventh in the series and deals specifically with proposed frameworks for the 1982 late season migratory bird hunting regulations.

These proposed regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Review of Public Comments and the Service's Response

Comments Received at Public Hearing. Thirteen statements were offered at the August 3, 1982, public hearing. In some instances, portions of these statements were irrelevant to the purpose of the hearing. Relevant portions of each statement are summarized below. In the interest of efficiency, the Service responds after presenting the summaries of comments rather than following each individual comment.

Dr. W. Alan Wentz, representing the National Wildlife Federation (NWF), opposed an Office of Management and Budget (OMB) proposal to terminate the annual regulations process with the establishment of frameworks, from which States would select and finalize under State regulatory procedures the hunting seasons and options selected (see 47 FR 16721 for details of the OMB proposal). NWF expressed support for stabilized duck hunting regulations, urging the Service to make its study available as soon after 1985 as possible, and to make a greater effort to explain stabilized hunting regulations to sportsmen; endorsed shooting hours for migratory bird hunting as proposed by the Service; and noted that significant, recreational, economic, and social benefits could accrue form a properly regulated hunting season for whistling swans of the eastern population. NWF provided a copy of a resolution passed at its annual meeting in Milwaukee, Wisconsin, that urged the Service, the Mississippi Flyway Council, and cooperating States to implement actions which will achieve the objectives of the Mississippi Valley Population (MVP) of Canada geese within the agreed upon time frame. Dr. Wentz's verbal comments focused on the OMB proposal and stabilized duck hunting regulations.

Mr. John M. Anderson, National Audubon Society (NAS), urged

continuance of the stabilized duck hunting regulations study, noting that regulatory changes now would undermine the 5-year experiment which is in its third year. He stated that data do not suggest that hunting in general is affecting black duck populations. He observed that the mallard had expanded eastward forcing the black duck into less favorable habitat, and that no relationships have been detected between years of liberal and restrictive hunting regulations for mallards and black ducks. Mr. Anderson urged that no changes in the stabilized regulations study be made for at least 2 years so that a coordinated black duck management program can be developed with Canada.

Mr. Eldridge G. Hunt, representing the Pacific Flyway Council (PFC), recommended regulatory changes developed by the Council at its recent meeting. These related to minor changes in season frameworks for the Pacific and Rocky Mountain Populations of Canada geese; the experimental sandhill crane-Canada goose season proposed for portions of Lincoln County, Wyoming; season frameworks for white geese in portions of Washington, and for white geese, cackling Canada geese, and white-fronted geese in portions of Oregon; and modifications in the permit and tagging systems for controlling the harvests of whistling swans in 3 western States.

Mr. Tom Marshall, appearing for Congressman Ed Jones, 7th Congressional District of Tennessee, recommended that protective measures be undertaken for MVP Canada geese. He urged that the population be permitted to increase in accordance with the MVP management plan by reducing the harvest until a population of 1 million geese is achieved. Mr. Marshall recommended a harvest quota of 40,000 geese, and urged that no feeding of these geese be undertaken in southern Illinois.

Mr. William Hawks, representing Senator James Sasser of Tennessee, also spoke in support of the MVP Canada goose management plan, expressed opposition to the feeding of geese in southern Illinois, and urged that the harvest quota to be divided between Illinois and Wisconsin be set at 40,000 birds.

Mr. Thixton B. Miller, representing Illinois, indicated that his State could not support the MVP Canada goose quota being proposed by the Service for Illinois. He stated that Illinois will not participate in the MVP Canada goose management plan since it has become an impediment to the management of these geese. However, Illinois will support some of its provisions, and will continue to work toward an increase in MVP Canada geese.

Mr. Lee Roy Rendleman, representing farmers and hunting club operators of the Southern Illinois Quota Zone Association, objected to the Illinois Canada goose quota proposed by the Service, supported Illinois' withdrawal from the MVP Canada goose management plan, and expressed the determination of his organization to work for a modification of the Service's proposed goose harvest quota for Illinois.

Mr. William Wagner II, representing the Atlantic Flyway Council (AFC), expressed support for continuation of stabilized duck hunting regulations and the current procedures being followed by the Service in developing annual migratory bird hunting regulations. He reported that the AFC accepted a black duck management plan at its recent meeting, and intends to work with the Service and Canada to implement a coordinated management program.

Dr. Laurence R. Jahn, Wildlife Management Institute (WMI), urged the Service to set numerical objectives for waterfowl populations before hunting regulations are set for the 1983–84 season. Support was expressed for stabilized duck hunting regulations but WMI believes that the analysis of the 5-year study should include evaluation of impacts on species at State and provincial levels, as well as continentally. In each situation, a threshold level should be defined below which hunting mortality is largely compensated for by decreased natural mortality. Dr. Jahn stated that migratory bird hunding regulations should be exempted from recent proposals for change by OMB (described earlier) and from regulatory reform legislation being considered by the Congress. He stated that these proposed measures would inhibit the gathering of necessary biological information, adversely affect wise resource management, and the enforceability of hunting regulations. WMI complimented Canada and the United States in its development of migratory bird management plans and urged that efforts now be directed to developing a North American management plan.

Dr. John W. Grandy, representing the Humane Society of the United States (HSUS), spoke at length on the black duck and through HSUS counsel, Covington and Burling, submitted a lengthy statement. He states that, "FWS action in continuing to permit the hunting of black ducks is unlawful and contrary to sound wildlife management practices, in face of overwhelming evidence of an alarming and continuing decline in black duck populations and of strong evidence that hunting pressure contributes to—if not accounts almost entirely for—this decline." After stating HSUS's interest and position, Dr. Grandy made the following assertions:

—The Service has not supported its proposal [to retain the same black duck hunting regulations this year] with any sound reason
—The black duck population trend is downward
—The Service has historically failed to act to protect the black duck
—The Service's failure to prohibit black duck hunting is irrational
—Failure to prohibit black duck hunting would be contrary to applicable law.

Dr. Grandy referred to black duck population, harvest, and other data, and reports and studies of black ducks as supporting his beliefs.

Ms. Ellen Bass, counsel for HSUS, briefly stated that the Migratory Bird Treaty Act prohibits hunting of migratory game birds unless affirmative action is taken by the U.S. Fish and Wildlife Service, and that the agency cannot shift its responsibility by requiring evidence of harm before taking action. She noted that Covington and Burling is prepared to take legal action to "save the black duck" but expressed hope that such action will not be necessary.

Mr. Dale E. Whitesell, speaking on behalf of Ducks Unlimited (U.S.), briefly reported upon habitat conditions and the status of ducks in Canada. He supported the continuation of the stabilized duck hunting regulations evaluation and the need to exempt annual hunting regulations from procedural requirements of pending legislation.

Mr. Ron Fox of the Tennessee Wildlife Resources Agency expressed strong support for the MVP Canada goose management plan, noting that it was cooperatively developed and agreed by States of the Mississippi Flyway sharing in the management of these geese, and the Service. He expressed opposition to the Illinois-Wisconsin harvest quota of 45,000 birds which is being proposed by the Service. Mr. Fox noted that such a quota world result in an actual U.S. harvest of about 65,000 geese. He urged the Service to alter its proposed quotas to achieve the population objectives set forth in the MVP plan.

Response. The Service responds as follows to the comments made at the public hearing.

OMB Proposal. On April 20, 1982, the Office of Management and Budget (OMB) proposed that the Service

consider changing its regulatory process so that Federal involvement in establishing annual hunting regulations for migratory game birds would cease with publication of final frameworks from which States would select hunting season dates and other options. Promulgation of final regulations, which include specific season dates and options, would be a responsibility of the States.

Public notice of the OMB proposal was provided in **Federal Registers** dated April 19, 1982 (at 47 FR 16721) and June 15, 1982 (at 47 FR 25926). Also, the legal aspects of the OMB proposal were examined by Department of the Interior solicitors. In response to public notice the Service received direct comments from 24 State conservation agencies, the governmental organizations directly affected by the proposal, and 3 non-governmental organizations. Among the latter was the Mississippi Flyway Council, representing 14 State conservation organizations, including 7 States which had not commented separately.

Of the 27 comments received, all but 8 were in opposition to the proposal. Six States said that in the absence of Federal regulations containing season dates and other selected options, their administrative procedures would preclude setting final hunting regulations in time. Other reasons offered in opposition included inconveniences to hunters, differential enforceability of the hunting regulations among States, and the weakening of Federal involvement in the national migratory bird management program. No comments supported the OMB proposal. However, 8 States indicated that they could adjust their regulatory procedures to accommodate the proposal should it be implemented.

The Departmental Solicitor identified a number of legal problems with the OMB proposal. The legislative history of the Migratory Bird Treaty Act shows that Congress clearly intended Federal hunting regulations to include regulation of the activities of individual hunters rather than be directed solely toward the actions of State conservation agencies as would be the case under the OMB proposal. Other concerns relate to the adequacy of State laws to set hunting regulations for migratory birds, and the enforceability of these regulations by Federal officers.

In view of these problems, Assistant Secretary G. Ray Arnett wrote Director David A. Stockman, OMB, on July 19, 1982, stating:

> In view of the above, we believe that terminating the Federal role in the regulation process with publication of final frameworks would be legally inconsistent with the Migratory Bird Treaty Act and would create serious implementation and enforcement problems for the States as well as the Fish and Wildlife Service. Therefore, we think it best not to pursue this proposal further.

Mississippi Valley Population (MVP) Canada geese. A 1981–82 winter survey conducted in December 1981 indicated a population of 251,000 MVP geese, down 32 percent from the 367,000 geese indicated in a comparable survey in December 1980. A Canada goose survey was also conducted throughout the flyway during the midwinter waterfowl survey in early January 1982, approximately 3 weeks after the December survey. The flyway estimate of Canada geese from this survey was 820,000, 29 percent higher than the flyway estimate of 634,000 from the December survey. Using criteria from the December survey to allocate the January flyway estimate among the various goose populations, the January MVP estimate was 421,000, 68 percent higher than the December MVP estimate. However, due to widespread dispersal of geese, including some intermingling of populations, after the hunting season, the relationship between January and December population estimates is not entirely clear.

The MVP Canada goose management plan specifies that the mid-December survey will be used to monitor the annual population size. Based on a mid-December population of 435,000 Canada geese in 1978, and the 15 percent annual population increase stated in the plan, the populations should have been 500,000 geese in 1979; 575,000 in 1980; and 662,000 in 1981. Instead, the observed populations were 395,000 in 1979; 367,000 in 1980; and 251,000 in 1981. While opinions differ over the validity of these population estimates, particularly for the past 2 years, the important point is that the population has been downward in comparison to the upward trend provided in the MVP plan.

This situation led to confusion about the size of the MVP and the reliability of the December survey to measure it. After reviewing all available information, the Mississippi Flyway Council MVP Committee, in a meeting in March 1982 in Indianapolis, Indiana, concluded that the December 1981 population was about 10 percent lower than in December 1980, but did not establish a population level for either year.

State harvest surveys in Wisconsin (1979–81) and Illinois (1981) indicate that MVP Canada goose harvests in both States have been substantially higher than the assigned quotas in recent years. Both States have proposed measures for implementation in 1982 to reduce actual harvests to quota levels. These include reducing the length of the hunting season on MVP geese in the Mississippi Flyway, including Wisonsin and Illinois, reducing the daily bag outside the quota zone in Illinois, and reducing the proportion of the statewide Illinois quota assigned to the quota zone.

At their July 1982 meeting in Mobile, Alabama, the Mississippi Flyway Council failed to reach agreement on hunting regulations for 1982. This left the determination to the Service, as was the case in 1981. The Upper Region Regulations Committee recommended that the total harvest of MVP geese, including harvest in Canada, not exceed 100,000. They further recommended that season length be reduced to 40 days in all MVP areas, including a larger portion of Kentucky than in 1981, and that there be reductions in bag limit in certain areas but harvest quotas for Wisconsin and Illinois should be the same as in 1981. The Lower Region Regulations Committee recommended that the U.S. harvest of MVP geese not exceed 40,000, stating that this was necessary to produce a 15 percent increase in the population. The group further recommended that if the regulations this year are not designed to produce a 15 percent population increase, States which previously had closed seasons be granted the option to reopen their seasons.

The Service endorses the restictive measures recommended by the Upper Region Regulations Committee and subscribed to by Wisconsin and Illinois to reduce MVP harvest. However, the Service is of the view that these measures do not go far enough, and that some further restriction is necessary in order to provide additional assurance that the downward trend in the population apparent in recent years will be halted and reversed. Accordingly, the Service proposes to reduce 1982 harvest quotas in Wisconsin to 18,000 and in Illinois to 27,000. the proposed quota of 45,000 for both States combined is a reduction of 5,000 from the combined quota of 50,000 in 1981. This, plus the quota changes made in 1981, amounts to a 2-year reduction of approximately 30 percent in the harvest quotas for Wisconsin and Illinois. It is believed that the proposed reduction in quotas will significantly enhance the effectiveness of the measures already proposed by the Upper Region Regulations Committee and will provide additional assurance that the downward

trend of the MVP will be reversed. However, it cannot be guaranteed these measures necessarily will result in a 15 percent increase as called for in the MVP management plan. Such population increases do not depend solely on harvest restrictions. Favorable levels of nesting success and production are also necessary. For this reason, the Service favors as approach in which consideration could be given to developing regulations that will stabilize harvest at a level that can reasonably be expected to facilitate an upward trend in population and that can be left in place for a period of years. The Service proposes to work with the Flyway Council, through its MVP Committee, in an effort to reach agreement on such a set of regulations. Elsewhere, the Service indicates that it does not favor the earlier goose season framework requested by Michigan because it is oriented to MVP geese and would be inconsistent with current efforts to reduce the harvest of the birds in the Upper Region of the Flyway. On the other hand, the Service proposes to provide an option to States in the Lower Region for a limited harvest of MVP Canada geese in areas where seasons have been closed in recent years, as requested by the Lower Region Regulations Committee.

Black Ducks. At the August 3, 1982, public hearing for late hunting season frameworks, the Service presented its position on black ducks, including the proposal to retain for 1982 the same hunting regulations as in 1981. The Service's statement included much information pertinent to HSUS's comments offered at the public hearing. The following summarized information responds to statements made by HSUS.

The Service concurs that a gradual decline of black duck numbers, as indicated by winter population survey data, has been underway for many years. The precise cause of the decline is not known. However, changes in land use in some portions of the breeding ground, deterioration and loss of habitat, competition with mallards, and hybridization with mallards appear to be major factors adversely affecting the size of the black duck population. Comprehensive analyses of banding and other data have been conducted by the Service during the past two years. These analyses do not demonstrate that current levels of harvest are depressing the survival of adult black ducks to a point that would adversely affect the population. However, they suggest that hunting may be affecting the numbers of immatures that survive to enter the breeding population. Under these circumstances, the Service is of the view that management attention should be focused on measures, including harvest restrictions to increase the number of immatures that survive to enter the breeding population. The Service intends to work in this directions and is of the view that it does not require such drastic action as complete prohibition of all hunting of black ducks in the United States.

Despite HSUS's assertion, hunting regulations for black ducks have been made more restrictive over the years. In 1959, the Atlantic Flyway had a 70-day season with 4 black ducks allowed daily. By 1973, restrictions had reduced the season length to 50 days, with a 1- or 2-black duck daily bag depending on a State's choice of either a 4- or 5-total daily bag limit of ducks. Under the point system, only 2 black ducks may be taken daily.

The Service believes it undesirable to alter the black duck hunting frameworks this year for a number of reasons. A black duck management plan just recently endorsed by the Atlantic Flyway Council contains specific proposals for further reducing the havest of black ducks in certain areas. The Service believes that the plan should be made available for consideration elsewhere in the range of the black duck, particularly by agencies involved in black duck management. It is particularly important that the Mississippi Flyway Council and Canada be afforded ample opportunity to consider the plan, and that a carefully planned comprehensive management program be developed for application throughout the range of the black duck. It is essential that hunters be informed about the plight of the species, and the need for regulatory action to assist in its recovery. It is highly important that adequate lead time be provided to develop, coordinate, and implement such a comprehensive rangewide program considering the fact that two countries and many State and Provincial management agencies must cooperate and assist in the program. It is also highly important that dissemination of public information be provided prior to the implementation of the recommended management measures.

Other Recommendations. The Service offers the following responses to other recommendations by persons appearing at the public hearing. The proposed frameworks provide for a continuation of the 5-year stabilized duck hunting regulations into the 1982–83 season, the third year of the experiment. No changes in hunting hours are being proposed. In response to WMI's recommendations, the Service notes that a number of management plans for various populations of migratory game birds have been completed or are nearing completion. In March 1982 the service issued its *National Waterfowl Management Plan* (copies are available upon request). Canada, also, has a national waterfowl management plan in the final stages of development. The Service intends to consult with wildlife authorities in both Canada and Mexico in the near future regarding development of a North American Waterfowl management plan.

Written Comments Received

In the **Federal Register** dated June 15, 1982 (at 47 FR 25923), the Service responded to comments or proposed late season frameworks which had been received up to that time. Twenty additional late season recommendations have been received since then. Two of these (NWF and WMI) were also presented at the August 3, 1982, public hearing and are discussed above. Of the remaining 18 comments, 8 were submitted by State wildlife agencies, 5 by waterfowl flyway councils, 3 by individuals, and 2 by other organizations. The comments have been arranged by regulatory topics in the order they appeared in the **Federal Register** dated April 19, 1982 (at 47 FR 16718).

2. *Frameworks for ducks and geese in the continental United States.* The Atlantic Flyway Council recommended later Canada goose season frameworks for North Carolina and South Carolina, and reduced limits. Michigan recommended a September 26 framework opening for the Upper Peninsula. Louisiana recommended that the waterfowl framework extension to January 31 be reconsidered by the service. One organization recommended that the waterfowl hunting season framework in California be extended from January 23 to January 31 while another opposed it. Two individuals also favored the later framework. Separate frameworks for "light" and "dark" geese were requested for New Mexico.

Response. The proposed frameworks reflect the recommended changes for North Carolina and South Carolina. In the **Federal Register** dated June 15, 1982 (at 47 FR 25923) the service addressed the Michigan request, and the request from the Lower Region regulations Committee of the Mississippi Flyway Council. At that time, the Service noted that, "* * * the Service does not favor additional earlier or later frameworks until ongoing evaluations of

experimental framework changes have been completed * * *." The Service does not favor the recommendation for California at this time for the same reason. Also, the Pacific Flyway Council recently indicated that it wished to retain the present waterfowl season frameworks until the conclusion of the 5-year stabilized regulations experiment. In the meantime, the service and the Pacific Flyway Council, including California, will plan a comprehensive review of waterfowl management programs in the flyway, including the present frameworks. The revised frameworks propose separate frameworks for "light" and "dark" geese in New Mexico.

7. *Extra teal option.* Delaware noted that the option for the Atlantic Flyway did not include green-winged teal along with blue-winged teal.

Response. This omission has been corrected in the accompanying frameworks. Thus, the option remains unchanged from previous years.

12. *Canvasbacks.* Regulatory changes proposed to the service include the removal of all canvasback closure areas in the Central Flyway and the lower part of the Mississippi Flyway, certain closure areas in the upper part of the Mississippi Flyway, and a request for a special canvasback season in designated portions of the Atlantic Flyway. The upper Mississippi Flyway proposal is based on the belief that several of the closed areas are no longer used by significant numbers of canvasbacks. The Central Flyway and lower Missisippi Flyway proposals are based on the belief that the closed areas no longer serve their intended purpose and that point system regulations that assign a 100-point value to the canvasback would provide adquate protection to the species if the closed areas were abolished. This year the Atlantic Flyway proposed opening closed areas to an experimental 6-day season during which 3 male canvasbacks could be taken daily.

Response. The Service view these proposals as a further indication of the need for a comprehensive review and update of current management strategies and objectives for this species which have been in place since 1976. The Service proposes to undertake such a review and develop recommendations for consideration for the 1983–84 hunting season. The review will include an evaluation of management measures discussed in an environmental assessment title *Proposed Hunting Regulations on Canvasbacks and Redhead Ducks* (April 1976), including area closures and the criteria for defining and selecting them, and consideration of alternative management strategies including those proposed by the various Flyway Councils mentioned above. This review is judged to be a necessary preliminary to further consideration of changes in canvasback hunting regulations. Accordingly, the Service proposes to defer consideration of such changes pending completion of the review.

13. *Zoning.* Michigan requested a minor change in its zone boundary. Zoning proposals along with detailed study plans were received from Montana, New Mexico, and Oklahoma. Nebraska proposed a modification in its current zoning study which would result in the shift of 4 counties from 1 zone to another.

Response. The change in the Michigan zone is shown in the revised frameworks. The Service has reviewed the Montana, New Mexico, and Oklahoma zoning proposals and concluded that they meet the zoning criteria which have been developed to guide such experiments. These criteria appear in the **Federal Register** dated April 19, 1982 (at 47 FR 16725). The zones for the 3 Central Flyway States are identified in the proposed frameworks. The Service proposes to accept the Nebraska request for a minor change in its zone boundary, and does not believe that the change is sufficiently large to require modifying the study's time schedule.

14. *Goose and brant seasons.* Several comments were received on goose hunting seasons and hunting areas. Maryland requested and the Atlantic Flyway Council (AFC) endorsed that the season for Canada geese in Maryland west of Chesapeake Bay be extended from 70 to 90 days. Massachusetts similarly requested a 90-day season. Michigan recommended that 2 geese per day and 4 in possession be permitted statewide, that the framework be extended to February 15 in one goose management area, and that brant be included within the overall goose limit. Oregon recommended minor changes in the hunting frameworks for Canada geese belonging to the Pacific Population. Oregon also requested that data be provided on the distribution of Aleutian Canada geese so that consideration could be given to closing specific areas to all Canada goose hunting for the protection of the endangered species. Other minor changes were recommended for various Pacific Flyway goose populations by the Pacific Flyway Council. Michigan and the Central Flyway Council recommended that for hunting regulations purposes brant be regarded as "geese"; this would allow the lawful taking of brant which occasionally migrate into the 2 flyways.

Response. The Service is of the view that the western shore of Maryland is outside the areas of the Atlantic Flyway where 90-day seasons and 4-bird bag limits are permitted for Canada geese for the purpose of stabilizing these goose populations or limiting the rate of increase which, in the past, has been judged excessive. No formal proposal and supporting information has been submitted by Maryland or the AFC to document the need for further expansion of the 90-day, 4-bird area. In this regard the Service notes that the Atlantic Flyway Canada goose population in the Delmarva Peninsula area where the population problem was most acute is presently significantly below the levels of previous years. Thus, the need for further increase in harvest opportunity at present is unclear. Also, such further increases appear to be inconsistent with the intention of the AFC to seek ways of adjusting harvest regulation to promote improved distribution of the population especially in regard to increasing the proportion of the population in more southerly wintering areas. For these reasons, the Service does not believe that the proposed change is desirable at this time. The Service does not favor the Massachusetts request for many of the same reasons, including the need to better document need for the season extension. The proposed frameworks incorporate Michigan's request for a statewide Canada goose limit of 2 birds per day and 4 in possession. Minor changes were made in the goose season frameworks and limits in the Pacific Flyway. Data on distribution records of Aleutian Canada geese in Oregon were provided to the State, and the proposed frameworks identify Canada goose season closures in portions of 3 coastal Oregon counties. These closures are designed to afford greater protection to Aleutian Canada geese which frequent the areas. Revised goose regulations frameworks for both the Central and Mississippi Flyways allow the taking of brant within the overall goose season frameworks and limits.

15. The Pacific Flyway Council recommended that States having whistling swan seasons be permitted more flexibility in distributing permits and employing means to control the allotted harvests of swans. States would continue gathering standardized data on hunter activity and harvests.

Response. The Service concurs with this recommendation and the proposed change is reflected in the revised frameworks.

Public Comment Invited

Based on the results of recently completed migratory game bird studies and having due consideration for any data or views submitted by interested parties, the amendments resulting from these supplemental proposals will specify open seasons, shooting hours, areas, and bag and possession limits for waterfowl, coots, and gallinules; and snipe in the Pacific Flyway.

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals and will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time which the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on the one hand, to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms, and, on the other hand, the unavailability before late July of specific, reliable data on this year's status of waterfowl. Therefore, the Service believes that to allow a comment period past August 30, 1982, is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 525–B in the Matomic Building, 1717 H Street, NW., Washington, D.C. 20240.

All relevant comments received on the late season proposals no later than August 23, 1982, will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

Nontoxic Shot Regulations

On August 13, 1982, the Service published in the **Federal Register** (46 FR 40879) final rules describing nontoxic shot zones for waterfowl hunting. When eaten by waterfowl, spent lead pellets can have a toxic effect. Nontoxic shot zones reduce availability of lead pellets in selected waterfowl feeding areas.

Amendments to these regulations were published in the **Federal Register** (47 FR 32546; July 28, 1982). These amendments relate to changes in Indiana, Maine, Massachusetts, and Nebraska. Colorado, South Dakota, and Texas have regulations requiring steel shot for waterfowl hunting in areas not included in the Federal regulations published in the **Federal Register** on August 13, 1981 (46 FR 40879). Zones in other States will remain as they were described on August 13, 1981 (46 FR 40879).

Some national wildlife refuges require use of steel shot on hunting areas within their boundaries, and these rules are published with other regulations regarding public use of the refuges (Title 50 CFR Part 32—Hunting).

Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of these documents are available from the Service.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and] "* * * by taking such action necessary to insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species * * * which is determined to be critical."

Consequently, the Service initiated Section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On July 1, 1982, Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, concluded:

Therefore, it is my biological opinion that your action, as proposed, is not likely to jeopardize the continued existence of the above listed species or result in the destruction or adverse modification of the American peregrine falcon, whooping crane, or Everglade kite Critical Habitat.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinion resulting from its consultation under Section 7 is considered a public document and is available for public inspection in or available from the Office of Endangered Species and the Office of Migratory Bird Management, Department of the Interior, Washington, D.C. 20240.

Regulatory Flexibility Act and Executive Order 12291

In the **Federal Register** dated April 19, 1982 (at 47 FR 16722), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Memorandum of Law

The Service published its Memorandum of Law, required by Section 4 of Executive Order 12291, in the **Federal Register** dated July 19, 1982 (at 47 FR 31283).

Authorship

The primary author of this final rule is Henry M. Reeves, Office of Migratory Bird Management, working under the direction of John P. Rogers, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Dated: August 13, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

BILLING CODE 4310-55-M

Proposed Regulations Frameworks for 1982-83 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved proposed frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl, coots, and gallinules; cranes in parts of New Mexico, Texas, Colorado, Oklahoma, Montana, Wyoming, and Arizona; and common snipe in the Pacific Flyway. Frameworks are summarized below. States may be more restrictive in selecting season regulations, but may not exceed the framework provisions.

GENERAL

Split Season: States in all Flyways may split their season for ducks, geese, or brant into two segments of equal or unequal lengths. States in the Atlantic and Central Flyways may, in lieu of zoning, split their season for ducks or geese into three segments of equal or unequal lengths. Exceptions are noted in appropriate sections.

Shooting Hours: Between one-half hour before sunrise and sunset daily in all States, for all species, and for all seasons. The hours noted here also apply to hawking (taking by falconry).

Extra Blue-winged Teal: States in the Mississippi and Central Flyways selecting neither a teal or early duck season in September nor the point system may select an extra daily bag and possession limit of 2 and 4 blue-winged teal, respectively, for 9 consecutive days designated during the regular duck season. These extra limits are in addition to the regular duck bag and possession limits.

Extra teal: States in the Atlantic Flyway (except Florida) not selecting the point system may select an extra teal limit for 9 consecutive days during the regular duck season of no more than 2 blue-winged teal or 2 green-winged teal or 1 of each daily and no more than 4 singly or in the aggregate in possession.

Special Scaup-only Season: States in the Atlantic, Mississippi, and Central Flyways may select a special scaup-only hunting season not to exceed 16 consecutive days, with daily bag and possession limits of 5 and 10 scaup, respectively, subject to the following conditions:

1. The season must fall between October 1, 1982, and January 31, 1983, all dates inclusive.

2. The season must fall outside the open season for any other ducks except sea ducks.

3. The season must be limited to areas mutually agreed upon between the State and the Service prior to September 1, 1982.

4. These areas must be described and delineated in State hunting regulations.

OR

Extra Scaup: As an alternative, States in the Atlantic, Mississippi, and Central Flyways, except those selecting a point system, may select an extra daily bag and possession limit of 2 and 4 scaup, respectively, during the regular duck hunting season, subject to conditions 3 and 4 listed above. These extra limits are in addition to the regular duck limits and apply during the entire regular duck season.

Point System: Selection of the point system for any State entirely within a flyway must be on a statewide basis, except if New York selects the point system, conventional regulations may be retained for the Long Island Area. New York may not select the point system within the Upstate zoning option, and Maine, New Hampshire, Massachusetts, Connecticut, Pennsylvania, and West Virginia may not select the point system pending completion of zoning studies.

Deferred Season Selections: States that did not select their rail, woodcock, snipe, sandhill crane, gallinule, and sea duck seasons in July should do so at the time they make their waterfowl selections.

Frameworks for open seasons and season lengths, bag and possession limit options, and other special provisions are listed below by Flyway.

ATLANTIC FLYWAY

Ducks, Coots, and Mergansers

Outside Dates: Between October 1, 1982, and January 20, 1983.

Hunting Season: 50 days.

Daily Bag and Possession Limits (including restrictions on black ducks): (a) basic daily bag and possession limits of 4 and 8 ducks, respectively, of which no more than 2 in the daily bag and 4 in possession may be black ducks; or (b) basic daily bag and possession limits of 5 and 10 ducks, respectively, of which no more than 1 in the daily bag and 2 in possession may be black ducks.

Canvasbacks and Redheads: Except in closed areas, the limit on canvasbacks is 1 daily and 1 in possession. The limit on redheads throughout the flyway is 2 daily, except that in areas open to canvasback harvest the daily bag limit is 2 redheads, or 1 redhead and 1 canvasback. The possession limit on redheads is twice the daily bag limit under conventional regulations. The canvasback possession limit is equal to the daily bag limit. Under the point system, canvasbacks (except in closed areas) count 100 points each and redheads flywaywide count 70 points each. Areas closed to canvasback hunting are:

New York - Upper Niagara River between the Peace Bridge at Buffalo, New York, and the Niagara Falls. All waters of Lake Cayuga.

New Jersey - Those portions of Monmouth County and Ocean County lying east of the Garden State Parkway.

Maryland, Virginia and North Carolina - Those portions of each State lying east of U.S. Highway 1.

Restrictions on Wood Ducks: Under conventional and point system options, the daily bag and possession limits may not include more than 2 and 4 wood ducks, respectively.

Early Wood Duck Season Option: Virginia, North Carolina, South Carolina, and Georgia may split their regular hunting season so that a hunting season not to exceed 9 consecutive days occurs between October 1 and October 15. During this period under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the flyway shall apply to wood ducks. Under the point system, wood ducks shall be 25 points. For other ducks, daily bag and possession limits shall be the same as established for the flyway under conventional or point system regulations. For those States using conventional regulations, the extra teal option may be selected concurrent with the early wood duck season option. This exception to the daily bag and possession limits for wood ducks shall not apply to that portion of the duck hunting season that occurs after October 15.

Merganser Limits: The daily bag limit on mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

Coot Limits: The daily bag and possession limits of coots are 15 and 30, respectively.

Lake Champlain Area, New York Follows Vermont: The Lake Champlain Area of New York must follow the waterfowl seasons, daily bag and possession limits, and shooting hours selected by Vermont. This area includes that part of New York lying east and north of a boundary running south from the Canadian border along U.S. Highway 9 to New York Route 22 south of Keeseville, along New York Route 22 to South Bay, along and around the shoreline of South Bay to New York Route 22, along New York Route 22 to U.S. Highway 4 at Whitehall, and along U.S. Highway 4 to the Vermont border.

Special Scaup and Goldeneye Season: In lieu of a special scaup season, Vermont may, for the Lake Champlain Area, select a special scaup and goldeneye season not to exceed 16 consecutive days, with a daily bag limit of 3 scaup or 3 goldeneyes or 3 in the aggregate and a possession limit of 6 scaup or 6 goldeneyes or 6 in the aggregate, subject to the same provisions that apply to the special scaup season elsewhere.

Zoning:

Long Island: New York may, for Long Island, select season dates and daily bag and possession limits which differ from those in the remainder of the State.

Upstate New York: Upstate New York (excluding the Lake Champlain area) may be divided into three zones (West, North, South) on an operational basis for the purpose of setting separate duck, coot and merganser seasons. Option (a) or (b) for seasons and bag limits is applicable to the zones in the Upstate area within the Flyway framework; only conventional regulations may be selected. Each zone will be permitted the full number of days offered under options (a) or (b). In addition, a 2-segment split season without penalty may be selected in each zone. The basic daily bag limit on ducks in each zone and the restrictions applicable to
options (a) and (b) of the regular season for the Flyway also apply. Teal and scaup bonus bird options shall be applicable to the Upstate zones, but the 16-day special scaup season will not be allowed.

New York Zone Definitions: The zones are defined as follows:

The West Zone is that portion of Upstate New York lying west of a line commencing at the north shore of the Salmon River and its junction with Lake Ontario and extending easterly along the north shore of the Salmon River to its intersection with Interstate Highway 81, then southerly along Interstate Highway 81 to the Pennsylvania border.

The North and South Zones are bordered on the west by the boundary described above and are separated from each other as follows: starting at the intersection of Interstate Highway 81 and State Route 49 and extending easterly along State Route 49 to its junction with State Route 365 at Rome, then easterly along State Route 365 to its junction with State Route 28 at Trenton, then easterly along State Route 28 to its junction with State Route 29 at Middleville, then easterly along State Route 29 to its intersection with Interstate Highway 87 at Saratoga Springs, then northerly along Interstate Highway 87 to its junction with State Route 9, then northerly along State

Route 9 to its junction with State Route 149, then easterly along State Route 149 to its junction with State Route 4 at Fort Ann, then northerly along State Route 4 to its intersection with the New York/Vermont boundary.

Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, Pennsylvania, and West Virginia: Maine and Connecticut may implement their current zoned season programs on an operational basis. New Hampshire, Massachusetts, and West Virginia each may be divided into two zones on an experimental basis for the purpose of setting separate duck, coot and merganser seasons. New Jersey may be divided into three zones and Pennsylvania may be divided into four zones for the same purpose. Option (a) or (b) for seasons and bag limits is applicable to the zones within the Flyway framework. Only conventional regulations may be selected in Maine, New Hampshire, Massachusetts, Connecticut, West Virginia, and Pennsylvania. New Jersey must select the point system. Each zone will be permitted the full number of days offered under options (a) or (b). In addition, a two-segment split season without penalty may be selected. The basic daily bag limit on ducks in each zone and the restrictions applicable to options (a) and (b) of the regular season for the Flyway also apply. Teal and scaup bonus bird options, and the 16-day special scaup season shall be allowed.

Zone definitions:

Connecticut

North Zone - That portion of the State north of Interstate 95.

South Zone - That portion of the State south of Interstate 95.

Maine

North Zone - Game Management Zones 1 through 5.

South Zone - Game Management Zones 6 through 8.

Massachusetts

Coastal Zone - Beginning at the New Hampshire-Massachusetts border, that portion of the State east and south of a boundary formed by Interstate 95, south to U.S. Route 1, south to Interstate 93, south to Route 3, south to U.S. Route 6, southwest to Route 28, northwest to Interstate 195, and west to the Rhode Island line.

Inland Zone - That portion of the State west and north of the above boundary.

New Hampshire

Coastal Zone — Beginning at the Maine-New Hampshire line in Rollinsford, that portion of the State east of a boundary formed by State Highway 4 west to the city of Dover, south to the intersection of State Highway 108, south along State Highway 108 through Madbury, Durham, and Newmarket to the junction of State Highway 85 in Newfields, south to State Highway 101 in Exeter, east to State Highway 51 (Exeter-Hampton Expressway), east to Interstate 95 (New Hampshire Turnpike) in Hampton, and south to the Massachusetts line.

Inland Zone — That portion of the State west of the above boundary.

New Jersey

Coastal Zone — That portion of New Jersey seaward of a continuous line beginning at the New York State boundary line in Raritan Bay; then west along the New York boundary line to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with the Garden State Parkway; then south on the Garden State Parkway to the shoreline at Cape May City and continuing to the Delaware boundary in Delaware Bay.

North Zone - That portion of New Jersey west of the Coastal Zone and north of a boundary formed by Route 70, west to the New Jersey Turnpike, north on the turnpike to Route 206, north on Route 206 to Route 1, Trenton, west on Route 1 to the Pennsylvania State boundary in the Delaware River.

South Zone - That portion of New Jersey not within the North Zone or the Coastal Zone.

Pennsylvania

Lake Erie Zone - The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

North Zone - That portion of the State north of I-80 from the New Jersey State line west to the junction of State Route 147, then north on State Route 147 to the junction of Route 220, then west and/or south on Route 220 to the junction of I-80, then west on I-80 to its junction with the Allegheny River, and then north along but not including the Allegheny River to the New York border.

Northwest Zone - That portion of the State bounded on the north by the Lake Erie Zone and the New York line, on the east by and including the Allegheny River, on the south by Interstate Highway I-80, and on the west by the Ohio line.

South Zone - The remaining portion of the State.

West Virginia

Allegheny Mountain Upland Zone (contained within the circumscribed boundaries below).

The north boundary is the State line adjacent to Pennsylvania and Maryland. The eastern boundary extends south along U.S. Route 220 through Keyser, West Virginia, to the intersection of U.S. Route 50, and follows U.S. Route 50 to the intersection with State Route 93. The boundary follows State Route 93 south to the intersection with State Route 42 and continues south on State Route 42 to Petersburg. At Petersburg, the boundary follows State Route 28 south to Minnehaha Springs, and then follows State Route 39 west to U.S. Route 219 and follows 219 south to the intersection of Interstate 64. The southern boundary follows I-64 west to the intersection with U.S. Route 60, and follows Route 60 west to the intersection of U.S. Route 19. The western boundary follows Route 19 north to the intersection of I-79, and follows I-79 north to the Pennsylvania State line.

Remainder of the State - That portion outside the above boundaries.

Point System Option for all States in the Atlantic Flyway: As an alternative to conventional bag limits for ducks, a 50-day season with a point-system bag limit may be selected by States in the Atlantic Flyway during the framework dates prescribed. Point values for species and sexes taken are as follows: in Florida only, the fulvous tree duck counts 100 points each; in all States the canvasback counts 100 points each (except in closed areas); the female mallard, black duck, mottled duck, wood duck (except in Virginia, North Carolina, South Carolina, and Georgia during the early wood duck season option), redhead, and hooded merganser count 70 points each; the blue-winged teal, green-winged teal, pintail, gadwall, wigeon, shoveler, scaup, sea ducks, and mergansers (except hooded) count 10 points each; the male mallard, the wood duck during the early wood duck season option in Virginia, North Carolina, South Carolina, and Georgia, and all other species of ducks count 25 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds which legally could have been taken in 2 days.

Sea Ducks: In any State in the Atlantic Flyway selecting both point-system regulations and a special sea duck season, sea ducks count 10 points each during the point-system season, but during any part of the sea duck season falling outside the point-system season, sea duck daily bag and possession limits of 7 and 14, respectively, apply.

Coot Limits: Coots have a point value of zero, but the daily bag and possession limits are 15 and 30, respectively, as under the conventional limits.

Canada Geese

Outside Dates, Season Lengths, and Limits: Between October 1, 1982, and January 20, 1983, Maine, New Hampshire, Vermont, Massachusetts, Pennsylvania, West Virginia, Maryland, and Virginia (excluding those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate 64 and U.S. Highway 17) may select 70-day seasons on Canada geese; the daily bag and possession limits are 3 and 6 geese, respectively. However, in the area comprised of New York (including Long Island), Rhode Island, Connecticut, New Jersey, Delaware, the Delmarva Peninsula portions of Maryland and Virginia, and that portion of Pennsylvania lying east and south of a boundary beginning at Interstate Highway 83 at the Maryland border and extending north to Harrisburg, then east on U.S. Highway 22 to the New Jersey border, the Canada goose season length may be 90 days with the closing framework date extended to January 31, 1982. The daily bag limit within this area (except New York, Rhode Island, and Connecticut) will be 4 birds with a possession limit of 8 birds. The daily bag and possession limits in New York, Rhode Island, and Connecticut will be 3 and 6, respectively. Those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate 64 and U.S. Highway 17 in Virginia may select a 50-day season on Canada geese within the October 1, 1982, to January 20, 1983, framework; the daily bag and possession limits are 2 and 4 Canada geese, respectively. North Carolina and South Carolina may select a 43-day season on Canada geese within a December 20, 1982, to January 31, 1983, framework; the daily bag and possession limits are 1 and 2 Canada geese, respectively.

Closures on Canada Geese: The season is closed on Canada geese in Florida and Georgia.

Snow Geese

Outside Dates, Season Lengths, and Limits: Between October 1, 1982, and January 31, 1983, States in the Atlantic Flyway may select 90-day seasons on snow geese (including blue geese); the daily bag and possession limits are 4 and 8 geese, respectively.

Atlantic Brant

Outside Dates, Season Lengths, and Limits: Between October 1982, and January 20, 1983, States in the Atlantic Flyway may select 30-d asons on Atlantic brant; the daily bag and possession limits are 2 4 brant, respectively.

MISSISSIPPI FLYWAY

Ducks, Coots, and Mergansers

Outside Dates: Between October 2, 1982, and January 20, 1983, in all States, except that the framework opening date is September 18 in Iowa and October 1 in Wisconsin, and the framework closing date is January 31 in Mississippi.

Hunting Season: Not more than 50 days.

Limits: The daily bag limit for ducks is 5, and may include no more than 3 mallards (no more than 2 of which may be female mallards), 1 black duck, and 2 wood ducks (except as noted below). The possession limit is 10, including no more than 6 mallards (no more than 4 of which may be female mallards), 2 black ducks, and 4 wood ducks (except as noted below).

Canvasback and Redhead Limits: Except in closed areas, the conventional limit on canvasbacks and redheads is 1 daily and 2 in possession for each species. Under the point system, canvasbacks count 100 points each (except in closed areas) and redheads count 70 points each.

Closed Areas for Canvasback Hunting:

Mississippi River - Entire river, both sides, from Alton Dam upstream to Prescott, Wisconsin, at confluence of St. Croix River.

Alabama - Baldwin and Mobile Counties.

Louisiana - Caddo, St. Charles, and St. Mary Parishes; that portion of Ward 1 formerly designated as Ward 6 of St. Martin Parish; and Catahoula Lake in LaSalle and Rapides Parishes.

Michigan - Arenac, Bay, Huron, Macomb, Monroe, St. Clair, Tuscola, and Wayne Counties, and those adjacent waters of Saginaw Bay south of a line extending from Point au Gres in Sec. 6, T18N, R7E (Arenac County) to Sand Point in Sec. 11, T17N, R9E (Huron County), the St. Clair River, Lake St. Clair, the Detroit River and Lake Erie, under jurisdiction of the State of Michigan.

Minnesota - Douglas, Mahnomen, Polk, Pope, and Sibley Counties. Where the county line of any of the above counties crosses any portion of a lake, that entire lake is closed. In addition, all land in Sec. 13, T130N, R31W (i.e., land between Lake Christina and Pelican Lake) is closed.

Ohio - Land and water areas comprising Erie, Ottawa, and Sandusky Counties.

Tennessee - Kentucky Lake lying north of Interstate Highway 40.

Wisconsin - In the Mississippi River Zone, all that part of Wisconsin west of the Burlington-Northern Railroad in Grant, Crawford, Vernon, LaCrosse, Trempealeau, Buffalo, Pepin, and Pierce Counties. Also, the following lakes and waters, including a strip of land 100 yards wide adjacent to the shorelines thereof: Lake Poygan in Winnebago and Waushara Counties and Lakes Winneconne and Butte des Morts, including the connecting waters thereof, in Winnebago County.

Merganser Limits: The daily bag limit on mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

Coot Limits: The daily bag and possession limits on coots are 15 and 30, respectively.

Point System Option: As an alternative to conventional bag limits for ducks, a 50-day season with point-system bag and possession limits may be selected by States in the Mississippi Flyway during the framework dates prescribed. Point values for species and sexes taken are as follows: except in closed areas, the canvasback counts 100 points; the redhead, female mallard, wood duck (except as noted below), black duck, and hooded merganser count 70 points each; the pintail, blue-winged teal, cinnamon teal, wigeon, gadwall, shoveler, scaup, green-winged teal, and mergansers (except hooded merganser) count 10 points each; the male mallard and all other species of ducks count 25 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds which legally could have been taken in 2 days.

Coot Limits—Point System: Coots have a point value of zero, but the daily bag and possession limits are 15 and 30, respectively, as under the conventional limits.

Early Wood Duck Season Option: Arkansas, Louisiana, Mississippi, and Alabama may split their regular duck hunting seasons in such a way that a hunting season not to exceed 9 consecutive days may occur between October 2 and October 15. During this period, under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway shall apply to wood ducks, and under the point system, the point value for wood ducks shall be 25 points. For other species of ducks, daily bag and possession limits shall be the same as established for the Flyway under conventional or point system regulations. In addition, the extra blue-winged teal option available to States in this Flyway that select conventional regulations and do not have a September teal season may be selected during this period. This exception to the daily bag and possession limits for wood ducks shall not apply to that portion of the duck hunting season that occurs after October 15.

Western Louisiana: In that portion of Louisiana west of a boundary beginning at the Arkansas-Louisiana border on Louisiana Highway 3; then south along Louisiana Highway 3 to Bossier City; then east along Interstate 20 to Minden; then south along Louisiana Highway 7 to Ringgold; then east along Louisiana Highway 4 to Jonesboro; then south along U.S. Highway 167 to Lafayette; then southeast along U.S. Highway 90 to Houma; then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass—the season on ducks, coots and mergansers may extend 5 additional days, provided that the season opens no later than November 6, 1982. If the 5-day extension is selected, and if point-system regulations are selected for the State, point values will be the same as for the rest of the State.

Pymatuning Reservoir Area, Ohio: The waterfowl seasons, limits, and shooting hours in the Pymatuning Reservoir area of Ohio will be the same as those selected by Pennsylvania. The area includes Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 known as Woodward Road, on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Zoning: Alabama, Illinois, Indiana, Michigan, Missouri, Ohio, and Tennessee may select hunting seasons on ducks, coots, and mergansers by zones described as follows:

Alabama: South Zone - Mobile and Baldwin Counties. North Zone - The remainder of Alabama. The season in the South Zone may be split.

Illinois: North Zone - That portion of the State north of a line running east from the Iowa border along Illinois Highway 17 to I-74, north along I-74 to I-80, then east along I-80 to the Indiana border. Central Zone - That portion of the State between the North and South Zone boundaries. South Zone - That portion of the State south of a line running east from the Missouri border along Illinois Highway 150 to Illinois Highway 4, north along Illinois Highway 4 to Illinois Highway 15, east along Illinois Highway 15 to I-57, north along I-57 to I-70, then east along I-70 to the Indiana border.

Indiana: North Zone - That portion of Indiana north of State Highway 18. South Zone - The remainder of Indiana.

Michigan: North Zone - That portion of the State north of a line extending east from the mouth of the Manistee River along the south bank to the U.S. 31 bridge, south on old U.S. 31 to East Preuss Road, east on East Preuss Road to Huer Road, north on Huer Road to County 591 in Stronach, east on County 591 to M-55, east on M-55 to M-37, south on M-37 to M-82, east on M-82 to U.S. 131, north on U.S. 131, then east on M-46 to Port Sanilac. South Zone - The remainder of Michigan.

Missouri: North Zone - That portion of Missouri north of a line running east from the Kansas border along U.S. Highway 54 to U.S. Highway 65, south along U.S. Highway 65 to State Highway 32, east along State Highway 32 to State Highway 72, east along State Highway 72 to State Highway 34, then east along State Highway 34 to the Illinois border. South Zone - The remainder of Missouri. Missouri may split its season in each zone into two segments.

Ohio: North Zone - The counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking, Muskingum, Guernsey, Harrison, and Jefferson and all counties north thereof. In addition, the North Zone also includes that portion of the Buckeye Lake area in Fairfield and Perry Counties bounded on the west by State Highway 37, on the south by State Highway 204, and on the east by State Highway 13. South Zone - The remainder of Ohio. Ohio may split its season in each zone into two segments.

Tennessee: Reelfoot Zone - Lake and Obion Counties, or a designated portion of that area. State Zone - The remainder of Tennessee.

Within each State: (1) the same bag limit option must be selected for both zones; and (2) if a special scaup season is selected for a zone, it shall not begin until after the regular season closing date in that zone.

Geese

Definition: For the purpose of hunting regulations listed below, the term "geese" also includes brant.

Outside Dates, Season Lengths, and Limits: Between October 2, 1982, and January 20, 1983, States in this Flyway may select 70-day seasons on geese, with a daily bag limit of 5 geese, to include no more than 2 white-fronted geese. The possession limit is 10 geese, to include no more than 4 white-fronted geese. Regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Outside Dates and Limits on Snow and White-fronted Geese in Louisiana: Between October 2, 1982, and February 14, 1983, Louisiana may select 70-day seasons on snow (including blue) and white-fronted geese by zones established for duck hunting seasons, with daily bag and possession limits as described in the above paragraph.

Minnesota. In the:

(a) Lac Qui Parle Zone (described in State Regulations)—the season on Canada geese closes after 50 days or when 5,500 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose and the possession limit is 4.

(b) Southeastern Zone (described in State regulations)—the season for Canada geese may extend for 70 consecutive days. The daily bag limit is 2 Canada geese and the possession limit is 4.

(c) Remainder of the State—the season on Canada geese will be concurrent with the duck season. The daily bag limit is 2 Canada geese and the possession limit is 4.

Iowa: The season may extend for 70 consecutive days. The daily bag limit is 2 Canada geese and the possession limit is 4.

Missouri. In the:

(a) Swan Lake Zone (described in State regulations)—the season on Canada geese closes after 70 days or when 20,000 birds have been harvested, whichever occurs first. Through November 21, the daily bag limit is 1 Canada goose and the possession limit is 4. After November 21, the daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Southeastern Area (east of U.S. Highway 67 and south of Crystal City)—State may select a 50-day season on Canada geese between December 1, 1982, and January 20, 1983, with a daily bag limit of 2 Canada geese and a possession limit of 4.

(c) Remainder of the State—the season on Canada geese will be concurrent with the duck season in the respective duck hunting zones. The daily bag limit is 2 Canada geese, and the possession limit is 4.

Wisconsin: The framework opening date for geese is October 1. The harvest of Canada geese is limited to 18,000 birds. In the:

(a) Horicon and Central Zones (described in State regulations)—the season for Canada geese may not exceed 40 days and the season bag and possession limit is 1 bird.

(b) Mississippi River Zone (that portion of the State west of the Burlington-Northern Railroad in Grant, Crawford, Vernon, LaCrosse, Trempealeau, Buffalo, Pepin, and Pierce Counties)—the season for Canada geese may not exceed 70 days. Through November 25, the daily bag limit is 1 Canada goose and the possession limit is 2. After November 25, the daily bag limit is 2 Canada geese and the possession limit is 4.

(c) Remainder of the State—the season for Canada geese may not exceed 30 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

Illinois: Seasons on geese up to 40 days may be selected by zones established for duck hunting seasons, except that in the South Zone the season will close no later than December 31. The harvest of Canada geese is limited to 27,000, with 17,500 birds allocated to the Southern Illinois Zone (described in State regulations). In the Southern Illinois Zone, the daily bag limit is 2 Canada geese and the possession limit is 4. Elsewhere in Illinois, the daily bag limit is 1 Canada goose and the possession limit is 4.

In the Tri-County Area (all of Knox County; in Fulton County the townships of Buckhart, Canton, Cass, Deerfield, Fairview, Farmington, Joshua, Orion, Putnam, and that portion of Banner Township bounded on the north by Illinois Route 9 and on the east by U.S. 24; in Henry County the townships of Alba, Annawan, Atkinson, and Cornwall), the season for Canada geese may extend for 10 days or until a quota of 700 birds is reached, whichever occurs first. The daily bag limit is 1 Canada goose and the possession limit is 4.

Michigan. In the:

(a) Counties of Baraga, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, and Ontonagon—the season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Southeastern Canada Goose Management Area (described in State regulations)—the season for Canada geese may not exceed 107 days between October 2, 1982, and February 15, 1983. During that portion of the season which coincides with the duck hunting season in the South Zone, the daily bag limit is 2 Canada geese and the possession limit is 4. During that portion of the season which occurs after the close of the duck season in the South Zone, the daily bag limit is 3 Canada geese and the possession limit is 6.

(c) Remainder of the State—the daily bag limit is 2 Canada geese and the possession limit is 4.

Ohio: The daily bag limit is 2 Canada geese and the possession limit is 4, except that in the counties of Ashtabula, Trumbull, Marion, Wyandot, Lucas, Ottawa, Erie, Sandusky, Mercer, and Auglaize, the daily bag limit is 1 Canada goose and the possession limit is 2.

Indiana: The season for Canada geese may extend for 70 days, except in Posey County, where the season may not exceed 40 days. The daily bag limit is 2 Canada geese and the possession limit is 4. The goose seasons may be set by zones established for duck hunting.

Kentucky: The season for Canada geese may extend for 70 days, except in that portion of the State west of U.S. Highway 41, where the season may not exceed 40 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

Tennessee: The season for Canada geese may extend for 70 days, except in Lake, Obion, Weakley, and Carroll Counties, and those portions of Gibson and Dyer Counties north of State Highways 20 and 104 and east of U.S. Highway 45W, where the season may not exceed 40 days. The daily bag limit is 1 Canada goose and the possession limit is 2, except in that portion of the State west of State Highway 13, where the daily bag limit is 2 Canada geese and the possession limit is 4. In that portion of Tennessee bounded on the north by State Highways 20 and 104, and on the east by U.S. Highways 45W and 45, the season for Canada geese may extend for 40 days, with bag and possession limits of 2 and 4 birds, respectively.

Arkansas, Louisiana, and **Mississippi:** the season for Canada geese may extend for 40 days, with bag and possession limits of 2 and 4 birds, respectively.

Alabama: The season is closed on all geese in the counties of Henry, Russell, and Barbour. Elsewhere in Alabama, the daily bag limit is 2 Canada geese and the possession limit is 4.

Missouri and Illinois Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Southern Illinois Zone, the Tri-County Area of Illinois, and the Swan Lake Zone of Missouri will have been filled, the season for taking Canada geese in the respective area will be closed by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing.

Shipping Restrictions: Geese taken in Illinois and Missouri and in the Kentucky counties of Ballard, Hickman, Fulton, and Carlisle may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

CENTRAL FLYWAY

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide and the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Ducks (including mergansers) and Coots

Outside Dates: October 2, 1982, through January 23, 1983.

Hunting Season: The basic season in the Low Plains Unit may include no more than 60 days and in the High Plains Mallard Management Unit may include no more than 83 days provided that the last 23 days of such season must begin on or after December 11, 1982. The High Plains Unit, roughly defined as that portion of the Central Flyway which lies west of the 100th meridian, shall be described in State regulations. States may split their seasons into 2 or, in lieu of zoning, 3 segments.

Daily Bag and Possession Limits: Conventional limits on ducks (including mergansers), singly or in the aggregate, are 5 daily and 10 in possession. The aggregate daily bag limit on ducks (including mergansers) may include no more than 1 canvasback (note areas closed to canvasback hunting), 1 redhead, 1 female mallard, 1 hooded merganser, and 2 wood ducks. The possession limit may include no more than 1 canvasback (note areas closed to canvasback hunting), 2 redheads, 2 female mallards, 2 hooded mergansers, and 4 wood ducks. The daily bag and possession limits on coots are 15 and 30, respectively.

As an alternative to conventional bag and possession limits for ducks, States may select point system regulations.

Point Values: Canvasbacks count 100 points each (note areas closed to canvasback hunting); female mallards, Mexican-like ducks, mottled ducks (Texas only), wood ducks, redheads, and hooded mergansers count 70 points each; blue-winged teal, green-winged teal, cinnamon teal, scaup, pintails, gadwalls, wigeon, shovelers, and mergansers (except the hooded merganser) count 10 points each; all other species and sexes of ducks count 20 points each. The daily bag limit is reached when the point value of the last bird taken, when added to the sum of the point values of other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds which legally could have been taken in 2 days. Coots have a point value of zero, but the daily bag and possession limits are 15 and 30, respectively, as under the conventional limits.

Closures. Areas closed to canvasback hunting are:

North Dakota - that portion lying east of State Highway 3, including all or portions of 27 counties.

South Dakota - all of Marshall County; that portion of Day County east of State Highway 25; that portion of Codington County south of State Highway 20 and west of U.S. Highway 81; that portion of Hamlin County west of U.S. Highway 81; and that portion of Kingsbury County east of State Highway 25 and north of U.S. Highway 14.

Zoning: Kansas, Montana, Nebraska, New Mexico, South Dakota, Oklahoma, and Wyoming may select hunting seasons on ducks, coots, and mergansers by zones described as follows:

Kansas: Two zones in the Low Plains portion of the State as follows:

Zone 1. That portion of south-central Kansas bounded by the State line and the following highways: on the west by U.S. 283; on the north by K-4, U.S. 81, U.S. 56, K-150, and U.S. 50; and on the east by K-99.

Zone 2. The remaining area within the Low Plains of Kansas.

Montana: Two zones in the Central Flyway portion as follows:

Zone 1. The counties of Bighorn, Blaine, Carbon, Daniels, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Richland, Roosevelt, Sheridan, Stillwater, Sweetgrass, Valley, Wheatland, and Yellowstone.

Zone 2. The counties of Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Treasure, and Wibaux.

Nebraska: Four zones within the Low Plains portion of the State as follows:

Zone 1. Keya Paha County east of U.S. Highway 183 and all of Boyd, Knox, Cedar, and Dixon Counties, including the adjacent waters of the Niobrara River.

Zone 2. The Low Plains portions of Dawson, Gosper, Frontier, and Furnas Counties and all of Boone, Buffalo, Phelps, Harlan, Hall, Kearney, Franklin, Merrick, Nance, Hamilton, Platte, Polk, Colfax, Butler, Dodge, Saunders, Douglas, Washington, and Wheeler Counties, including the adjacent waters of the Platte River.

Zone 3. The Low Plains portions of Brown, Blaine, and Custer Counties and all of Rock, Holt, Loup, Garfield, Valley, Greeley, Sherman, Howard, Antelope, Pierce, Madison, Wayne, Stanton, Cuming, Dakota, Thurston, and Burt Counties.

Zone 4. Adams, Webster, Clay, Nuckolls, York, Fillmore, Thayer, Seward, Saline, Jefferson, Lancaster, Gage, Sarpy, Cass, Otoe, Johnson, Nemaha, Pawnee, and Richardson Counties.

New Mexico: Two zones as follows:

Zone 1. That portion of northern New Mexico east of the Continental Divide and the Jicarilla Apache Indian Reservation and north of Interstate Highway 40 and U.S. Highway 54.

Zone 2. The remainder of the Central Flyway portion of New Mexico.

Oklahoma: Two zones in the Low Plains portion of the State as follows:

Zone 1. That portion of northwestern Oklahoma, except the Panhandle, bounded by the following highways: starting at the Texas-Oklahoma border, OK 33 to OK 47, OK 47 to U.S. 183, U.S. 183 to I-40, I-40 to U.S. 177, U.S. 177 to OK 51, OK 51 to I-35, I-35 to U.S. 60, U.S. 60 to U.S. 64, U.S. 64 to OK 132, and OK 132 to the Oklahoma-Kansas state line.

Zone 2. The remainder of the Low Plains portion of Oklahoma.

South Dakota: Two zones within the Low Plains portion of the State as follows:

South Zone. Bon Homme, Charles Mix, Clay, Gregory, Union, and Yankton Counties.

North Zone. The remainder of the Low Plains portion of South Dakota.

Wyoming: Four zones in the Central Flyway portion as follows:

Zone 1. Sheridan, Johnson, Natrona, Campbell, Crook, Weston, Converse, and Niobrara Counties.

Zone 2. Platte, Goshen, and Laramie Counties.

Zone 3. Carbon and Albany Counties.

Zone 4. Park, Big Horn, Hot Springs, Washakie, and Fremont Counties.

Geese

Definitions: In the Central Flyway, the terms "geese" include all species of geese and brant, "dark geese" include Canada and white-fronted geese and black brant, and "light geese" include all other species.

Outside Dates: October 2, 1982, through January 23, 1983, (except as noted for New Mexico).

Possession Limits: Goose possession limits are twice the daily bag limits.

West Tier States.

Montana: For its Central Flyway portion, Montana may select a season of 93 days. The daily bag limits are 2 geese in Sheridan County and 3 geese in the remainder of the Central Flyway portion.

Wyoming: Wyoming may select seasons of 93 days with daily bag limits of 2 geese for each of four Goose Management Units, which coincide with management zones for ducks, in the Central Flyway portion.

Colorado: Colorado may select, for the Central Flyway portion, a season of 93 days with a daily bag limit of 2 geese.

New Mexico: New Mexico, for the Central Flyway portion, may select a season for dark geese of 93 days with a daily bag limit of 2 during the period October 2, 1982, through January 23, 1983; and a season for light geese of 93 days with a daily bag limit of 5 during the period October 2, 1982, through February 13, 1983.

Texas (west of U.S. 81): Texas, for that portion west of U.S. Highway 81, may select a season of 93 days with a daily bag limit of 5 geese which may include no more than 2 dark geese.

East Tier States - Light geese.

North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas (for that portion east of U.S. Highway 81) may select seasons for light geese of 86 days with daily bag limits of 5 geese.

East Tier States - Dark geese. States in this tier may select seasons, statewide or in designated management units, on dark geese of 72 days (except in Nebraska and South Dakota as noted) as follows:

North Dakota: The daily bag limits may include no more than 1 Canada goose and 1 white-fronted goose or 2 white-fronted geese through October 31, 1982, and no more than 2 Canada geese or 2 white-fronted geese or 1 of each during the remainder of the season.

South Dakota: In Bon Homme, Brule, Buffalo, Campbell, Charles Mix, Corson (east of SD Highway 65), Dewey, Gregory, Hughes, Hyde, Lyman, Potter, Stanley, Sully, Tripp (east of U.S. Highway 183), Walworth, and Yankton (west of U.S. Highway 81) Counties, the season length may not exceed 79 days and the daily bag limit may include no more than 1 Canada goose and 1 white-fronted goose through November 12, 1982, and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season. In the remainder of the State, the season length may not exceed 72 days and the daily bag limit may include no more than 1 Canada goose and 1 white-fronted goose.

Nebraska: In Goose Management Unit 1 comprised of Boyd, Cedar (west of U.S. Highway 81), Keya Paha (east of U.S. Highway 183), and Knox Counties, the season length may not exceed 79 days and the daily bag limits may include no more than 1 Canada goose and 1 white-fronted goose through November 12, 1982, and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

In Goose Management Unit 2, the remainder of Nebraska east of U.S. Highway 183, and in Goose Management Unit 3, that portion of Nebraska west of U.S. Highway 183, the daily bag limits may include no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 21, 1982, and no more than 1 Canada goose and 1 white-fronted goose for the remainder of the season.

Kansas: The daily bag limit may include no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 28 and no more than 1 Canada goose and 1 white-fronted goose during the remainder of the season.

Oklahoma: In Goose Management Unit 1 (that portion of western and southern Oklahoma bounded by the following highways: starting at the Kansas-Oklahoma line, U.S. 77 to U.S. 177, U.S. 177 to OK 33, OK 33 to U.S. 75, U.S. 75 to Indian Nation Turnpike, Indian Nation Turnpike to U.S. 271, and U.S. 271 to the Oklahoma-Texas line) and in Goose Management Unit 2 (the remainder of Oklahoma), the daily bag limits may include no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose.

Texas: In that portion east of U.S. Highway 81, the bag limit may include no more than 1 Canada goose and 1 white-fronted goose daily.

PACIFIC FLYWAY

The Pacific Flyway includes the States of Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, those portions of Colorado, Wyoming (including the Great Divide Basin), and New Mexico (including the Jicarilla Apache Indian Reservation) lying west of the Continental Divide, and that portion of Montana including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties.

Ducks (including Mergansers), Coots, Gallinules, and Common Snipe

Outside Dates: Between October 2, 1982, and January 23, 1983.

Hunting Seasons: Concurrent 93-day seasons on ducks (including mergansers), coots, gallinules, and common snipe may be selected in Pacific Flyway States except as subsequently noted.

Duck Limits: Basic daily bag and possession limits on ducks (including mergansers) are 7 and 14, respectively. No more than 2 redheads or 2 canvasbacks or 1 of each may be taken daily and no more than 4 singly or in the aggregate may be possessed.

Coot and Gallinule Limits: The daily bag and possession limits on coots and gallinules are 25 singly or in the aggregate.

Common Snipe Limits: The daily bag and possession limits on common snipe are 8 and 16, respectively.

California—Waterfowl Zones: Season dates for the Colorado River Zone of California must coincide with season dates selected by Arizona. Season dates for the Northeastern Zone of California must coincide with season dates selected by Oregon. For the Southern Zone of California, the State may designate season dates differing from those in the remainder of the State.

Nevada—Clark County Waterfowl Zone: Nevada may designate season dates for Clark County differing from those in the remainder of the State.

"Columbia Basin" Portions of Washington, Oregon, and Idaho: In the Idaho counties of Ada, Bannock, Benewah, Blaine, Bonner, Boundary, Camas, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Kootenai, Latah, Lewis, Lincoln, Minidoka, Nez Perce, Owyhee, Payette, Power, Shoshone, Twin Falls, Washington, and that portion of Bingham County lying outside the Blackfoot Reservoir drainage; the Oregon counties of Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, and Wasco; and in Washington all areas lying east of the summit of the Cascade Mountains and east of the Big White Salmon River in Klickitat County, the seasons may be 100 days and must run concurrently.

Colorado, Montana, New Mexico, and Wyoming — Common Snipe: For States partially within the Flyway 93-day seasons on common snipe may be selected to occur between September 1, 1982, and February 28, 1983, and which need not be concurrent with the duck season.

Geese

Outside dates, season lengths, and limits on geese: Between October 2, 1982, and January 23, 1983, 93-day seasons on geese (except brant) may be selected in the Pacific Flyway States, except as subsequently noted. The basic daily bag and possession limits are 6, provided that the daily bag limit includes no more than 3 white geese (snow, including blue, and Ross' geese) and 3 dark geese (Canada and white-fronted geese); the daily bag and possession limits are proportionately reduced in those areas where special restrictions apply to Canada geese. In Washington and Idaho, the daily bag and possession limits are 3 and 6 geese, respectively.

Aleutian Canada goose closure: The season is closed on the Aleutian Canada goose. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

Canada goose closures in California: Three areas in California, described as follows, are restricted in the hunting of all Canada geese:

(1) In the counties of Del Norte and Humboldt there will be no open season on any Canada geese during the 1982-83 waterfowl hunting season.

(2) In the Sacramento Valley in that area bounded by a line beginning at Willows in Glenn County proceeding south on Interstate Highway 5 to the junction with Hahn Road north of Arbuckle in Colusa County; then easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes on the Sacramento River; then southerly on the Sacramento River to the Tisdale By-pass; then easterly on the Tisdale By-pass to where it meets O'Banion Road; then easterly on O'Banion Road to State Highway 99; then northerly on State Highway 99 to its junction with the Gridley-Colusa Highway in Gridley in Butte County; then westerly on the Gridley-Colusa Highway to its junction with the River Road; then northerly on the River Road to the Princeton Ferry; then westerly across the Sacramento River to State Highway 45; then northerly on State Highway 45 to its junction with State Highway 162; then continuing northerly on State Highway 45-162 to Glenn; then westerly on State Highway 162 to the point of beginning in Willows, the hunting season for taking any Canada geese will not open until December 15, 1982, and may continue to the end of the 1982-83 waterfowl hunting season.

(3) In the San Joaquin Valley in that area bounded by a line beginning at Modesto in Stanislaus County proceeding west on State Highway 132 to the junction of Interstate Highway 5; then southerly on Interstate Highway 5 to the junction of State Highway 152 in Merced County; then easterly on State Highway 152 to the junction of State Highway 59; then northerly on State Highway 59 to the junction of State Highway 99 at Merced; then northerly and westerly to the point of beginning; the hunting season for taking any Canada geese will close on November 23, 1982.

Canada goose closures in Oregon: Those portions of Coos and Curry counties lying west of U.S. Highway 101 and that portion of Tillamook County lying south of an east-west line passing through the most westerly point of Cape Lookout shall be closed to the hunting of all Canada geese.

"Columbia Basin" Portions of Washington and Oregon—geese: In the Washington counties of Adams, Benton, Douglas, Franklin, Grant, Kittitas, Klickitat, Lincoln, Walla Walla, and Yakima, and in the Oregon counties of Gilliam, Morrow, Sherman, Umatilla, Union, Wallowa, and Wasco, the goose season may be of 100 days duration and must run concurrently with the duck season.

Oregon (Lake and Klamath Counties) — geese: In the Oregon counties of Lake and Klamath the daily bag and possession limits through October 29 are reduced to 2 and 4 geese, respectively, with no more than 1 and 2, respectively, being dark geese. Thereafter, the limits may be increased to those which are allowed for the Flyway.

California (Northeastern Zone) — geese: In the Northeastern Zone of California through October 29, the limits are 1 dark goose or 1 white goose in the daily bag and 2 geese in possession. Thereafter, the limits may be increased to 4 geese in bag and possession with not more than 2 dark geese or 3 white geese being in either the daily bag or possession.

California (Balance of the State Zone) — geese: In the Balance of the State Zone the season shall not exceed 79 days. The daily bag and possession limits are 5, with not more than 2 dark geese or 3 white geese in either the daily bag or possession.

Pacific Population of Canada geese—Idaho, Oregon, and Montana: In that portion of Idaho lying west of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border (except Boundary, Bonner, Kootenai, Benewah, Shoshone, Latah, Nez Perce, Lewis, Clearwater and Idaho Counties); in the Oregon counties of Baker and Malheur; and in Montana (Pacific Flyway portion west of the Continental Divide), the daily bag and possession limits are 2 Canada geese and the season on Canada geese may not extend beyond January 2, 1982.

Rocky Mountain Population of Canada Geese—Montana and Wyoming: In Montana (Pacific Flyway portion east of the Continental Divide) and Wyoming the season may not extend beyond January 2, 1982. In Lincoln County, Wyoming, the combined special sandhill crane-Canada goose season and the regular regular goose season shall not exceed 93 days.

Idaho, Colorado, and Utah: In that portion of Idaho lying east of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border; in Colorado; and in Utah, except Washington County, the daily bag and possession limits are 2 and 4 Canada geese, respectively, and the season on Canada geese may be no more than 86 days and may not extend beyond January 2, 1983.

Nevada—experimental zoning: Nevada may experimentally designate season dates on geese in Clark County, in Elko County, and in that portion of White Pine County within Ruby Lake National Wildlife Refuge differing from those in the remainder of the State. The daily bag and possession limits are 2 Canada geese throughout the State.

Arizona, Nevada, California, Utah, and New Mexico: In California, the Colorado River Zone where the season must be the same as that selected by Arizona and the Southern Zone; in Arizona; in New Mexico; in Clark County, Nevada; and in Washington County, Utah; the season on Canada geese may be no more than 86 days. The daily bag and possession limits are 2 Canada geese except in that portion of California Department of Fish and Game District 22 within the Southern Zone (i.e. Imperial Valley) the daily bag and possession limits on Canada geese are 1 and 2, respectively.

Washington—snow goose: In the Washington counties of Island, Skagit, Snohomish, and Whatcom, the seasons on snow geese may not extend beyond January 2, 1983.

Pacific Brant

Between October 23, 1982, and February 20, 1983, States in this Flyway may select an open season on Pacific brant of 93 days with daily bag and possession limits of 4 and 8 brant, respectively.

Whistling Swans

In Utah, Nevada and Montana, an open season for taking a limited number of whistling swans may be selected subject to the following conditions: (a) the season must run concurrently with the duck season; (b) in Utah, no more than 2,500 permits may be issued, authorizing each permittee to take 1 whistling swan; (c) in Nevada, no more than 500 permits may be issued, authorizing each permittee to take 1 whistling swan in Churchill County; (d) in Montana, no more than 500 permits may be issued authorizing each permittee to take 1 whistling swan in either Teton or Cascade Counties; and (e) the appropriate State agency must issue permits, obtain harvest and hunter participation data, and require successful hunters to immediately validate their harvests.

Sandhill Cranes

Arizona may select an experimental sandhill crane season subject to the conditions specified in the frameworks for early seasons.

SPECIAL FALCONRY FRAMEWORKS

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States
may select an extended season for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall within the regular season framework dates and, if offered and accepted, other special season framework dates for hunting.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting seasons and extended falconry seasons.

Regulations Publication: Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

NOTE: In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September teal season, special scaup season, special scaup and goldeneye season, or falconry season) exceed 107 days for a species in one geographical area.

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federal register

Friday
August 20, 1982

Part VIII

Department of Agriculture

Soil Conservation Service

Policy and Procedures for Protecting Archeological and Historic Properties; Proposed Rule

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

7 CFR Part 656

SCS Policy and Procedures for Protecting Archeological and Historic Properties

AGENCY: Soil Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule is a revision of general policy and procedures for Soil Conservation Service (SCS) protection of archeological and historic properties (also referred to as "historic properties" or "properties") and implementation of historic preservation legislation and executive orders in its programs. It was developed to ensure complete compliance with the applicable statutes and regulations. In response to comments received, it has been further revised to ensure consideration of historic properties in all SCS programs. These counterpart procedures have been drafted jointly with the Advisory Council on Historic Preservation (ACHP) as counterpart regulations under 36 CFR 800.11.

DATE: Comments are due on or before October 19, 1982.

ADDRESS: Interested persons are invited to submit written comments and suggestions to Arun Basu, Director of Social Sciences, Soil Conservation Service, U.S. Department of Agriculture, P.O. Box 2890, Washington, D.C. 20013, (202) 382–1514.

FOR FURTHER INFORMATION CONTACT: Diane Gelburd, National Cultural Resources Specialist, Social Sciences, Soil Conservation Service, U.S. Department of Agriculture, P.O. Box 2890, Washington, D.C. 20013, (202) 382–1514 or Jack Goldstein or Ronald D. Anzalone, Advisory Council on Historic Preservation, 1522 K Street, NW., Washington, D.C. 20005, (202) 254–3974.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA criteria established to carry out Executive Order 12291 "Improving Government Regulations," and has been classified "not significant." On July 18, 1977, SCS published in the **Federal Register** (42 FR 36804) its final rule "Procedures for the Protection of Archeological and Historical Properties Encountered in SCS-Assisted Programs" (7 CFR Part 656). Amendments to this rule were published in the **Federal Register** on June 19, 1978, and on June 23, 1978 (43 FR 26277 and 43 FR 27158).

An earlier proposed revision of this rule was published in the **Federal Register** on January 29, 1981 (46 FR 9611). In response to comments received (see "Comments Leading to Changes in the Rulemaking"), it has been further revised to ensure consideration of historic properties in all SCS programs. Explicit instructions and guidance for carrying out this rule will be included in SCS manuals, guidelines, directives, and training programs.

This proposed rule is a total revision of present SCS procedures for protecting historic properties. It was developed to insure complete compliance with the applicable statutes and regulations. It is a counterpart rule to regulations of the Advisory Council on Historic Preservation (36 CFR Part 800) for implementing Section 106 of the National Historic Preservation Act, as amended (16 U.S.C. 470f), and USDA rules for Enhancement, Protection, and Management of the Cultural Environment (7 CFR Part 3100).

The determination has been made pursuant to the provisions of Executive Order 12291 that the preparation of a regulatory impact analysis is not required. The proposed regulation is not considered a major rule under Executive Order 12291. The regulation concerns agency policy and guidelines.

It has also been determined, pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534), that the regulations do not have significant economic impact on a substantial number of small entities.

Comments on the proposed rule will be accepted for consideration if received on or before October 19, 1982. After that time this proposed action will be reviewed. A final rule discussing the comments received and incorporating any revisions of the proposed rule will be published in the **Federal Register** as soon as possible.

Comments Leading to Changes in the Rulemaking

SCS received 42 letters representing 62 individuals, organizations, or agencies. The substantive comments received and their consideration are discussed below.

Comment: The requirements are burdensome. They will be costly and time consuming and will severely hamper SCS assistance activities.

Response: The 1981 proposed rule has been revised to streamline the procedures and minimize burdensome, costly, or time-consuming requirements. The objective of SCS is efficient and effective integration of historic preservation considerations in SCS assistance programs.

Comment: SCS does not have the technical expertise to carry out these responsibilities.

Response: SCS is providing training on archeological and historic properties so that its field personnel will have the technical expertise necessary to carry out their responsibilities under the proposed rule.

Comment: SCS, not ACHP, should have final decision authority on assistance actions because SCS is the agency with the program responsibilities.

Response: SCS consults with and seeks advice from ACHP, but retains final decision authority on assistance actions.

Comment: SCS should allow an opportunity for public comment in its review of proposed undertakings that may affect historic properties.

Response: The 1981 proposed rule has been revised to specify that it is SCS policy to allow opportunities for public comment.

Comment: Many of the exempted actions that were listed in appendices A and B of the proposed rule published on January 29, 1981, should not be exempted, because they can have an adverse effect on historic properties.

Response: The 1981 proposed rule has been revised to insure SCS consideration of historic properties when any activity may have an adverse effect (see Appendix I).

Comment: The requirements for project and nonproject activities are basically the same. Therefore, SCS should not distinguish between project and nonproject procedures.

Response: The distinction is made because the degree of Federal involvement and planning requirements is much greater in project activities than in nonproject activities. Therefore, the procedural requirements for historic preservation have been designed for efficient integration with the different project and nonproject procedural requirements.

Comment: A mechanism for resolving disagreements is needed.

Response: The mechanisms for resolving disagreements are specified in this proposed rule.

Comment: Requirements should be limited to known historic properties.

Response: There is inadequate knowledge of the locations of significant historic properties because about 90 percent of the Nation has not been adequately surveyed. The National Historic Preservation Act of 1966 requires Federal agencies to consider all properties on, or eligible for, the National Register of Historic Places.

SCS has a responsibility to identify significant properties and will make investigations commensurate with the likelihood that significant historic properties will be encountered.

Comment: The paperwork requirements are burdensome.

Response: The 1981 proposed rule has been revised to reduce paperwork requirements and streamline the procedures while still meeting legal requirements.

Comment: SCS can be much more effective in protecting historic properties by providing technical assistance than by terminating assistance.

Response: The 1981 proposed rule has been revised to ensure that assistance is terminated only when the participant refuses to implement prudent and feasible mitigating measures.

(Catalog of Federal Domestic Assistance Programs numbered 10.900 (Great Plains), 10.901 (Resources Conservation and Development), 10.902 (Soil and Water Conservation), 10.904 (Watershed Protection and Flood Prevention), and 10.905 (Plant Materials))

List of Subjects in 7 CFR Part 656

Historic preservation, Soil conservation.

Part 656 of Title 7, Code of Federal Regulations, would be revised to read as follows:

PART 656—SCS POLICY AND PROCEDURES FOR PROTECTING ARCHEOLOGICAL AND HISTORIC PROPERTIES

Sec.

656.1 Purpose.
656.2 Archeological and historic preservation legislation and executive orders.
656.3 Policy.
656.4 Definitions.
656.5 Applicability.
656.6 SCS administrative responsibilities.
656.7 Procedures for considering historic properties in nonproject undertakings.
656.8 Procedures for considering historic properties in nonproject undertakings.
656.9 Procedures to follow when historic properties are discovered during construction.
656.10 Ownership and curation of artifacts.
656.11 Developing more efficient techniques or procedures for protecting historic properties.
Appendix I—Assistance Activities to be Considered by SCS
Appendix II—Identification and Consideration of Historic Properties in Nonproject Undertakings
Appendix III—Procedures for Considering Historic Properties in Project Undertakings

Authority: 7 CFR 2.62; Sec. 1; E.O. 11593 (36 FR 8921, 3 CFR, 1971 comp., p. 154); Sec. 106, National Historic Preservation Act of 1966 Pub. L. 89–665 (16 U.S.C. 4701); Archeological and Historic Preservation Act of 1974 Pub. L. 93–291 (16 U.S.C. 469a).

§ 656.1 Purpose.

This part establishes Soil Conservation Service (SCS) policy and procedures for protecting archeological and historic properties (also referred to as "historic properties" or "properties") and implementing historic preservation legislation and executive orders in its programs.

§ 656.2 Archeological and historic preservation legislation and executive orders.

These regulations are based upon and implement the following laws, regulations, and Presidential directives:

(a) Antiquities Act of 1906 (Pub. L. 59–209; 34 Stat. 225; 16 U.S.C. 431 et seq.) provides for the protection of historic or prehistoric remains or any object of antiquity on Federal lands; establishes criminal sanctions for unauthorized destruction or appropriation of antiquities; and authorizes scientific investigation of antiquities on Federal lands, subject to permit and regulations.

(b) Historic Sites Act of 1935 (Pub. L. 74–292; 49 Stat. 666; 16 U.S.C. 461 et seq.) authorizes the establishment of National Historic Sites; the preservation of properties of national historical or archeological significance; and the designation of National Historic Landmarks. It also establishes criminal sanctions for violating regulations pursuant to the Act.

(c) Reservoir Salvage Act of 1960 (Pub. L. 86–523, 74 Stat. 220, as amended; 16 U.S.C. 469 et seq.) provides for the preservation of historical and archeological materials or data, including relics and specimens, that might otherwise be lost or destroyed as a result of any Federal or federally assisted or licensed project, activity, or program.

(d) National Historic Preservation Act of 1966 (NHPA) (Pub. L. 89–665; 80 Stat. 915; as amended; 16 U.S.C. 470 et seq.) establishes a positive national policy for preserving the cultural environment and authorizes establishment of the Advisory Council on Historic Preservation (ACHP). Section 106 (16 U.S.C. 470f) of this act also sets forth a Federal mandate for protection. The purpose of section 106 is to protect properties listed in or eligible for listing in the National Register of Historic Places (NRHP) through review and comment by ACHP on proposed Federal, federally assisted, or federally licensed undertakings that may affect such properties. As implemental through ACHP regulations (36 CFR Part 800), section 106 establishes a public review process with participation by the Federal agency responsible for an undertaking, the State Historic Preservation Officer (SHPO), ACHP, and interested organizations and individuals.

(e) National Environmental Policy Act of 1969 (NEPA) (Pub. L. 91–190; 83 Stat. 852; 42 U.S.C. 4321 et seq.) declares that it is the policy of the Federal Government to preserve important historic, cultural, and natural aspects of our national heritage. Compliance with NEPA requires consideration of all environmental concerns during project planning and execution.

(f) Executive Order 11593 (36 FR 8921, 3 CFR, 1971 comp. p. 154), Protection and Enhancement of the Cultural Environment, gives the Federal Government leadership in preserving, restoring, and maintaining the historic and cultural environment of the Nation. This order directs Federal agencies to administer historic properties under their control in a spirit of stewardship and trusteeship for future generations. They are directed to initiate measures necessary to implement their policies, plans, and programs in ways that preserve, restore, and maintain federally owned sites, structures, and objects of historical, architectural, or archeological significance. Executive Order 11593 directs that agencies, in consultation with ACHP, institute procedures ensuring that Federal plans and programs contribute to preservation and enhancement of nonfederally owned sites, structure, and objects of historical, architectural, or archeological significance. The order also charges all Federal agencies to locate, inventory, and nominate to NRHP all sites, buildings, districts, and objects under their jurisdiction or control that appear to qualify for listing in NRHP.

(g) Archeological and Historic Preservation Act of 1974 (Pub. L. 93–291, 88 Stat. 174; 16 U.S.C. 469 et seq.) amends the Reservoir Salvage Act of 1960 and authorizes the Secretary of the Interior or the responsible Federal agency to undertake recovery, protection, and preservation of historic and archeological data that would otherwise be lost as a result of Federal or federally assisted activities. In addition, the Act authorizes Federal agencies to expend up to 1 percent of authorized project construction costs for the protection of archeological and historical data.

(h) American Indian Religious Freedom Act of 1978 (92 Stat. 469; 42 U.S.C. 1996) declares that it is the policy of the United States to protect and preserve for American Indians, Eskimos, Aleuts, and Native Hawaiians the inherent right of freedom to believe, express, and exercise their traditional religions.

(i) Archeological Resources Protection Act of 1979 ((Pub. L. 96–95, 93 Stat. 721; 16 U.S.C. 470aa et seq.) provides protection for archeological resources found on public lands and Indian lands of the United States.

(j) Protection of Historic and Cultural Properties (36 CFR Part 800) is a procedure established by ACHP for implementing section 106 of NHPA and authorizes publication of agency implementing procedures in the form of counterpart regulations.

(k) Enhancement, Protection, and Management of the Cultural Environment (7 CFR Part 3100, Subpart C) sets forth U.S. Department of Agriculture (USDA) general policy and procedural direction pertaining to the cultural environment.

(l) National Register of Historic Places (36 CFR Part 60) sets forth procedures of the U.S. Department of the Interior (USDI), National Park Service, for nominations to the National Register of Historic Places by States and Federal agencies.

§ 656.3 Policy.

(a) SCS recognizes that historic properties are an integral part of our national heritage. Protection of these properties requires careful consideration in SCS assistance programs. SCS shall promote the conservation and protection of historic properties in its programs for conservation of soil, water, and related resources.

(b) SCS shall take the steps necessary to identify and protect historic properties early in the planning and environmental evaluation phases of all assistance activities. If historic properties are identified in an area to be disturbed, SCS shall take prudent and feasible precautions to avoid irrevocable destruction or loss.

(c) SCS policy is to protect historic properties in their original place to the fullest extent possible. If adverse effects cannot be avoided, SCS shall develop prudent and feasible measures to mitigate the adverse effects before construction or assistance completion. SCS shall consider terminating technical and financial assistance if participants refuse to implement prudent and feasible mitigating measures when assistance activities would have adverse effects on historic properties.

(d) SCS will inform participants about the importance of the cultural environment, and appropriate opportunities to enhance it.

(e) SCS shall provide training and information to field personnel and other interested parties to ensure maximum consideration of historic properties.

(f) SCS shall work with State historic preservation officers (SHPO), USDI, ACHP, the USDA historic preservation officer, SCS participants, other agencies, organizations, public interest groups, and individuals to ensure the protection of our Nation's heritage.

§ 656.4 Definitions.

(a) "Advisory Council on Historic Preservation" (ACHP) is the independent agency mandated to advise the President, Congress, and Federal agencies, and review their activities related to historic properties. ACHP was established pursuant to title II of the National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470, as amended).

(b) "Area of the undertaking's potential environmental effect" means that geographical area within which direct and indirect impacts generated by the undertaking could reasonably be expected to cause a change in the historical, architectural, or archeological qualities possessed by a National Register of Historic Places (NRHP) listed or eligible property.

(c) "Effect" is any change, beneficial or adverse, in the quality of the properties' significant historic, architectural or archeological characteristics. Effects are determined by applying the ACHP's "Criteria of Effect" (36 CFR Part 800).

(d) "Eligible property" means a district, site, building, structure, or object that meets the National Register of Historic Places (NRHP) Criteria (36 CFR 60.4).

(e) "Historic properties review" is an examination of current information to identify historic properties that are or may be present in an area that may be affected by an SCS assistance activity. This review includes checking the current State and National Registers of Historic Places and consulting the State historic preservation officer. It may also include contacting the State archeologist, historian and archivist; archeological and historical societies; and other appropriate individuals or organizations. Research on the history, prehistory, enthnography, and ecology of the area and minor field inspections may be conducted to determine whether historic properties may be present in the area of potential environmental effect and whether a historic properties survey is needed.

(f) "Historic properties survey" is a systematic field examination of the area to be affected by an SCS assistance activity in an attempt to determine and document the presence of historic properties. The scope of the survey may range from a sample to an intensive coverage of the area. Information may be gathered through remote sensing techniques, sampling procedures, resources documentation, and testing.

(g) "Historic property" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register of Historic Places; such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object.

(h) "Mitigation" refers to actions lessening the adverse effects of undertakings on historic properties. They may include:

(1) Minimizing the effect by limiting the degree or magnitude of the action and its implementation.

(2) Rectifying the effects by repairing, rehabilitating, or restoring the affected historic properties.

(3) Reducing or eliminating the effect over time by preservation and maintenance operations during the life of the action.

(4) Compensating for the effect, by moving or documenting the historic property or conducting data recovery.

(i) "National Register of Historic Places" (NRHP) is the Nation's official list of districts, sites, buildings, structures, and objects worthy of preservation because of their significance in American history, architecture, archeology, and culture. The NRHP is maintained by the Secretary of the Interior under the authority of section 2(G) of the Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461) and section 101(a)(1) of the National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470).

(j) "Nonproject Undertaking" consists of technical and financial assistance to participants on nonfederal lands through programs such as Conservation Operations, Great Plains Conservation, Rural Abandoned Mine, Rural Clean Water, Critical Area Treatment, and Land Treatment as well as SCS technical assistance to other Federal, State, and local agencies.

(k) "Participants" are any individuals, organizations, or agencies receiving technical or financial assistance from SCS.

(l) "Project sponsors" are units of government having the legal authority

and resources to install, operate, or maintain works of improvement.

(m) "Project undertaking" is a formally planned action that is carried out within a specified area by project sponsors for the benefit of the general public. Project undertakings are carried out through programs such as Watershed Protection and Flood Protection (Pub. L. 566), Flood Prevention (Pub. L. 534), and Resource Conservation and Development (Pub. L. 97–98). "Undertakings" are further defined and described in Appendix I.

(n) "Significant property" is any prehistoric or historic district, site, building, structure, or object determined important to the Nation's history or prehistory by applying the NRHP criteria (36 CFR 60.4). This term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object.

(o) "SCS assistance activity" is any undertaking planned or carried out with technical or financial aid from SCS.

(p) "State Historic Preservation Officer" (SHPO) is the official, appointed pursuant to section 101(b)(1) of the National Historic Preservation Act (NHPA), who is responsible for administering the NHPA within the State or jurisdiction, or a designated representative authorized to act for the Executive Director of ACHP.

(q) "Undertaking" is any Federal, federally assisted, or federally licensed action, activity, or program or the approval, sanction, assistance, or support of any nonfederal action, activity, or program. "Undertakings" are further defined and described in Appendix I.

§ 656.5 Applicability.

This rule applies to all SCS assistance programs except soil surveys, National Resources Inventory, snow surveys, range surveys, and wetlands inventories.

§ 656.6 SCS administrative responsibilities.

(a) SCS National Office. The SCS Chief is responsible for implementing historic preservation legislation and this rule, protecting historic properties in SCS soil and water conservation programs, and providing historic properties information and education programs for SCS personnel and interested participants.

(b) SCS National Technical Centers (NTC's). The SCS Assistant Chiefs, with assistance from the NTC's, are responsible for coordinating and providing guidance and education for considerations of historic properties.

(c) SCS State Office. Within each State, the SCS state conservationist is responsible for encouraging the protection of historic properties in SCS soil and water conservation programs and implementing this rule. The state conservationists are also the responsible Federal officials for establishing and maintaining relations with State historic preservation offices and other State agencies and officials responsible for historic properties.

(d) SCS Area and Field Offices. Area and district conservationists are responsible for identifying and protecting historic properties and for recommending opportunities to enhance them as appropriate during SCS nonproject assistance activities.

§ 656.7 Procedures for considering historic properties in nonproject undertakings.

(a) SCS recognizes the need to protect historic properties in its nonproject assistance activities. In providing assistance, SCS will take prudent and feasible precautions to identify historic properties and to avoid adverse effects on them. When appropriate, SCS will inform its participants of opportunities to enhance a historic property and of its importance. SCS has determined that the most effective means of protecting historic properties is through its guidance and assistance at the local level. SCS will provide field personnel and other interested parties with training and information to identify, protect and enhance historic properties.

(b) Identification, evaluation, and treatment of historic properties in nonproject undertakings will be conducted in accordance with SCS policy (7 CFR 656.3 above) and National Conservation Planning (Title 11–V) Manuals and the guidelines in Appendices I and II of this rule.

§ 656.8 Procedures for considering historic properties in project undertakings.

For every project undertaking which may affect historic properties (see Appendix I), SCS, in consultation with the SHPO, will implement the following prcedures (also see Appendix III), as appropriate. SCS will also invite participation of the project sponsors in this process. SCS may request assistance from USDI, the SHPO, ACHP, or other interested organizations and individuals in carrying out these responsibilities.

(a) Identify historic properties. When initiating the environmental evaluation of each project undertaking, SCS, in consultation with the SHPO, and with participation of project sponsors, as appropriate, will conduct an historic properties review.

(1) If such review and consultation identifies the actual or probable presence of historic properties in the area of environmental effect, SCS will conduct an historic properties survey. The survey will be conducted as part of the environmental evaluation during planning or before implementation on operational projects, when feasible. When it is not feasible to conduct the survey during planning, SCS will conduct the survey before developing construction specifications. SCS will follow paragraph (b) of this section to determine significance for all properties whose significance is not known.

(2) If the results of such review and consultation do not identify the actual or probable presence of any historic properties within the area of the project's potential environmental effect, SCS will document this finding in the environmental evaluation and proceed with the project.

(b) Determine significance. SCS will determine the significance of all properties identified in the area of environmental effect by applying the NRHP "Criteria of Evaluation" (36 CFR 60.4). The determination shall be carried out in consultation with the SHPO. If SCS and the SHPO determine that a property is eligible for NRHP and therefore significant, SCS will determine the effect on that historic property in accordance with paragraph (c) of this section. If SCS and the SHPO disagree on the eligibility of the property, SCS will request a determination of eligibility from the Division of NRHP in the National Park Service of the Department of the Interior.

(1) If it is determined that no properties are eligible for NRHP, SCS will document this determination in the environmental evaluation and proceed with the project.

(2) If it is determined that any property is eligible for NRHP, SCS will carry out all steps in paragraph (c) of this section.

(c) Determine effect. SCS will determine whether the project will have an adverse effect on any historic properties by applying ACHP's "Criteria of Effect" (36 CFR 800.3 (a)) in consultation with the SHPO. SCS will also invite project sponsors to participate in this determination.

(1) SCS will identify all prudent and feasible project alternatives that would avoid adverse effects on historic properties. If the adverse effect can be avoided, SCS will so document this finding in the environmental evaluation,

take action to avoid the adverse effect, and continue with the project.

(2)(i) When avoidance is neither prudent nor feasible, and SCS and the SHPO agree that the effect will be adverse, SCS will develop mitigating measures under paragraph (d) of this section.

(ii) When avoidance is neither prudent nor feasible, and SCS and the SHPO agree that the effect will not be adverse, SCS will forward such documentation to ACHP for a 30-day comment period. Unless ACHP objects within 30 days, SCS will proceed with the project. If ACHP objects to the no-adverse-effect determination within 30 days, SCS will develop mitigating measures under paragraph (d) of this section.

(3) If SCS and the SHPO, after consultation, cannot agree on whether the project will have an adverse effect on the historic properties, SCS will request a determination of effect from ACHP. On determination, SCS will take action appropriate under either paragraph (c)(1) or (2) of this paragraph.

(d) Develop mitigating measures. When it is determined that the undertaking will have an adverse effect on the property, SCS will consult with ACHP and SHPO to develop mitigating measures. SCS will also invite the participation of the project sponsors.

(1) If consultations result in an agreed-to mitigation proposal, SCS will prepare a Proposal Memorandum of Agreement describing the proposed mitigating measures, and this memorandum will be signed by both SCS and SHPO. SCS will then submit this memorandum to ACHP for comment. Unless the ACHP Executive Director finds that the proposal does not represent the agreement of the consulting parties, the proposal shall be forwarded to the ACHP Chairman within 10 days of ACHP receipt. On ratification of the proposal by the ACHP Chairman, or if ACHP takes no action within 10 days, SCS will proceed with the project in accordance with the agreed-to measures.

(2) If SCS and the SHPO cannot reach agreement on a Proposal Memorandum of Agreement, SCS will request the Executive Director of ACHP to prepare a Memorandum of Agreement which, after signature by SCS and SHPO, will be submitted to ACHP pursuant to the procedure described in paragraph (d)(1) of this section.

(3) On the failure of the consulting parties (SCS, SHPO, ACHP and project sponsors) to agree to a mitigation proposal or on notice of such failure by any of the consulting parties to the ACHP Executive Director, the Executive Director will notify the ACHP Chairman within 15 days, and the matter will be considered for comments by ACHP under the procedures provided in 36 CFR 800.6(d). Upon receiving ACHP's comments, SCS shall take these comments into account in reaching a final decision in regard to the proposed undertaking.

§ 656.9 Procedures to follow when historic properties are discovered during construction.

(a) When historic properties that appear to be NRHP eligible, as defined in § 656.4 above, are discovered during construction, (by a contractor, an SCS employee, or others) the project engineer or construction inspector will ask the contractor to avoid further work that might adversely affect the historic property and will immediately notify the responsible SCS official.

(b) SCS will notify the USDI National Park Service (NPS) and the SHPO according to Pub. L. 93–291 (16 U.S.C. 469a–2). If the notification is via telephone, the conversation will be documented by a followup telegram or letter.

(c) SCS will request NPS to provide onsite consultation and advice on the significance of the property within 48 hours or will determine the significance of the property in consultation with the SHPO. If the property is determined to be significant, SCS will follow § 656.8(d). If the property is determined not to be significant, SCS will proceed with construction after appropriate documentation of consultation findings.

(d) If SCS or NPS determines that the property is significant and recommends that construction be stopped or delayed so that an appropriate detailed survey, recovery, protection, or preservation can be accomplished, SCS will determine if NPS is willing to assume liability under its authority provided in section 3(b) of the Archeological and Historic Preservation Act of 1974, Pub. L. 93–291 (16 U.S.C., 469a). If NPS is—

(1) not willing to assume liability for delays in construction, SCS will document the property by taking photographs and preparing a brief description of the property, and will then resume construction.

(2) willing to assume liability for delays and documents this willingness in writing, SCS will order the contractor or the local contracting organization to delay or terminate the contract. SCS will then request that NPS carry out the appropriate mitigating measures. If NPS declines to do so, SCS, at its discretion, may carry out mitigating measures under § 656.8(d), or may resume construction after documenting the property in accordance with paragraph (d)(1) of this section.

(e) After mitigation is completed, SCS will cause construction to be resumed (if federally-administered contract) or recommend resumption of construction (if locally-administered contract).

§ 656.10 Ownership and curation of artifacts.

(a) When technical assistance is provided on Federal land, recovered artifacts belong to the responsible Federal agency. SCS will take appropriate action to ensure that long-term curation of recovered artifacts is provided.

(b) When technical assistance is provided on non-Federal land, recovered artifacts belong to the landowner. Arrangements will be made to ensure that the recovered artifacts are adequately analyzed before they are returned to the landowner. SCS will encourage the landowner to ensure long-term curation of the recovered artifacts or donation to an appropriate curatorial facility.

§ 656.11 Developing more efficient techniques or procedures for protecting historic properties.

(a) SCS may request execution of a Programmatic Memorandum of Agreement with ACHP for a particular program or class of undertakings that would otherwise require numerous individual requests for comments under this rule. Such agreements will be developed in accordance with 36 CFR 800.8.

(b) An SCS state office may enter into agreements with the State historic preservation office or other appropriate organizations to develop more efficient techniques or procedures for protecting historic properties.

(Catalog of Federal Domestic Assistance Programs numbered 10.900 (Great Plains), 10.901 (Resource Conservation and Development), 10.902 (Soil and Water Conservation), 10.904 (Watershed Protection and Flood Prevention), and 10.905 (Plant Materials)

Appendix I—Assistance Activities to be Considered by SCS

Certain SCS assistance activities that will not result in direct physical change on a specific site need not be considered as "undertakings" for the purposes of this part, and therefore need not be considered further by SCS. Such assistance activities include but are not limited to: providing basic information on soil and water conservation and crop production, inventorying natural resources, providing general planning assistance of a district-wide or similar nature, and providing assistance that either will not lead to disturbance of previously undisturbed

areas or soils or will not lead to further disturbances of areas previously disturbed.

Some conservation practices have a high potential to affect historic properties adversely. Such practices must be considered as "undertakings" for the purpose of this part and are as follows:

Access road
Bedding
Brush management (mechanical)
Channel vegetation
Chiseling and subsoiling
Clearing and snagging
Commercial fishponds
Critical area shaping
Dam, diversion
Dam, floodwater retarding
Dam, multiple-purpose
Dike
Diversion
Drainage land grading
Drainage development (tile and ditch)
Firebreak
Floodwater diversion
Floodway
Grade stabilization structure
Grassed waterway or outlet
Hillside ditch
Irrigation canal or lateral
Irrigation field ditch
Irrigation land leveling
Irrigation pit or regulating reservoir
Irrigation storage reservoir
Irrigation system
Land construction, abandoned mined land
Land clearing
Land smoothing
Livestock watering facilities
Mole drain
Obstruction removal
Open channel
Pipeline
Pond
Raceway
Reclamation of surface mined land
Recreation area improvement
Recreation land grading and shaping
Road development
Sediment basin
Spoilbank spreading
Spring development
Streambank protection
Stream channel stabilization
Structure for water control
Subsurface drains
Surface drainage
Terrace
Underground outlets
Vertical drain
Waste storage and treatment development
Waste storage pond or structure
Waste treatment lagoon
Water and sediment-control basins
Waterspreading
Well

Appendix II—Identification and Consideration of Historic Properties in Nonproject Undertakings

A. Introduction

This appendix is designed to serve as general guidance for the use of District Conservationists and other SCS field personnel and interested parties in (1) determining when an SCS nonproject assistance activity may affect one or more historic properties, (2) identifying the properties, and (3) determining what action should be taken if project effects from implementation of conservation practices and land treatment cannot be avoided. More explicit guidance will be provided in the SCS Social Sciences and National Conservation Planning Manuals.

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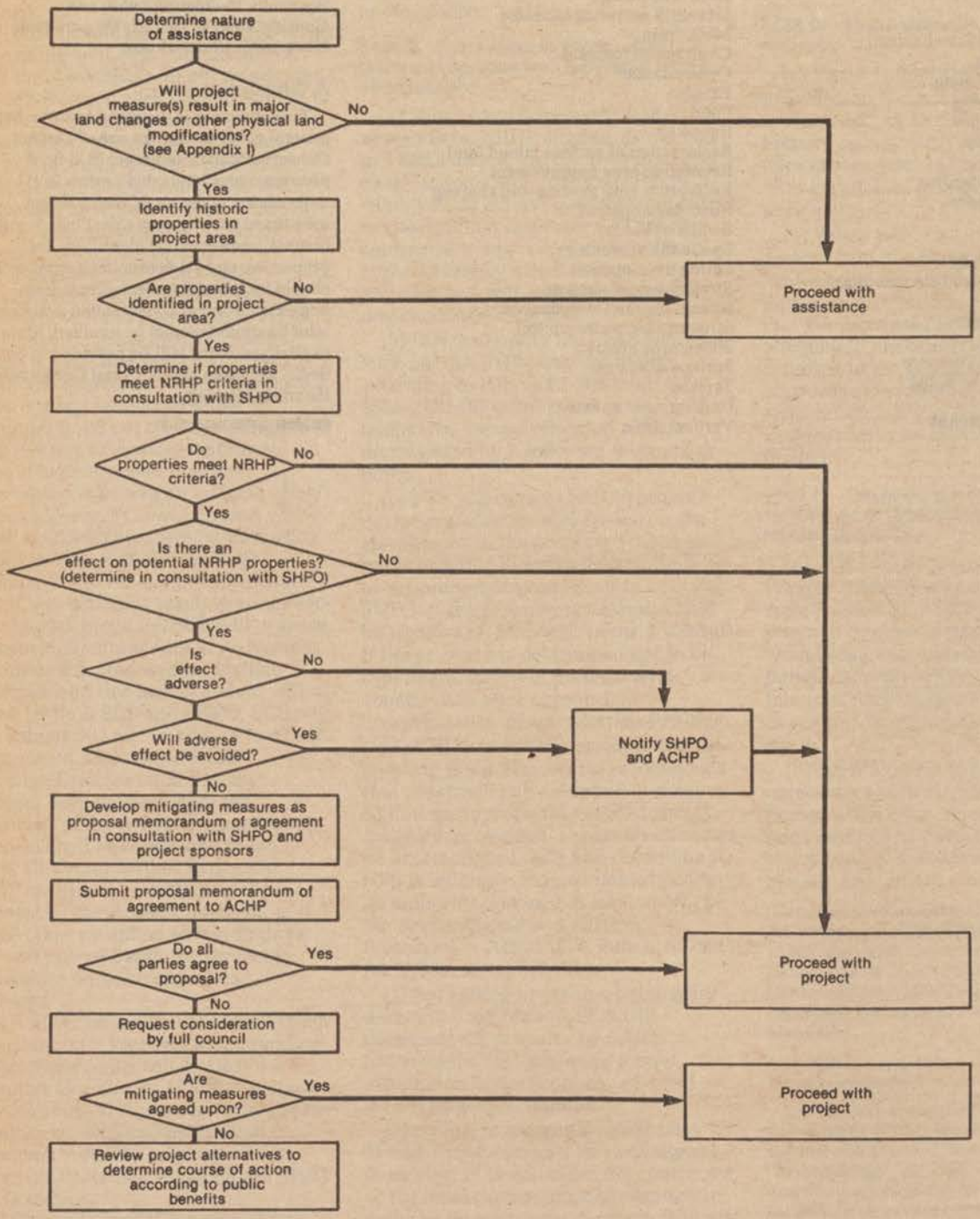
Appendix III:

Procedures for Considering Historic Properties in Project Undertakings

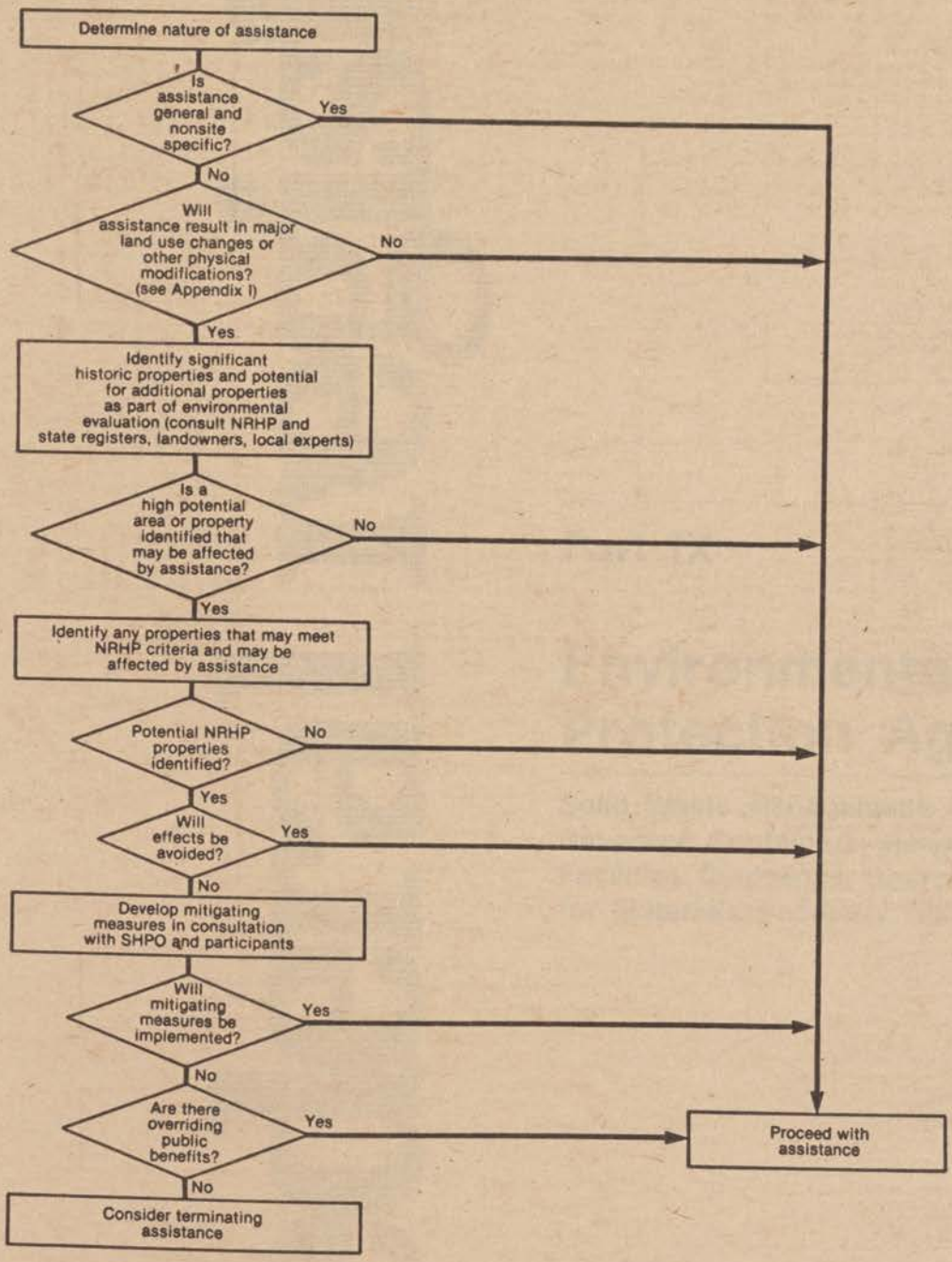
The following flowchart outlines the steps SCS will take to protect historic properties in project undertakings:



B.

Procedures for Considering Historic Properties in Nonproject Undertakings

The following flowchart outlines the steps SCS will take to protect historic properties in nonproject undertakings:



Dated: August 2, 1982.

Peter C. Myers,

Chief, Soil Conservation Service.

[FR Doc. 82-22827 Filed 8-19-82; 8:45 am]

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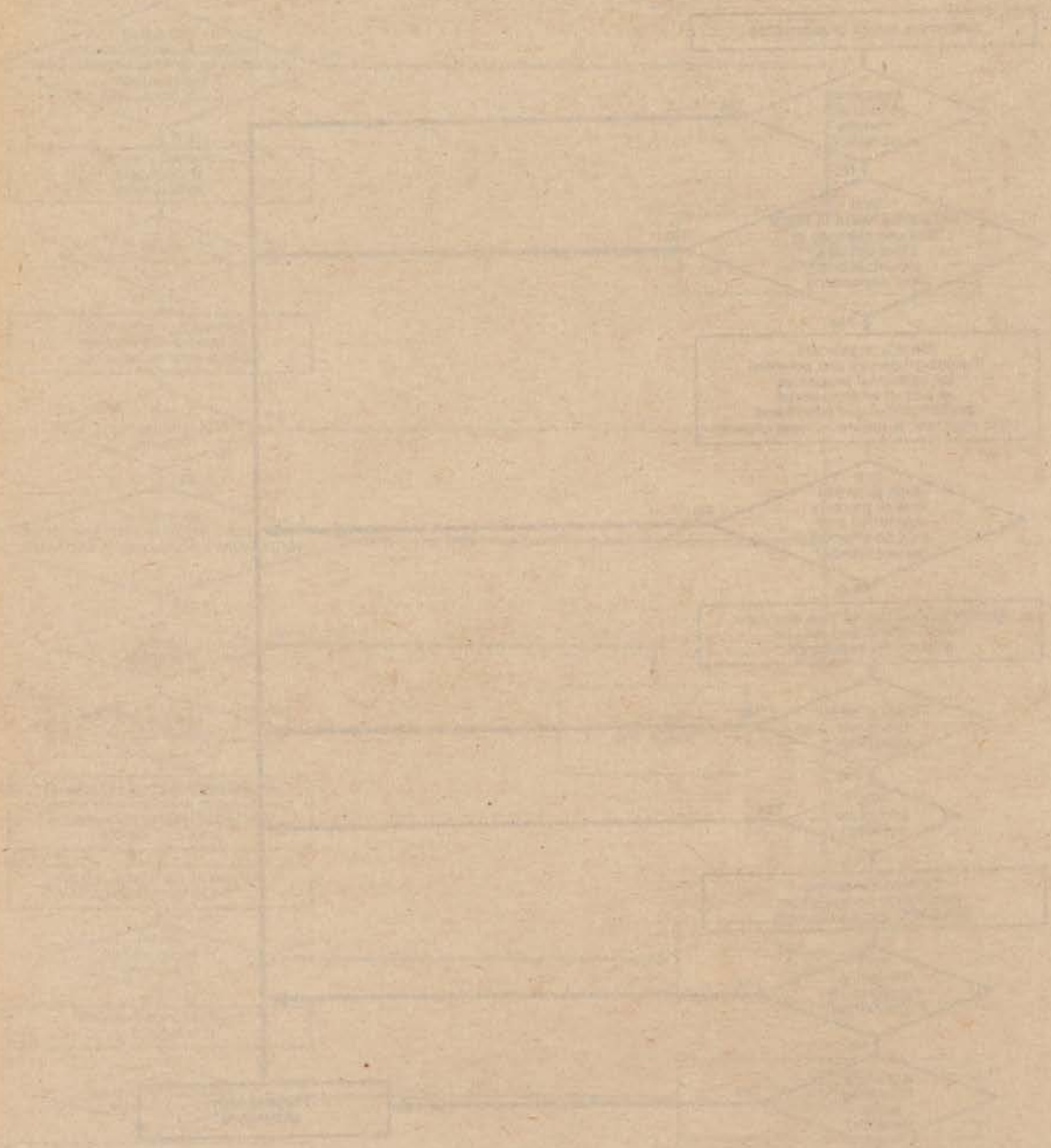

Federal Register

Friday
August 20, 1982

Part IX

Environmental Protection Agency

Solid Waste Management; Guidelines for Beverage Containers; Resource Recovery Facilities Guidelines; Source Separation for Materials Recovery Guidelines

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 244, 245, and 246

[SW-FRL-2169-4]

Solid Waste Management; Guidelines for Beverage Containers; Resource Recovery Facilities Guidelines; Source Separation for Materials Recovery Guidelines

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Office of Solid Waste is today cancelling the reporting requirements for Federal agencies under the Beverage Container Guidelines (40 CFR Part 244), Resource Recovery Facilities Guidelines (40 CFR Part 245), and Materials Recovery Guidelines for Source Separation (40 CFR Part 246). These requirements are of limited utility and their elimination will not prejudice the guidelines' objectives.

EFFECTIVE DATE: The effective date of this rule is September 20, 1982.

FOR FURTHER INFORMATION CONTACT: Jane Stieber, (202) 382–4505.

SUPPLEMENTARY INFORMATION: The Beverage Container, Resource Recovery Facilities and Materials Recovery Guidelines were promulgated to fulfill EPA responsibilities under Section 209 of the Solid Waste Disposal Act of 1965, (Pub. L. 89–272), as amended by the Resource Recovery Act of 1970 (Pub. L. 91–512), which requires the Administrator of the U.S. Environmental Protection Agency (EPA) to "recommend to appropriate agencies and publish in the **Federal Register** guidelines for solid waste recovery, collection, separation, and disposal systems." The three guidelines require federal agencies to file two kinds of reports: an Initial Report which reflects the Agency's determination whether or not to implement the guidelines and Status Reports which update the initial report. The initial reports were due by the end of 1978. The status reports are the subject of our final rule.

The above reporting requirements were not specifically required by statute and were imposed by the Agency in the belief that they could substantially aid in monitoring compliance with the guidelines. In June 1979, an EPA Office of Solid Waste Working Group reviewed these reporting requirements and concluded that the objectives of the guidelines would not be compromised by eliminating the requirements. Among the reasons cited in support of this conclusion were the availability of the information from other sources, and the small number of federal agencies covered.

For these reasons, and other, EPA proposed to eliminate the Status Report requirement on January 12, 1982, and invited comments on this proposal. Comments were received from four sources including a Federal agency and three trade associations.

The responding Federal agency was in favor of the proposal. The three trade associations were in favor of the proposal for the Beverage Container Guidelines but felt EPA should have gone further and completely eliminated the Beverage Container Guidelines.

Since no negative comments were received, EPA is finalizing the proposal.

Regulatory Analysis: Section 3(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981) requires EPA to initially determine whether a rule that it intends to propose or issue is a major rule and to prepare a regulatory impact analysis for all major rules.

EPA has determined that this final rule is not a major rule. As discussed above, this amendment withdraws the reporting requirements on the guidelines for Beverage Containers (promulgated September 21, 1976), Resource Recovery Facilities (promulgated September 21, 1976) and the Source Separation for Materials Recovery (promulgated April 23, 1976). As such, it lessens the burden on complying federal agencies. Accordingly, a Regulatory Impact Analysis has not been prepared for this amendment.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether a regulation will have a significant impact on a substantial number of small entities so as to require a regulatory analysis. The reporting requirements addressed in this amendment do not affect private enterprises. Furthermore, the effect of the rule is to eliminate these requirements. Therefore, pursuant to 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities.

List of Subjects in 40 CFR

Part 244

Government property, Beverages, Recycling.

Part 245

Government property, Recycling.

Part 246

Waste treatment and disposal, Recycling, Government property.

Dated: August 13, 1982.

John W. Hernandez, Jr.,

Acting Administrator, U.S. Environmental Protection Agency.

For the reasons set out in the preamble, Part 244, 245 and 246 of Title 40 of the Code of Federal Regulations are amended as follows:

PART 244—SOLID WASTE MANAGEMENT GUIDELINES FOR BEVERAGE CONTAINERS

1. The authority citations for Part 244 is revised to read as follows:

Authority: Secs. 1008 and 6004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6907, 6964).

2. Section 244.100 is amended by removing § 244.100(f)(2).

§ 244.100 [Amended]

* * * * *

(f) * * *

(2) [Removed]

3. Section 244.203 is revised to read as follows:

§ 244.203 Implementation decisions and reporting.

Federal agencies are to determine whether or not to implement these guidelines by October 20, 1987. Reporting of that determination shall be in accordance with the following requirements:

(a) Federal agencies that plan to implement these guidelines shall report that decision to the Administrator in accordance with the procedures described in § 244.100(f)(1).

(b) Agencies that determine not to implement these guidelines shall provide to the Administrator a nonimplementation report in accordance with § 244.100(f)(3). This report shall include the reasons for nonimplementation, based on concepts presented in § 244.100(d).

PART 245—RESOURCE RECOVERY FACILITIES GUIDELINES

1. The authority citation for Part 245 is revised to read as follows:

Authority: Secs. 1008 and 6004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6907, 6964).

2. Section 245.200–1 is amended by removing § 245.200–1(g) and (h).

§ 245.200–1 [Amended]

* * * * *

(g) [Removed]

(h) [Removed]

PART 246—SOURCE SEPARATION FOR MATERIALS RECOVERY GUIDELINES

1. The authority citation for Part 246 is revised to read as follows:

Authority: Secs. 1008 and 6004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6907, 6964).

2. Section 246.100 is amended by removing § 246.100(g) and by relettering and revising § 246.100(h) to read as follows:

§ 246.100 [Amended]

* * * * *

(g) The report required under § 246.100(e) and (f) shall be made on forms to be prescribed by the Administrator by notice in the **Federal Register.**

§ 246.203–1 [Removed]

3. Section 246.203–1 is amended by removing that section.

[FR Doc. 82–22836 Filed 8–19–82; 8:45 am]

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

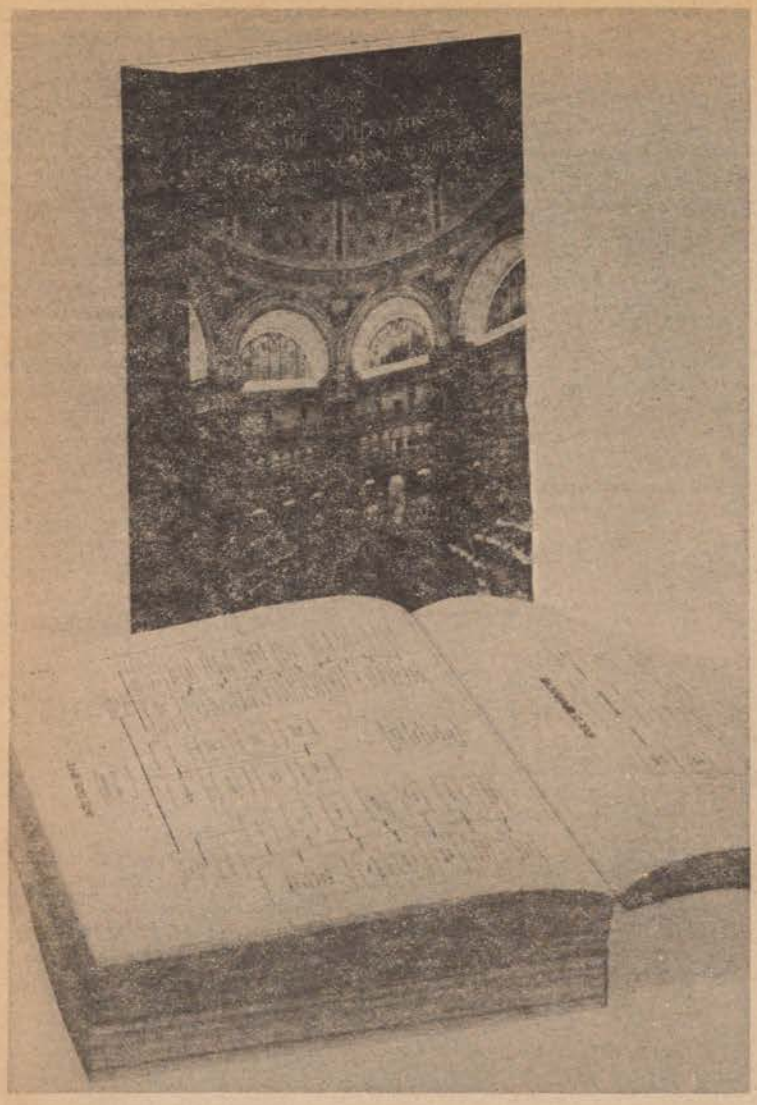
Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

List of Public Laws

Last Listing August 18, 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 (telephone 202–275–3030).

S.J. Res. 183/Pub. L. 97–236 To authorize and request the President to issue a proclamation designating October 17 through October 23, 1982, as "Lupus Awareness Week". (Aug. 17, 1982; 96 Stat. 266). Price: $1.75.



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United States Government Manual 1981/82

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies, international organizations in which the United States participates, and boards, committees, and commissions.

For those citizens interested in where to go and who to see about a subject of particular concern, the *Manual* provides the "Guide to Government Information" section, a reference to an agency's statement of organization in the *Federal Register* or *Code of Federal Regulations*, and comprehensive name, subject, and agency indexes. Particularly helpful is each agency's "Sources of Information" section, which provides addresses and telephone numbers for obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest.

Of significant historical interest is Appendix A, which describes the agencies and functions of the Federal Government abolished or transferred subsequent to March 4, 1933.

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